

Kern County

Agt. # 067-2023

**RESTATED  
EXCLUSIVE SOLID WASTE  
FRANCHISE AGREEMENT  
BETWEEN  
THE COUNTY OF KERN  
AND  
VARNER BROS., INC.**



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# TABLE OF CONTENTS

<b>ARTICLE 1: DEFINITIONS</b> .....	<b>7</b>
Section 1.1: Definitions.....	7
<b>ARTICLE 2: GRANT AND ACCEPTANCE OF EXCLUSIVE FRANCHISE</b> .....	<b>23</b>
Section 2.1: Grant and Limitations of Exclusive Franchise .....	23
<b>ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF THE PARTIES</b> .....	<b>26</b>
Section 3.1: Representations and Warranties.....	26
<b>ARTICLE 4: TERM OF AGREEMENT</b> .....	<b>28</b>
Section 4.1: Term of Agreement .....	28
Section 4.2: Reserved.....	28
Section 4.3: Termination for Failure to Implement Services.....	28
<b>ARTICLE 5: SCOPE OF SERVICES</b> .....	<b>29</b>
Section 5.1: Single-Family Services in a Universal Collection Area.....	29
Section 5.2: Commercial and Multi-Family Services in Universal Collection Areas .	30
Section 5.3: Single-Family Services in all areas other than Universal Collection Areas .....	33
Section 5.4: Commercial and Multi-Family Services in all Areas other than Universal Collection Areas.....	35
Section 5.5: Collection Service Operating Requirements .....	36
Section 5.6: Other Discarded Materials Services.....	38
Section 5.7: Standard of Performance .....	39
Section 5.8: Collection Locations .....	41
Section 5.9: Other Wastes .....	41
Section 5.10: Changes in Scope of Collection Services .....	41
Section 5.11: Billing .....	42
<b>ARTICLE 6: PROCESSING AND TRANSFER</b> .....	<b>45</b>
Section 6.1: Processing and Transfer Arrangements.....	45
Section 6.2: Recovered Materials Processing .....	47
Section 6.3: Title to Recovered Materials .....	48
Section 6.4: Rejection of Excluded Waste .....	48
Section 6.5: Facility Evaluations .....	48
<b>ARTICLE 7: SOLID WASTE DISPOSAL</b> .....	<b>50</b>
Section 7.1: Solid Waste and Residue Disposal .....	50
Section 7.2: Gate and Bin Fees .....	51
<b>ARTICLE 8: OTHER PROGRAMS AND SERVICES</b> .....	<b>53</b>
Section 8.1 Public Education and Outreach.....	53
Section 8.2: Technical Assistance .....	55
Section 8.3: Food Recovery Program Support .....	55
Section 8.4: Contamination Monitoring in Universal Collection Areas.....	56

Section 8.5: Studies, Capacity Planning, and Pilot Programs .....	57
Section 8.6: Waivers and Exemptions .....	58
Section 8.7: Compliance and Enforcement Program .....	60
Section 8.8: The Contractor's Responsibility for Implementation .....	61
Section 8.9: SB 1383 Implementation Plan.....	61
<b>ARTICLE 9: OPERATING ASSETS .....</b>	<b>63</b>
Section 9.1: Operating Assets .....	63
Section 9.2: Operation and Maintenance of the Operating Assets .....	64
Section 9.3: Containers.....	64
Section 9.4: Vehicle Requirements.....	67
<b>ARTICLE 10: GENERAL REQUIREMENTS .....</b>	<b>68</b>
Section 10.1: Public Access to the Contractor .....	68
Section 10.2: Service Complaints .....	68
Section 10.3: Accounting and Records .....	68
Section 10.4: Record Keeping and Reporting .....	69
Section 10.5: CalRecycle Regulatory Compliance.....	71
Section 10.6: Personnel and Subcontractors.....	71
Section 10.7: County Contract Manager and Contract Administrator.....	72
Section 10.8: Performance Review and Audit.....	72
<b>ARTICLE 11: COUNTY FEES AND REIMBURSEMENTS .....</b>	<b>73</b>
Section 11.1: County Payments.....	73
Section 11.2: Adjustment to Payments .....	73
Section 11.3: Payment Schedule and Late Fees .....	73
<b>ARTICLE 12: CONTRACTOR'S COMPENSATION AND RATE SETTING.....</b>	<b>75</b>
Section 12.1: General .....	75
Section 12.2: Rates and Annual Adjustments .....	76
Section 12.3: Publication of Rates .....	77
<b>ARTICLE 13: INDEMNITY, INSURANCE, AND PERFORMANCE BOND .....</b>	<b>78</b>
Section 13.1: Indemnification .....	78
Section 13.2: Insurance .....	79
Section 13.3: Performance Bond .....	82
<b>ARTICLE 14: DEFAULT, REMEDIES AND TERMINATION.....</b>	<b>83</b>
Section 14.1: Default and Remedies.....	83
Section 14.2: Liquidated Damages .....	85
Section 14.3: Uncontrollable Circumstances .....	94
Section 14.4: Right to Demand Assurances of Performance .....	95
Section 14.5: Waiver of Defenses.....	96
<b>ARTICLE 15: RESOLUTION OF DISPUTES .....</b>	<b>97</b>
<b>ARTICLE 16: MISCELLANEOUS PROVISIONS .....</b>	<b>98</b>
Section 16.1: Relationship of the Parties .....	98

Section 16.2: Notice to Parties.....	98
Section 16.3: Actions of the County in its Governmental Capacity .....	98
Section 16.4: Binding Effect.....	98
Section 16.5: Amendments.....	99
Section 16.6: Further Assurance.....	99
Section 16.7: Assignment and Transfer of Agreement.....	99
Section 16.8: Interpretation.....	100
Section 16.9: Jurisdiction .....	101
Section 16.10: Entire Agreement .....	101
<b>ARTICLE 17: EXHIBITS .....</b>	<b>103</b>

## **List of Exhibits**

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- A. Approved and Designated Facilities**
- B. Rate Adjustment Methodology**
- C. Initial Rates for Collection Services**
- D. Reporting Requirements**
- E. Public Education and Outreach Plan**
- F. SB 1383 Implementation Plan**
- G. Reserved**
- H. Approved Subcontractors**
- I. Reserved**
- J. County Franchise Zone and Area**
- K. Contractor's Service Area**
- L. Supplemental Schedule**

1 **EXCLUSIVE SOLID WASTE**  
2 **FRANCHISE AGREEMENT**

3 This Restated and now Exclusive Solid Waste Franchise Agreement (the "Agreement") is hereby  
4 entered into on the 7<sup>th</sup> day of February 2023 with the provisions herein becoming effective  
5 July 1, 2023, by and between the County of Kern, a political subdivision of the State of California,  
6 (hereinafter, the "County"), and Varner Bros., Inc. a California corporation, (hereinafter, the "Contractor")  
7 (together, the "Parties").

8 **RECITALS**

9 WHEREAS, the County is obligated to protect the public health and safety within its jurisdiction  
10 and arrangements for the collection of Solid Waste must be made in a manner consistent with said  
11 obligation to protect the public health and safety; and,

12 WHEREAS, the County Board of Supervisors determines and finds that the public interest, health,  
13 safety and wellbeing can be served through the performance of the needed services by a contractor under  
14 the specific terms provided herein with the strict compliance of said terms by the contractor being vital  
15 to this goal and the failure to meet such strict compliance grounds for declaration of material breach; and,

16 WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the County  
17 Board of Supervisors is empowered to enter into exclusive and nonexclusive franchise agreements and to  
18 prescribe the terms and conditions for solid waste handling services by resolution or ordinance; and,

19 WHEREAS, the Contractor has an existing nonexclusive franchise agreement to provide services  
20 to the area of Kern County as identified in Exhibits J and K; and,

21 WHEREAS, the now existing nonexclusive franchise agreement held by the Contractor, and any  
22 understandings related to said agreement, are hereby deemed to be insufficient to meet the recent  
23 changes in law and therefore said existing nonexclusive franchise agreement is superseded in its entirety  
24 by this Restated Exclusive Franchise Agreement; and,

25 WHEREAS, Contractor understands and agrees that the Applicable Laws, Rules and Regulations  
26 pertaining to solid waste handling services may be revised, rewritten and/or otherwise modified during  
27 the Term of this Agreement and in the event of such an occurrence the Parties agree that they will meet  
28 and confer to resolve any such issues should they arise; and,

29 WHEREAS, the County and the Contractor are mindful of the provisions of all Applicable Law  
30 governing the safe Collection, Transport, Recycling, and Disposal of Solid Waste, including, but not limited  
31 to, Proposition 218, AB 939, AB 341, SB 1383, AB 1826, AB 1594, AB 2176, SB 1016, and the Resource  
32 Conservation and Recovery Act 42 U.S.C. 9601 et seq.; and,

33 WHEREAS, the Legislature of the State of California, by enactment of the California Integrated  
34 Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid  
35 Waste management process which requires jurisdictions to implement source reduction, reuse, and  
36 recycling as integrated waste management practices; and,

37 WHEREAS, AB 939 authorizes and requires the County to make adequate provisions for Solid  
38 Waste handling within its solid waste handling jurisdiction; and,

39 WHEREAS, the State of California has found and declared that the amount of solid waste  
40 generated in California, coupled with diminishing disposal capacity and interest in minimizing potential  
41 environmental impacts from landfilling and the need to conserve natural resources, have created an  
42 urgent need for state and local agencies to enact and implement an aggressive integrated waste  
43 management program. The State has, through enactment of AB 939 and subsequent related legislation  
44 including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling  
45 Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory  
46 Commercial Organics Recycling Act of 2014 (AB 1826), AB 1594 , and the Short-Lived Climate Pollutants  
47 Bill of 2016 (SB 1383), directed the responsible state agency, and all local agencies, to promote a reduction  
48 in landfill Disposal and to maximize the use of feasible waste reduction, Reuse, Recycling, and composting  
49 options in order to reduce the amount of material that must be disposed; and,

50 WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers,  
51 Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste disposal  
52 reduction targets; and,

53 WHEREAS, SB 1383 requires the County to implement Collection programs, meet Processing  
54 facility requirements, conduct contamination monitoring, provide education, maintain records, submit  
55 reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the County has  
56 chosen to delegate some of its responsibilities to the Contractor, acting as the County's designee, through  
57 this Agreement; and,

58 WHEREAS, Section 40059 of the State Public Resources Code provides that the County may  
59 determine aspects of Solid Waste handling which are of local concern, including, but not limited to,  
60 frequency of Collection, means of Collection and Transportation, level of services, charges and fees and  
61 nature, location, and extent of providing Solid Waste handling services and whether the services are to  
62 be provided by means of partially exclusive or wholly exclusive agreements, contracts, licenses, permits  
63 or otherwise; and,

64 NOW THEREFORE, in consideration of the respective and mutual covenants and promises herein,  
65 and subject to all the terms and conditions hereof, terms and conditions which hereby superseded in their  
66 entirety any other prior agreements or understandings, the Parties agree as follows:

## ARTICLE 1: DEFINITIONS

67

### 68 Section 1.1: DEFINITIONS.

69 For the Purposes of this Agreement, and unless a different meaning is clearly required, the following  
70 words and phrases shall have the following meanings respectively ascribed to them and shall be  
71 capitalized throughout this Agreement:

72 **"AB 341"** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011  
73 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented,  
74 superseded, and replaced from time to time.

75 **"AB 876"** means the Assembly Bill approved by the Governor of the State of California on October  
76 8, 2015, which added Section 41821 to the Public Resources Code, relating to Solid Waste as  
77 amended, supplemented, superseded, and replaced from time to time.

78 **"AB 901"** means the Assembly Bill approved by the Governor of the State of California on October  
79 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6  
80 of, and added Sections 41821.6 to, the Public Resources Code, relating to Solid Waste, as  
81 amended, supplemented, superseded, and replaced from time to time.

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

85 **"AB 1594"** means the Assembly Bill approved by the Governor of the State of California on  
86 September 28, 2014, which amended Sections 40507 and 41781.3 of the Public Resources Code,  
87 relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

88 **"AB 1826"** means the Assembly Bill approved by the Governor of the State of California on  
89 September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of  
90 Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented,  
91 superseded, and replaced from time to time.

92 **"Administration Fee"** means the cost reimbursement used to offset expenses including staffing  
93 costs related to contract management, compliance, monitoring, and to enforce the Agreement.

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

99 **"Agreement"** means this Restated Exclusive Solid Waste Franchise Agreement between the  
100 County and the Contractor.

101 **"Agreement Date"** means the date of approval of this Restated Exclusive Solid Waste Franchise  
102 Agreement by the County.



103 **"Agreement Year"** means a twelve-month period beginning on January 1 of each year and ending  
104 on the following December 31 each year during the Term of this Agreement, provided however,  
105 that the first Agreement Year will commence on the Agreement Date and the last Agreement Year  
106 will end on the date of termination of this Agreement.

107 **"Annual Percentage Change"** means the average of the percentage monthly changes in the value  
108 of an index for the 12-month period ending June 30 of the most recently completed Rate Period  
109 minus the average of the percentage monthly changes in the index value for the 12-month period  
110 ending June 30 of the Rate Period immediately preceding the most recently completed Rate  
111 Period. The Annual Percentage Change shall be rounded to the nearest hundredth (100<sup>th</sup>).

112 **"Applicable Law"** means any law, ordinance, rule, regulation, requirement, guideline, permit,  
113 action, determination, or order of any Governmental Body, including but not limited to the County  
114 of Kern, having jurisdiction over any of the matters provided for or effected by this Agreement.  
115 Applicable Law may change from time to time and the provisions in this Agreement shall be  
116 interpreted and acted upon in accordance with Applicable Law at the time in question.  
117 Furthermore, to the full extent of the law, the County of Kern's shall have ability to adopt future  
118 rules, regulations and/or ordinances related to and/or effecting the matters in this Agreement  
119 and to the extent there is a disagreement regarding the provisions or requirements of Applicable  
120 Law the County of Kern's determinations shall prevail over the Contractor's.

121 **"Approved C&D Processing Facility"** means the facility and location designated on Exhibit A, and  
122 which designation may be changed from time to time, in accordance with this Agreement.

123 **"Approved Facilities"** means any one or combination of the Approved C&D Processing Facility,  
124 Approved Recyclable Materials Processing Facility, Approved Organic Waste Processing Facility  
125 and Approved Green Waste Processing Facility.

126 **"Approved Green Waste Processing Facility"** means the facility and location set forth on Exhibit  
127 A, and which designation may be changed from time to time, in accordance with this Agreement  
128 to which the Contractor shall transport Green Waste.

129 **"Approved Organic Waste Processing Facility"** means the facility and location set forth in Exhibit  
130 A, and which designation may be changed from time to time, in accordance with this Agreement  
131 to which the Contractor shall transport Organic Materials or other separated Organic Waste.

132 **"Approved Recyclable Materials Processing Facility"** means the facility and location designated,  
133 and which designation may be changed from time to time, by the County Contract Manager for  
134 Recyclable Materials Processing.

135 **"Bi-monthly"** means every other calendar month. The following months are reporting months:  
136 February, April, June, August, October and December.

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

140 **"Board of Supervisors"** means the Board of Supervisors of Kern County.

141 **"Bulky Waste"** means items that can reasonably be lifted by two people, including but not limited  
142 to, large and small household appliances, furniture, carpets, mattresses, and similar large items  
143 which require special Collection due to their size or nature, cannot be contained within a standard  
144 Container, or which does not fit in or causes harm to Collection Vehicles.

145 **"Bureau of Labor Statistics (BLS)"** means the U.S. Department of Labor, Bureau of Labor Statistics  
146 or its successor agency.

147 **"Business Days"** mean days during which the Kern County Public Works Department offices are  
148 open to do business with the public.

149 **"California Code of Regulations" or "CCR"** means the State of California Code of Regulations. CCR  
150 references in this Agreement are preceded with a number that refers to the relevant Title of the  
151 CCR (e.g., "14 CCR" refers to Title 14 of CCR).

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

154 **"Cart"** means a plastic Container with a hinged lid and wheels that is serviced by an automated  
155 or semi-automated Collection vehicle. A Cart has capacity of 35, 65, 96 gallons (or similar  
156 volumes).

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

160 **"Collect" or "Collection" (or any variation thereof)** means the act of collecting Discarded  
161 Materials at the place of generation in the County.

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

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

165 **"Commercial"** shall mean of, from or pertaining to non-Residential Premises where business  
166 activity is conducted, including, but not limited to, retail sales, services, wholesale operations,  
167 manufacturing, and industrial operations, but excluding businesses conducted upon Residential  
168 property, which are permitted under applicable zoning regulations and are not the primary use of  
169 the property. For the purposes of this Agreement, Commercial includes any parcels of real  
170 property located within the County which are not classified under the Use Codes listed annually  
171 in the *Schedule of Solid Waste Management Program Service Charges (Land Use Fees) for*  
172 *Residential Real Property*.

173 **"Commercial Edible Food Generator"** means a Tier One Commercial Edible Food Generator or  
174 Tier Two Commercial Edible Food Generator, or as otherwise defined in 14 CCR Section  
175 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery  
176 Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section  
177 18982(a)(7).

178 **“Community Composting”** means any activity that composts green material, agricultural  
179 material, food material, and vegetative food material, alone or in combination, and the total  
180 amount of feedstock and compost on-site at any one time does not exceed 100 cubic yards and  
181 750 square feet; or as otherwise defined in 14 CCR Section 18982(a)(8).

182 **“Compostable Plastic Bags”** means plastic bags that are made of Compostable Plastic and are  
183 certified “compostable” by the Biodegradable Products Institute (BPI).

184 **“Compostable Plastics”** means plastic materials that meet the ASTM D6400 standard for  
185 compostability.

186 **“Construction and Demolition Debris (C&D)”** includes discarded building materials, packaging,  
187 debris, and rubble resulting from construction, alteration, remodeling, repair, or demolition  
188 operations on any pavements, excavation projects, houses, Commercial buildings, or other  
189 structures, excluding Excluded Waste.

190 **“Consumer Price Index (CPI)”** shall mean the All Urban Consumers Index (CPI-U) compiled and  
191 published by the BLS, for Garbage and Trash Collection:

- 192 • Area – U.S. West city average
- 193 • Base Period – December 1983=100
- 194 • Not seasonally adjusted
- 195 • Periodicity – Monthly
- 196 • Series Identification Number –CUUR0000SEHG02

197 In the event that this CPI index becomes unusable or inappropriate in the eyes of the County, then  
198 the County shall, at its discretion, choose another index to replace this index.

199 **“Container(s)”** mean Bins, Carts and Roll-Off Containers.

200 **“Contractor”** means Contractor organized and operating under the laws of the State and its  
201 officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and  
202 Subcontractors.

203 **“County”** means the County of Kern, California, a political subdivision of the State, acting through  
204 its Board of Supervisors.

205 **“County Code”** means the Kern County Codified Ordinances, as it may be amended,  
206 supplemented, superseded, or modified from time to time.

207 **“County Contract Manager”** means the County Public Works Director or their designated  
208 representative who is responsible for the administrative management of this Agreement.

209 **“County Fees”** shall mean those fees described in Article 11 of this Agreement.

210           **“County Jurisdiction”** means those areas of the County wherein the County is obligated to protect  
211           the public health and safety by provide arrangements for the collection of Solid Waste.

212           **“Customer”** means Person who is provided service by the Contractor.

213           **“Customer Type”** means the Customer’s sector category including, but not limited to, Single-  
214           Family, Multi-Family, Commercial, and County Facilities.

215           **“Designated Collection Location”** refers to the location at each Collection Premises where  
216           Discarded Materials Containers are customarily placed for Collection, in accordance with this  
217           Agreement.

218           **“Designated Disposal Facility”** means the facility designated by the County Contract Manager to  
219           which the Contractor shall transport Solid Waste and may transport Residual waste; which, as of  
220           the Agreement Date, shall be as set forth in Exhibit A.

221           **“Designated Facilities”** means any combination of the Designated Disposal Facility and the  
222           Designated Transfer Facility.

223           **“Discarded Materials”** means Recyclable Materials, Organic Materials, and Solid Waste/Mixed  
224           Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection  
225           by Contractor or acceptance at an Approved or Designated Facility, excluding Excluded Waste.

226           **“Dispose” or “Disposal” (or any variation thereof)** means the final disposition of Solid Waste at  
227           a Disposal site.

228           **“Disposal Facility”** means a landfill, or other facility for ultimate Disposal of Solid Waste.

229           **“Divert” or “Diversion”** (or any variation thereof) means to prevent Discarded Materials from  
230           Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis,  
231           distillation, gasification, or biological conversion methods) through source reduction, reuse,  
232           Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the  
233           provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and  
234           Processing changes that may occur over the Term including, but not limited to, changes in  
235           standard industry practice or implementation of innovative (but not necessarily fully proven)  
236           techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons  
237           deemed desirable by the County.

238           **“Dwelling Unit”** means any individual living unit in: a Single-Family dwelling (SFD) or Multi-Family  
239           dwelling (MFD) structure or building, a mobile home, or a motor home located on a permanent  
240           site intended for, or capable of being utilized for, Residential living other than a Hotel or Motel.

241           **“Edible Food”** means food intended for human consumption. For the purposes of this Agreement,  
242           Edible Food is not Solid Waste or Discarded Materials if it is recovered and not discarded. Nothing  
243           in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food  
244           safety requirements of the California Retail Food Code. If the definition in 14 CCR Section  
245           18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section  
246           18982(a)(18) shall apply to this Agreement.

247 **“Electronic Waste (E-Waste)”** means discarded electronic equipment including, but not limited  
248 to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer  
249 peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers,  
250 facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves,  
251 telephones, cellular telephones, and other electronic devices. Some E-Waste or components  
252 thereof may be Hazardous Waste and thus require special handling, Processing, or Disposal.

253 **“Emergency Services”** means Solid Waste Collection Services, other than those specified under  
254 this grant of Agreement, provided during or as a result of an emergency which threatens the  
255 public health or safety, as determined by the County Contract Manager.

256 **“Event of Default”** means only the events described in Section 14.1.

257 **“Excluded Waste”** means Hazardous Waste, Infectious Waste, U-Waste, E-Waste, volatile,  
258 corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that  
259 Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State  
260 or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that  
261 cannot be Disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would  
262 present a significant risk to human health or the environment, cause a nuisance or otherwise  
263 create or expose Contractor or County to potential liability; but not including de minimis volumes  
264 or concentrations of waste of a type and amount normally found in Residential Solid Waste after  
265 implementation of programs for the safe Collection, Recycling, treatment, and Disposal of  
266 batteries and paint in compliance with Sections 41500 and 41802 of the California Public  
267 Resources Code.

268 **“Flow Control”** has the meaning ascribed in Section 7.1.E.

269 **“Food Recovery”** means actions to collect and distribute food for human consumption which  
270 otherwise would be disposed; or as otherwise defined in 14 CCR Section 18982(a)(24).

271 **“Food Recovery Organization”** means an entity that primarily engages in the collection or receipt  
272 of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the  
273 public for Food Recovery either directly or through other entities, including, but not limited to:

- 274 1. A food bank as defined in Section 113783 of the Health and Safety Code;
- 275 2. A nonprofit charitable organization as defined in Section 113841 of the Health  
276 and Safety code; and,
- 277 3. A nonprofit charitable temporary food facility as defined in Section 113842 of the  
278 Health and Safety Code.

279 If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this  
280 definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

281 **“Food Recovery Service”** means a Person or entity that collects and transports Edible Food from  
282 a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food  
283 Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

284 **"Food Scraps"** means those discarded materials that will decompose and/or putrefy including: (i)  
285 all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results  
286 from the storage, preparation, cooking or handling of food stuffs; and, (iv) food items, such as,  
287 but not limited to: fruits, vegetables, meat, poultry, seafood, shellfish, bones, grains, beans, pasta,  
288 bread, dairy products, and eggshells. Food Scraps are a subset of Food Waste.

289 **"Food Soiled-Paper"** means compostable paper material that has come in contact with food or  
290 liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza  
291 boxes, and milk cartons. Food-Soiled Paper is a subset of Food Waste.

292 **"Food Waste"** means Source Separated Food Scraps, Food-Soiled Paper, and Compostable  
293 Plastics. Food Waste is a subset of Organic Materials.

294 **"Franchise Zone 2-25"** means that portion of the unincorporated area of the County as described  
295 in Section 5.36.030 of the County Code and as depicted in Exhibit J.

296 **"Generator"** means any Person whose act or process generates or produces Discarded Materials,  
297 or whose act first causes Discarded Materials to become subject to regulation under the County  
298 Code or federal, State, or local regulations.

299 **"Governmental Body"** means any federal, state, county including the County or regional  
300 legislative, executive, judicial or other governmental board, agency, authority, commission,  
301 administration, court or other body, or any officer thereof acting within the scope of their  
302 authority.

303 **"Governmental Fee"** shall mean any fee or surcharge imposed by a governmental entity other  
304 than the County including without limitation the State, County, or Local Enforcement Agency.  
305 Governmental Fees are a component of the Tipping Fee.

306 **"Green Waste"** means grass, lawn clippings, shrubs, plants, weeds, small branches, and other  
307 forms of Organic Waste generated from landscapes or gardens, separated from other Discarded  
308 Materials. Green Waste is a subset of Organic Materials.

309 **"Gross Receipts"** shall mean total cash receipts actually received from Customers by the  
310 Contractor or the County through the property tax roll, for the provision of services pursuant to  
311 this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of  
312 Recyclable Materials.

313 **"Hazardous Waste"** means:

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

- 322 1. The Resource Conservation and Recovery Act and the regulations contained in 40  
323 CFR Parts 260-281.
- 324 2. The Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the  
325 regulations contained in 40 CFR Parts 761-766.
- 326 3. The California Health & Safety Code Section 25117 (West 1992 & Supp. 1998).
- 327 4. The California Public Resources Code Section 40141 (West 1996).
- 328 5. Future additional or substitute federal, state or local laws pertaining to the  
329 identification, treatment, storage, or disposal of toxic substances or Hazardous  
330 Wastes.
- 331 B. Radioactive materials which are source, special nuclear, or by-product material as defined  
332 by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations  
333 contained in 10 CFR Part 40.

334 **"Home-Generated Sharps Waste"** means hypodermic needles, pen needles, intravenous needles,  
335 lancets, and other devices that are used to penetrate the skin for the delivery of medications  
336 derived from a Residential household; or as otherwise defined by Section 117671 of the California  
337 Health and Safety Code.

338 **"Household Hazardous Waste"** means waste materials determined by CalRecycle, the  
339 Department of Toxic Substances Control, the State Water Resources Control Board, or the Air  
340 Resources Board to be: (i) of a nature that they must be listed as hazardous in State statutes and  
341 regulations; (ii) Toxic/ignitable/corrosive/reactive; and, (iii) Carcinogenic/mutagenic/teratogenic;  
342 which are Generated and discarded from Residential Premises as opposed to Commercial  
343 businesses.

344 **"Incompatible Material"** means human-made inert material, including, but not limited to, glass,  
345 metal, plastic, and also includes Organic Waste that the receiving end-user, facility, operation,  
346 property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery  
347 activities as defined in 14 CCR Section 18983.1(b); or as otherwise defined by 14 CCR Section  
348 17402(a)(7.5).

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

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

356 **"Legal Proceeding"** means every action, suit, litigation, arbitration, administrative proceeding,  
357 and other legal or equitable proceeding having a bearing upon this Agreement.

358           **“Line of Business”** means any of the following services provided by the Contractor: Residential  
359 Solid Waste, Residential Recycling, Residential Organics, Commercial Solid Waste, Commercial  
360 Recycling, or Commercial Organics.

361           **“Liquid Waste”** means watered or dewatered sewage or sludge.

362           **“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific  
363 quantifiable standards of performance as described in Section 14.2.

364           **“Medical Waste”** means waste capable of producing an infection or pertaining to or characterized  
365 by the presence of pathogens, including without limitation certain wastes generated by medical  
366 practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists,  
367 veterinarians, veterinary hospitals and medical testing labs, and waste which includes animal  
368 wastes or parts from slaughterhouses or rendering plants.

369           **“Mulch”** means a layer of material applied on top of soil, and, for the purposes of the Agreement,  
370 Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR  
371 Section 18993.1(f)(4):

372           A. Meets or exceeds the physical contamination, maximum metal concentration, and  
373 pathogen density standards for land applications specified in 14 CCR Section  
374 17852(a)(24.5)(A)(1) through (3).

375           B. Was produced at one or more of the following types of Facilities:

376                     1. A Compostable material handling operation or facility as defined in 14 CCR  
377 Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14  
378 of the CCR, other than a chipping and grinding operation or facility as defined in  
379 14 CCR Section 17852(a)(10); Guidance: Note that this criteria disallows Mulch  
380 produced from chipping and grinding operations to count toward fulfillment of a  
381 jurisdiction’s annual Organic Waste product procurement target.

382                     2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14  
383 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized  
384 under 14 CCR, Division 7, Chapter 12.

385                     3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under  
386 27 CCR, Division 2.

387           **“Multiple-Unit Dwelling”** means any building in the County, other than a Single-Unit Dwelling,  
388 lawfully occupied for human shelter.

389           **“Multi-Family”** means any Multiple-Unit Dwelling with five (5) or more dwelling units and/or  
390 refers to programs serving the Customers living in such properties. Multi-Family Premises include,  
391 but are not limited to, apartment complexes, mobile home parks, senior housing/care facilities,  
392 and condominium complexes.

393           **“Municipal Code”** means the County’s Codified Ordinances, as the same may be amended,  
394 supplemented, or modified from time to time.



395 **"Non-Residential Premises"** means those parcels of real property located within the County  
396 which are not classified under the use codes listed in the County's Schedule of Solid Waste  
397 Management Program Service Charges (Land Use Fees) for Residential Real Property, and made a  
398 part hereof, as amended by the County from time to time.

399 **"Occupant"** means the Person who occupies a Premises.

400 **"Operating Assets"** means all real and personal property of all kinds, which is owned, leased,  
401 managed, or operated by or under contract to the Contractor for providing the Collection Services,  
402 including without limitation the Containers, Vehicles, Transfer stations, maintenance and storage  
403 facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

404 **"Organic Materials"** means any combination of Food Waste and Green Waste. Organic Materials  
405 is a subset of Organic Waste.

406 **"Organic Waste"** means Solid Wastes containing material originated from living organisms and  
407 their metabolic waste products including, but not limited to, food, green waste, organic textiles  
408 and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids,  
409 digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Notwithstanding  
410 the foregoing, paper products, printing and writing paper shall be collected as Recycled Materials.

411 **"Owner"** means the person holding the legal title or having a right to possession of the real  
412 property constituting the Collection Premises to which Discarded Materials Collection Service is  
413 provided or required to be provided hereunder.

414 **"Party or Parties"** refers to the County and Contractor, individually or together.

415 **"Person(s)"** means any individual, firm, association, organization, partnership, corporation, trust,  
416 joint venture, or public entity.

417 **"Premises"** means any land or building in the County where Discarded Materials are generated  
418 or accumulated.

419 **"Process" or "Processing"** refers to the controlled separation, recovery, volume reduction,  
420 conversion, or Recycling of Recyclable Materials or Organic Waste prior to the delivery of such  
421 material to the Designated Disposal Facility. Processing activities may include, but are not limited  
422 to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of  
423 waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or  
424 volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

425 **"Processing Facility"** refers to any facility that removes Recyclable Materials or Organic Materials  
426 from other Discarded Materials and Solid Waste, prior to the delivery of Discarded Materials to  
427 the County Disposal System.

428 **"Prohibited Container Contaminants"** means the following: (i) Discarded Materials placed in the  
429 Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the  
430 County's Collection program; (ii) Discarded Materials placed in the Organic Materials Container  
431 that are not identified as acceptable Organic Materials for the County's Collection program; (iii)  
432 Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials

433 and/or Organic Materials to be placed in the Recyclable Materials or Organic Materials  
434 Containers, or otherwise managed under the County's Collection program; and, (iv) Excluded  
435 Waste placed in any Container.

436 **"Proprietary Information" or "Proprietary"** means that information provided by Contractor to  
437 the County which is protected from disclosure by the California Public Records Act and meets that  
438 definition of Proprietary Information. Nothing shall be considered proprietary which is required  
439 to be submitted to the County in any report described in this Agreement. Contractor's customer  
440 lists for Customers served under this Agreement are specifically not considered proprietary for  
441 the purposes of this Agreement, however, the County may protect such information from  
442 disclosure consistent with the provisions of the Public Records Act.

443 **"Public Street"** means all County-owned and maintained paved areas between the normal Curb  
444 line of a roadway, including public parking lots, roadway dividers, and medians.

445 **"Rate"** means the maximum amount, expressed as a dollar unit, approved by the County, that the  
446 Contractor may bill a Customer for providing services under this Agreement. A Rate has been  
447 established for each individual Service Level and the initial Rates for Rate Period One are  
448 presented in Exhibit C. The Rates approved by County are the maximum Rate that Contractor  
449 may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and  
450 including the maximum Rate approved by the County.

451 **"Rate Adjustment Factor"** shall mean the amount, expressed as a percentage, by which the fee  
452 components of each Rate are adjusted. The Rate Adjustment Factor for each component shall be  
453 calculated separately.

454 **"Rate Period"** means a twelve (12) month period, commencing July 1 and concluding June 30.

455 **"Rate Period One"** means the first Rate Period covered by this Agreement. Rate Period One shall  
456 begin on July 1, 2023 and shall end on June 30, 2024.

457 **"Recovered Materials"** means the products, excluding Residual Waste, produced by the  
458 Processing of Recyclable Materials, Organic Materials, and/or C&D.

459 **"Recyclable Materials"** means source separated materials that are intended for recycling or are  
460 capable of being recycled. Such materials may include newspaper, cardboard, mixed color paper,  
461 white paper, junk mail, magazines, telephone books, paper bags, cereal and food boxes, egg  
462 cartons, plastic bottles and containers labeled #1-7, plastic milk containers, detergent containers,  
463 clear, brown, and green food and beverage container glass, cans of aluminum, steel, tin, food  
464 cans, empty aerosol cans, pipe tins or other materials having economic value contained within a  
465 load of Recyclable Materials, and may also include any other type of recyclable waste material  
466 agreed on by the Parties.

467 **"Recycle," "Recycled," or "Recycling"** means the process of sorting, cleansing, treating, and  
468 reconstituting materials at a Recyclable Materials Processing Facility that would otherwise be  
469 Disposed of at a landfill for the purpose of returning such materials to the economy in the form  
470 of raw materials for new, reused, or reconstituted products. Recycling includes processes deemed  
471 to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2.

472 Recycling does not include gasification or transformation as defined in Public Resources Code  
473 Section 40201.

474 **“Residential”** shall mean of, from, or pertaining to those Single-Family and Multi-Family Premises  
475 that are parcels of real property located within the County, in accordance with the “Use Codes”  
476 developed and maintained by, and on file with, the County and, as approved annually by the Board  
477 of Supervisors, listed in the Schedule of Solid Waste management Program Service Charges (Land  
478 Use Fees) for Residential Real Property.

479 **“Residual Waste” or “Residue”** means those materials which, after Processing, are Disposed  
480 rather than Recycled due to either the lack of markets for materials or the inability of the  
481 Processing Facility to capture and recover the materials.

482 **“Reusable Materials”** means items that are capable of being used again after minimal Processing,  
483 if any. Reusable Materials may be Collected Source Separated or recovered through Processing.  
484 Reusable Materials may include, but are not limited to, clothing, furniture, and/or sporting  
485 equipment.

486 **“Roll-Off” or “Roll-Off Box”** means an open-top metal Container, roll-top Container, or closed  
487 compactor Container serviced by a roll-off truck and with a Container capacity of 10 to 50 cubic  
488 yards. Roll-Off Boxes are also known as drop boxes or debris boxes.

489 **“Route” or “Routes”** means the designated itinerary or sequence of stops for each segment of  
490 Collection areas within the unincorporated areas of the County, or as otherwise defined by the  
491 term “Hauler Route” in 14 CCR Section 18982(a)(31.5).

492 **“Routing and Collection System”** means the Routing and Collection System for Solid Waste and  
493 Recyclable Materials which is in effect as of the effective date of this Agreement.

494 **“Rural Service Area”** means, for the purposes of this Agreement, that portion of the Contractor’s  
495 Service Area that is not designated as the Urban Service Area, as described in Exhibits J and K.

496 **“SB 1383”** means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016,  
497 which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and  
498 added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public  
499 Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce  
500 emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced  
501 from time to time.

502 For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate  
503 Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle that created  
504 Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

505 **“SB 1383 Implementation Plan”** means the Contractor’s plan described in Section 8.8 and  
506 attached hereto as Exhibit F.

507 **“Scrap Materials”** means any materials which are separated by type of Generator thereof from  
508 materials which otherwise are discarded or rejected by the Generator as Discarded Materials and  
509 which are sold or donated by the Generator to a private Recycler, scrap dealer, or salvager and

510 Recycled or Reused. Scrap Materials shall not include any materials which (i) are commingled with  
511 Solid Waste/Mixed Waste, Recyclable Materials, or Organic Materials; or (ii) are not commingled  
512 with Solid Waste/Mixed Waste, Recyclable Materials, or Organic Materials, but which are  
513 collected by any Person other than the Contractor as part of any transaction or arrangement  
514 involving such Discarded materials, irrespective of whether the Generator pays or receives  
515 consideration in connection with such transaction or arrangement.

516 **“Self-Hauler” or “Self-Haul”** means a Person who hauls Discarded Materials, Recovered  
517 Materials, or any other material to another Person; or as otherwise defined in 14 CCR Section  
518 18982(a)(66). Self-Hauler also includes a Person who “back-hauls” waste, as defined in 14 CCR  
519 Section 18982(a)(66)(A).

520 **“Service Area”** means the geographic area in the County set forth in Exhibit K which the County  
521 has authority to provide for Collection services and for which the Contractor has been granted an  
522 exclusive franchise to provide Discarded Materials Collection services.

523 **“Service Level”** refers to the size of a Customer’s Containers, number of Containers, frequency of  
524 Collection, scheduled Collection day, and any ancillary services, which form the basis for provision  
525 of and charges for service.

526 **“Sharps Container”** means a rigid puncture-resistant container that, when sealed, is leak resistant  
527 and cannot be reopened without great difficulty; or as otherwise defined by Section 117750 of  
528 the California Health and Safety Code.

529 **“Single-Family”** means, for the purposes of this Agreement, of, from, or pertaining to, any  
530 detached or attached house or residence with four (4) or fewer distinct living units, provided that  
531 Collection service feasibly can be provided to such Premises as an independent unit, and the  
532 Owner or Occupant of such independent unit is billed directly for the Collection service. Single-  
533 Family includes townhouses, and each independent unit of duplex, tri-plex, or quadruplex  
534 Residential structures. Single-Family also refers to the programs and services for Customers living  
535 in such properties.

536 **“Single-Unit Dwelling”** means a dwelling designed for or occupied exclusively for human shelter  
537 by one (1) family.

538 **“Solid Waste”** means all garbage, refuse, rubbish, and other materials and substances discarded  
539 by the Generator thereof at the time of such discard and which are normally discarded by or  
540 collected from Single-Family Premises, Multi-Family Premises, Commercial Premises and  
541 institutional establishments, which are acceptable at Class III landfills under Applicable Law, and  
542 which are originally discarded by the first Generator thereof and have not been previously  
543 Processed. Solid Waste does not include Hazardous Waste, Medical Waste, Liquid Waste, Scrap  
544 Materials, construction and demolition debris, or self-hauled waste. Solid Waste includes only  
545 those materials which were originally discarded by the first Generator thereof, prior to any  
546 Processing at any Collection Premises within the County.

547 **“Source Separated”** means the segregation, by the Generator, of materials designated for  
548 separate Collection for some form of Recycling, Composting, Processing, recovery, or reuse.

549 **"Special Circumstance"** means a circumstance which, when occurring, permits, but does not  
550 require the Contractor or the County to seek an adjustment in the Rates for Service, and which  
551 then requires County Contract Manager to review such application and make a recommendation  
552 to the County Board of Supervisors as to whether the Base Rate should be adjusted up or down,  
553 or remain unchanged. The continuing need for any and all previously approved Special  
554 Circumstance Rate adjustments shall be reviewed at the time of each subsequent Rate  
555 adjustment.

556 **"Special Service"** means a level of Solid Waste Collection Service in excess of that offered by the  
557 Contractor as its basic level of service, at an additional cost to the Customer and may include, but  
558 is not limited to, backyard pickup, additional Containers, or more frequent collections. The charge  
559 for any Special Service shall be reviewed by the County Contract Manager.

560 **"SRRE"** means the County's Source Reduction and Recycling Element approved by CalRecycle, as  
561 the element may be amended from time to time, all in accordance with AB 939 and regulations  
562 related thereto, as they may be amended from time to time.

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

567 **"Term"** means the Term of this Agreement, including extension periods if granted, as provided  
568 for in Section 4.1.

569 **"Tier One Commercial Edible Food Generator"** means a Commercial Edible Food Generator that  
570 is one of the following, each as defined in 14 CCR Section 18982:

- 571 A. Supermarket.
- 572 B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- 573 C. Food Service Provider.
- 574 D. Food Distributor.
- 575 E. Wholesale Food Vendor.

576 If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator  
577 differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this  
578 Agreement.

579 **"Tier Two Commercial Edible Food Generator"** means a Commercial Edible Food Generator that  
580 is one of the following, each as defined in 14 CCR Section 18982:

- 581 A. Restaurant with 250 or more seats, or a total facility size equal to or greater than  
582 5,000 square feet.
- 583 B. Hotel with an on-site food facility and 200 or more rooms.

- 584 C. Health facility with an on-site food facility and 100 or more beds.
- 585 D. Large Venue.
- 586 E. Large Event.
- 587 F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility
- 588 size equal to or greater than 5,000 square feet.
- 589 G. A local education agency with an on-site food facility.

590 If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator  
591 differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this  
592 Agreement.

593 **“Tipping Fee”** shall mean the Rate or Tipping Fee charged for each Ton or unit of material  
594 delivered to the Designated Disposal Facility or the Approved Recyclable Materials Processing  
595 Facility. The Parties acknowledge that the timing of changes to the Tipping Fees that are not  
596 owned or operated by Contractor or their Subcontractor may not align with the review and  
597 adjustment of Rates under this Agreement. In the event that the Contractor begins to pay new  
598 Tipping Fees at another facility approved by the County, other than one owned and operated by  
599 Contractor or their Subcontractor, prior to the adjustment of Rates under this Agreement, the  
600 adjustment to the Rate Adjustment Factor may consider that period. Alternatively, the County  
601 reserves the right to adjust Rates at any time during the year in order to address changes in  
602 Tipping Fees alone without adjusting any other component of Rates. The “current approved”  
603 Tipping Fees shall be the Tipping Fees in place on January 1 immediately preceding the submission  
604 of the Rate Application.

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

607 **“Total Contractor’s Compensation”** shall mean the total amount to be used as a basis for  
608 determining the Rate Adjustment Factor. The Total Contractor’s Compensation does not reflect  
609 or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by the  
610 Contractor.

611 **“Trade Secret”** means information, including a formula, pattern, compilation, program, device,  
612 method, technique, or process, that: (1) derives actual independent economic value from not  
613 being generally known to the public or to other persons who can obtain economic value from its  
614 disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to  
615 maintain its secrecy.

616 **“Transfer”** means the act of transferring the materials Collected by Contractor in their route  
617 vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or  
618 Disposing of such materials.

619 **“Transport” or “Transportation” (or any variation thereof)** means the act of conveyance from  
620 one place to another or state of being Transported.

621 **“Uncontrollable Circumstance”** means one (1) or more of the following specified acts, events, or  
622 conditions, whether affecting the Operating Assets, the approved Processing Facility, the  
623 Designated Disposal Facility, the County, or the Contractor, to the extent that it materially and  
624 adversely affects the ability of the Contractor to perform any obligation under the Agreement  
625 (except for payment obligations), if such act, event or condition is beyond the reasonable control,  
626 and is not also the result of the willful or negligent act, error, or omission or failure to exercise  
627 reasonable diligence on the part of the Contractor, provided however, that the contesting in good  
628 faith or the failure in good faith to contest such action or inaction shall not be construed as willful  
629 or negligent action or a lack of reasonable diligence of the Contractor:

630 A. An act of God or other catastrophic event (but not including reasonably  
631 anticipated weather conditions for the County), including but not limited to  
632 hurricane, landslide, lightning, pandemic, epidemic, earthquake, fire, explosion,  
633 flood, sabotage or similar occurrence, acts of a public enemy, extortion, war,  
634 blockade or insurrection, riot or civil disturbance.

635 B. Preemption of materials or services by a Governmental Body in connection with  
636 a public emergency or any condemnation or other taking by eminent domain of  
637 any portion of the Operating Assets.

638 C. The first seven (7) days of a strike, work stoppage, or other labor dispute or  
639 disturbance occurring with respect to any activity performed or to be performed  
640 by the Contractor or any of the Contractor's Subcontractors in connection with  
641 the Operating Assets or the Collection Services, provided the Contractor has  
642 implemented a contingency plan satisfactory to the County Contract Manager.

643 D. Any act, event, or circumstance occurring outside of the United States that is well  
644 known and has a materially and significant impact on this Agreement.

645  
646 It is specifically understood that only the acts or conditions specified above shall constitute  
647 Uncontrollable Circumstances. Without limiting the generality of the foregoing, the Parties  
648 acknowledge that none of the following acts or conditions shall constitute Uncontrollable  
649 Circumstances:

650 A. General economic conditions, interest or inflation rates, currency fluctuations or  
651 changes in the cost or availability of fuel, commodities, supplies, or equipment.

652 B. Changes in the financial condition of the County, the Contractor, or any of its  
653 Affiliates, or any Subcontractor affecting their ability to perform their obligations.

654 C. The consequences of errors, neglect, or omission by the Contractor, any of its  
655 Affiliates, or any Subcontractor of any tier in the performance of the Collection  
656 Services.

657 D. The failure of the Contractor to secure patents or licenses in connection with the  
658 technology necessary to perform its obligations hereunder.

- 659 E. Union work rules, requirements, or demands which have the effect of increasing  
660 the number of employees employed in connection with the Operating Assets, or  
661 otherwise increase the cost to the Contractor of operating and maintaining the  
662 Operating Assets or providing the Collection Services.
- 663 F. Any strikes, work stoppages, or other labor disputes or disturbances occurring  
664 with respect to any activity performed or to be performed by the Contractor or  
665 any of the Contractor's Subcontractors in connection with the Operating Assets  
666 or the Collection Services and which last beyond seven (7) days.
- 667 G. Any failure of any Subcontractor to furnish labor, materials, service, or equipment  
668 for any reason.
- 669 H. Vehicle or equipment failure.
- 670 I. Any impact of prevailing wage law, customs, or practices on the Contractor's  
671 construction or operating costs; or,

672

673 **"Universal Collection Area"** mean the area(s) established by the County Board of Supervisors  
674 under Section 8.28.081 of the County Code where Generators are required to subscribe to  
675 Collection service.

676 **"Universal Waste (U-Waste)"** means all wastes as defined by Title 22, Subsections 66273.1  
677 through 66273.9 of the California Code of Regulations. These include, but are not limited to,  
678 batteries, fluorescent light bulbs, mercury switches, and E-Waste.

679 **"Urban Service Area"** means that portion of the Contractor's Service Area generally with a  
680 minimum of forty (40) Generators per square mile, or as otherwise determined by the County  
681 based on serviceability, and as described in Exhibits J and K.

682 **"Vehicle"** means any truck, rolling stock, or other Vehicle used by the Contractor in connection  
683 with Collection or Transportation Services.

684 **"Working Day"** means any day other than Sunday or a holiday designated as per Section 5.5.D.

685

686 **ARTICLE 2: GRANT AND ACCEPTANCE OF EXCLUSIVE FRANCHISE**

687 **Section 2.1: Grant and Limitations of Exclusive Franchise**

- 688 A. **General.** By the signing of this Agreement, the County grants to Contractor, and Contractor accepts,  
689 an exclusive franchise within the County jurisdiction identified in Exhibits J and K (the "Service  
690 Area"). Subject to the limitations provided by law and described in the County Code, the franchise  
691 granted to Contractor shall provide the Contractor the right and privilege within the defined Service  
692 Area to Collect, Transport, handle, Process, Recycle, and/or Dispose of Discarded Materials  
693 (including Organic Materials, Recyclable Materials, Solid Waste, and Construction & Demolition



694 Debris) generated by Residential Premises and Non-Residential Premises, as specifically set out in  
695 the scope of services described in Article 5 of this Agreement and subject to the limitations  
696 described below in Section 2.1.B, and except where otherwise precluded by Federal, State, and local  
697 laws and regulations.

698 **B. Limitations of Scope.** This Restated Exclusive Solid Waste Franchise Agreement shall not preclude  
699 the categories of Solid Waste, Recyclable Materials, and Organic Materials listed below from being  
700 delivered to and Collected and Transported by others; provided however, that nothing in this  
701 Agreement is intended to, or shall be construed to, excuse any Person from obtaining any  
702 authorization from the County which is otherwise required by law:

703 1. Recyclable Materials. Other Persons shall maintain the right to accept donated Recyclable  
704 Materials and to compensate the service recipient for Recyclable Materials so long as there is  
705 no net payment made by the service recipient to such other person.

706 2. Self-Hauled Materials. Persons whose Premise is outside of the Universal Collection Area may  
707 self-haul, for Disposal or Processing, Discarded Materials generated in or on their own  
708 Premises. Persons whose Premise is located within a Universal Collection Area may self-haul,  
709 for Disposal or Processing, Discarded Materials generated in or on their own Premises  
710 provided that they also shall be responsible for maintaining a minimum level of service from  
711 a franchise hauler to ensure that the County's obligation to public health and safety is met.

712 3. Donated Materials. Any items which are donated by the Generator to youth, civic, or  
713 charitable organizations.

714 4. Beverage Containers. Containers delivered for Recycling under the California Beverage  
715 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public  
716 Resources Code.

717 5. Materials Removed by Customer's Contractor as Incidental Part of Services. Discarded  
718 Materials removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming  
719 service, construction contractor, property maintenance, and/or cleaning service), as an  
720 incidental part of the service being performed.

721 6. Animal, Grease Waste, and Used Cooking Oil. Animal waste and remains from slaughterhouse  
722 or butcher shops, grease, or used cooking oil.

723 7. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge  
724 ash, grit, and screenings.

725 8. Excluded Waste. Excluded Waste regardless of its source.

726 9. Materials Generated by Exempted Generators or Facilities. Materials generated or collected  
727 by those that are exempted by law from County regulation, including but not limited to, public  
728 agencies, the State, and/or Federal facilities.

729 10. Edible Food. Edible food which is collected from a Generator by other Person(s), such as a  
730 Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food  
731 Recovery; or which is transported by the Generator to another Person(s), such as a Person

732 from a Food Recovery Organization or Food Recovery Service, for the purposes of Food  
733 Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other  
734 Person(s) to collect or receive the Edible Food.

735 11. Food Scraps. Food Scraps that are separated by the Generator and used by the Generator or  
736 distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section  
737 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or  
738 hauled by another party.

739 12. On-Site or Community Composting. Organic Waste that is composted or otherwise legally  
740 managed at the site where it is generated or at a Community Composting site.

741 Contractor acknowledges and agrees that the County may permit other Persons besides the Contractor  
742 to Collect any and all types of materials excluded from the scope of this Agreement, as set forth above,  
743 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other  
744 Persons are servicing Collection Containers or are Collecting and Transporting Discarded Materials that  
745 are included under the scope of this Agreement in a manner that is not consistent with this Agreement or  
746 the County Code, it shall report the location where the service is being provided, the name and phone  
747 number of the Person or company providing the service, and the Contractor's evidence to the County  
748 Contract Manager. In such case, the County may, but is not required, to notify the Generator and Person  
749 providing service of Contractor's rights under this Agreement. Contractor acknowledges and agrees that  
750 the County is under no legal or contractual duty to take any action against any Generator, and/or Person  
751 providing the service, that the Contractor believes is infringing upon the provisions in this Agreement or  
752 County Code and this Agreement does not provide an independent basis for any actions by the Contractor  
753 against such a third party. It is likewise acknowledged that notwithstanding the provisions in this  
754 Agreement, the County may, at its sole discretion, make a determination that the Generator and/or  
755 Person is not operating in violation of County rules, regulations or Ordinances.

756 This Agreement shall be interpreted to be consistent with then Applicable Law, now and during the Term  
757 of the Agreement as the Law may change from time to time. If future judicial interpretations of current  
758 law or new laws, regulations, or judicial interpretations limit the ability of the County to lawfully charge  
759 or contract for the scope of services in the manner and consistent with all provisions as specifically set  
760 forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and  
761 materials which may be lawfully included herein and that the County shall not be responsible for any lost  
762 profits and/or other losses claimed by Contractor to arise out of limitations to the scope or provisions of  
763 the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize  
764 the financial impact of such future judicial interpretations or new laws and the Contractor may meet and  
765 confer with County and may petition for the attempted processing of a Rate adjustment pursuant to  
766 Article 12, but the Contractor is not guaranteed such a Rate adjustment.

767 **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**  
768 **OF THE PARTIES**

769 **Section 3.1: Representations and Warranties**

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

- 771 A. **Existence and Powers.** The Parties are duly organized and validly existing as a corporation under  
772 the laws of the State of California, with full legal right, power, and authority to enter into and  
773 perform their obligations under this Agreement.
- 774 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and  
775 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes  
776 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance  
777 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,  
778 moratorium, and other laws affecting creditors' rights generally.
- 779 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under  
780 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental  
781 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any  
782 term or condition of any judgment, decree, franchise, agreement (including, without limitation, the  
783 certificate of incorporation of the Contractor), or instrument to which the Contractor or any Affiliate  
784 is a party or by which the Contractor or any Affiliate or any of their properties or assets are bound,  
785 or constitutes a default under any such judgment, decree, agreement, or instrument. The  
786 Contractor is aware of Conflicts of Interests laws including, but not limited to, the provisions and  
787 regulations of common law and the Political Reform Act. Likewise, the Parties have read and are  
788 aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California  
789 Government Code and the associated sections of the California Code of Regulations relating to  
790 conflicts of interest for public officers and employees and the Contractor acknowledges that said  
791 laws may change from time to time and at all times the Contractor shall abide by said laws and the  
792 failure to do so would be a material breach of this Agreement. Contractor represents that it has  
793 performed its due diligence in this regard and it is unaware of any financial or economic interest of  
794 any public officer or employee of the County relating to this Agreement.
- 795 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in  
796 equity, before or by any court or governmental authority, pending, or to the Parties' best  
797 knowledge, threatened against either Party which is likely to result in an unfavorable decision,  
798 ruling, or finding which would materially and adversely affect the validity or enforceability of this  
799 Agreement or any such agreement or instrument entered into by either Party in connection with  
800 the transactions contemplated hereby, or which would materially and adversely affect the  
801 performance by that Party of its obligations hereunder or by the Contractor under any such other  
802 agreement or instrument.
- 803 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the  
804 Agreement Date which would prohibit the performance by either Party of this Agreement and the  
805 transactions contemplated hereby.

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- 807 F. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of  
808 the conditions and circumstances surrounding the Agreement and the work to be performed  
809 hereunder. Contractor has taken such matters into consideration in entering this Agreement to  
810 provide services in exchange for the compensation provided for under the terms of this Agreement.
- 811 G. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to  
812 Collect, Transport, handle, Process, Recycle, and Dispose of all Discarded Materials (including Solid  
813 Waste, Organic Materials, Recyclable Materials, and Construction & Demolition Debris); and  
814 Contractor possesses the equipment, facility, and employee resources required to perform this  
815 Agreement. If Contractor does not possess such resources, Contractor must have an agreement in  
816 writing (a Subcontract) signed by the parties to be bound for such services necessary to insure  
817 Contractor's full performance under this Agreement. Any and all Subcontracts shall be included in  
818 Exhibit H or later approval shall be requested from County's Contract Manager for a change in  
819 Subcontract or Subcontractor. Subcontractors shall be strictly held to the provisions of this  
820 Agreement and any breach of said provisions shall be deemed a material breach by the Contractor.
- 821 H. **Voluntary Use of Designated Disposal Facilities.** The Contractor, without constraint and as a free-  
822 market business decision in accepting this Agreement, agrees to use the Designated Disposal Facility  
823 for the purposes of Disposing of all Solid Waste Collected in the County, and the other Designated  
824 Facilities for the relevant Transfer, Transport, and Processing of Discarded Materials. Such decision  
825 by Contractor in no way constitutes a restraint of trade notwithstanding any change in law regarding  
826 Flow Control limitations or any definition thereof.

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## **ARTICLE 4: TERM OF AGREEMENT**

### **829 Section 4.1: Term of Agreement**

830 The Term of this Agreement is from the Agreement Date through June 30, 2043, and shall continue in full  
831 force during that period, unless earlier termination is initiated pursuant to this Agreement and/or the  
832 operation of Federal or State law and/or any applicable statute.

### **833 Section 4.2: Reserved**

### **834 Section 4.3: Termination for Failure to Implement Services**

835 The Contractor has agreed herein, through either its own labor, equipment, and facilities or facilities  
836 provided by others, to provide each and every one of the services set forth in this Agreement and to  
837 implement each and every one of the various programs set forth in this Agreement. Moreover, it is  
838 understood and agreed that the County may require the Contractor to provide additional services or  
839 implement additional programs in accordance with changes in Applicable Law. Contractor's failure to  
840 follow directions of the County Contract Manager and/or the Contractor's failure implement and maintain  
841 provision of all the services described in this Agreement for any reason, shall constitute an Event of Default  
842 in accordance with Section 14.1 hereof. Notwithstanding the foregoing, nothing in this Agreement shall  
843 be construed to prohibit and or limit the County's legal ability to contract with others for the services  
844 provided herein.

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**ARTICLE 5: SCOPE OF SERVICES**

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Contractor shall perform the services described in this Article 5. This Article 5 describes the requirements for the services to be provided including the types and sizes of Containers to be provided by Contractor, available Service Levels and frequencies, acceptable and prohibited materials, and any additional services to be provided to Customers. Failure to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

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**Section 5.1: Single-Family Services in a Universal Collection Area**

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Contractor shall provide the services described in this Section 5.1 to any Single-Family Customer located within a Universal Collection Area in the unincorporated area of the County. Container sharing between Single-Family Customers will not be allowed. The rate for a three Container system will be approved by the County and will include Solid Waste, Recyclable Materials and Organic Materials collection. Charges for these services will be collected with residential property taxes as defined by the County Ordinance and/or Resolution for the Service Area.

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**Three-Container System**

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A. **Solid Waste Collection.** Contractor shall Collect Solid Waste one (1) time per week in Contractor-provided Containers from Single-Family Customers and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

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- Containers:** Carts
- Container Sizes:** 96-gallons (or similar size)
- Service Frequency:** One (1) time per week
- Service Location:** Curbside
- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste
- Additional Service:** Contractor shall provide additional Solid Waste Carts to Residential Customers upon request and may charge the "Additional Solid Waste Cart" Rate approved by the County. Payment for the additional cart will be direct billed by the Contractor. Contractor may provide Bin service upon Customer request and may charge the "Residential Bin" Rate approved by the County. Any incremental payment required for the Bin Rate will be direct billed by the Contractor. Contractor shall provide modified services for Disabled Customers, at no additional charge, in accordance with Section 5.8.A.

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B. **Recyclable Materials Collection.** Contractor shall Collect Recyclable Materials one (1) time every other week in Contractor-provided Containers from Single-Family Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing. Contractor shall provide Recyclable Material Collection services at no additional charge to Customers located in a Universal Collection Area.

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- Containers:** Carts
- Container Sizes:** 96-gallons (or similar size)
- Service Frequency:** One (1) time every other week

885           **Service Location:**           Curbside  
886           **Acceptable Materials:**       Recyclable Materials  
887           **Prohibited Materials:**       Solid Waste, Organic Materials, Excluded Waste  
888           **Additional Service:**           Contractor shall provide one (1) additional Recyclable Materials Cart to  
889                                       Residential Customers upon request and may charge the “Additional  
890                                       Recycling Cart” Rate approved by the County for any Carts requested by  
891                                       a Residential Customer. Payment for the additional cart will be direct  
892                                       billed by the Contractor. Contractor shall provide modified services for  
893                                       Disabled Customers, at no additional charge, in accordance with Section  
894                                       5.8.A.

895    C.    **Organic Materials Collection.** Contractor shall Collect Organic Materials one (1) time per week in  
896    Contractor-provided Containers from Single-Family Customers and Transport all Organic Materials  
897    to the Designated Organic Waste Processing Facility for Processing.

898           **Containers:**                       Carts  
899           **Container Sizes:**               96-gallons (or similar size)  
900           **Service Frequency:**           One (1) time every week  
901           **Service Location:**           Curbside  
902           **Acceptable Materials:**       Organic Materials  
903           **Prohibited Materials:**       Solid Waste, Recyclable Materials, Excluded Waste  
904           **Additional Service:**           Contractor shall provide additional Organic Materials Carts to Customers,  
905                                       upon request, and may charge the “Additional Organic Materials Cart”  
906                                       Rate approved by the County. Payment for the additional cart will be  
907                                       direct billed by the Contractor. Contractor shall provide modified services  
908                                       for Disabled Customers, at no additional charge, in accordance with  
909                                       Section 5.8.A.  
910           **Other Requirements:**       Single-Family Customers shall be permitted to place Compostable Plastics  
911                                       and Organic Materials contained in Compostable Plastic Bags in the  
912                                       Organic Materials Container for Collection. Contractor shall Collect these  
913                                       materials and submit the required Compostable Plastic Processing  
914                                       notification and education plan, if applicable, as required under Section  
915                                       6.2.2.

916    **Section 5.2: Commercial and Multi-Family Services in a Universal Collection**  
917    **Area**

918    Contractor shall provide the services described in this Section 5.2 to any Commercial or Multi-Family  
919    Customer located within a Universal Collection area in the unincorporated area of the County. Charges  
920    for the Multi-Family Services may be collected on the property tax rolls as determined by the County and  
921    defined by ordinance for the Service Area. Charges for Commercial Customers will be direct billed by the  
922    Contractor.

923    **Three-Container System**

924    A.    **Solid Waste Collection.** Contractor shall Collect Solid Waste not less than one (1) time per week in  
925    Contractor-provided Containers from Commercial and Multi-Family Customers and Transport all  
926    Solid Waste to the Designated Disposal Facility for Disposal.





972 Contractor shall not schedule County Solid Waste Collection service on  
973 Sunday, except as authorized by the County.

974 **Other Requirements:** Contractor shall, at Customer's request and for an additional charge  
975 approved by the County, open and close gates, lock and unlock  
976 enclosures, or perform other services as reasonably necessary to access  
977 and empty Containers.

978 C. **Organic Materials Collection.** Contractor shall collect Organic Materials not less than one (1) time  
979 per week in Contractor-provided Containers from Commercial and Multi-Family Customers and  
980 Transport all Organic Materials to the Approved Organic Waste Processing Facility for Processing.

981 **Containers:** Carts, Bins, Roll-Off Containers  
982 **Container Sizes:** 96-gallon Carts (or similar size); 1-, 1.5-, 2-, and 3-cubic yard Bins; and  
983 Roll-Off Containers. Container size to be negotiated between the  
984 Customer and the Contractor based on Customer need and Container  
985 availability.

986 **Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as  
987 requested by Customer

988 **Service Location:** Curbside or other Customer-selected service location at the Customer's  
989 Premises.

990 **Acceptable Materials:** Organic Materials

991 **Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste.

992 **Additional Service:** Upon Customer request and to accommodate periodic additional  
993 service needs, Contractor shall provide Collection service at a greater  
994 frequency than the Customer's regularly scheduled service, up to the  
995 maximum Service Level and Contractor may charge the appropriate  
996 Rate for the higher Service Level.

997 **Other Requirements:** Commercial and Multi-Family Customers shall be permitted to place  
998 Compostable Plastics and Organic Materials contained in Compostable  
999 Plastic Bags in the Organic Materials Container for Collection.  
1000 Contractor shall Collect these materials and submit the required  
1001 Compostable Plastic Processing notifications and education plan, if  
1002 applicable, as required under Section 6.2.2.

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1004 D. **Mixed C&D Collection and Processing.** Contractor shall Collect mixed C&D material from Customers  
1005 requesting such service on an on-call basis during the course of permitted construction and/or  
1006 demolition projects within the County.

1007 Contractor recognizes that non-franchised haulers are also permitted to haul C&D wastes where  
1008 the waste is being removed as part of the abatement of a public nuisance or dangerous condition  
1009 at the direction of the County or if the waste is being removed as part of remodeling, repair,  
1010 demolition, cleanup or construction project for a property owner and/or the contractor and/or  
1011 subcontractor is using his own equipment and employees.

1012 Contractor shall deliver mixed C&D Collected from Customers to the Approved C&D Processing  
1013 Facility where the mixed materials will be sorted for Recycling. Such Processing Facility shall be  
1014 selected by the Contractor; however, the Contractor must demonstrate to the satisfaction of the  
1015 County that the Processing Facility consistently Recycles a minimum of sixty-five percent (65%) of

1016 all mixed C&D Processed under this Agreement. Contractor shall ensure that the Approved C&D  
1017 Processing Facility is able to recover Organic Waste from the C&D in a manner deemed not to  
1018 constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a). Contractor shall comply with  
1019 CalRecycle and California Building Standards Code including Part 11 California Green Building  
1020 Standards Code (CALGreen) requirements for the Processing and Recycling of C&D including Organic  
1021 Waste, and Chapter 17.10 of the County Code.

1022 In the event that the Approved C&D Processing Facility does not meet these performance standards,  
1023 County may direct Contractor to use a different facility and such direction shall not constitute a  
1024 County-directed Change in Scope. Contractor shall deliver all C&D loads to the new Approved C&D  
1025 Processing Facility for Processing.

1026	<b>Containers:</b>	Roll-Off Containers
1027	<b>Container Sizes:</b>	10 – 50 cubic yard Roll-Off Containers
1028	<b>Service Frequency:</b>	As requested by Customer
1029	<b>Service Location:</b>	Customer-selected service location
1030	<b>Acceptable Materials:</b>	Mixed Construction and Demolition Debris
1031	<b>Prohibited Materials:</b>	Excluded Waste, Solid Waste, Recyclable Materials, Organic Materials
1032		(excluding wood waste)
1033	<b>Additional Service:</b>	Upon request, Contractor shall provide Customers and/or the County
1034		with certification of the Recycling of mixed C&D load(s), including the
1035		types of materials in the load and the percentage of the total load that
1036		was Recycled versus Disposed, and any other information required by
1037		Applicable Law.
1038	<b>Other Requirements:</b>	Contractor shall, at Customer’s request and for an additional charge
1039		approved by the County, open and close gates, lock or unlock enclosures,
1040		or perform other services as reasonably necessary to access and empty
1041		Containers.

1042 **Section 5.3: Single-Family Services in all areas other than Universal**  
1043 **Collection Areas**

1044 Contractor shall provide the services described in this Section 5.3 to any Single-Family Customer not  
1045 located within a Universal Collection Area or an Alternate Universal Collection Area in the unincorporated  
1046 area of the County that chooses to subscribe to their service. Contractor may allow, but is prohibited  
1047 from requiring Container sharing between Single-Family Customers. Rates for service will be set and  
1048 approved by the County on an annual basis and will be direct billed by the Contractor.

1049 **Voluntary One-Container System**

1050 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste one (1) time per week in Contractor-  
1051 provided Containers from Single-Family Customers that choose to subscribe to their service and  
1052 Transport all Solid Waste to the Designated Disposal Facility for disposal.

1053	<b>Containers:</b>	Carts
1054	<b>Container Sizes:</b>	96-gallons (or similar size)
1055	<b>Service Frequency:</b>	One (1) time per week
1056	<b>Service Location:</b>	Curbside

1057 **Acceptable Materials:** Solid Waste  
1058 **Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste  
1059 **Additional Service:** Contractor shall provide additional Solid Waste Carts to Residential  
1060 Customers upon request and may charge the "Additional Solid Waste  
1061 Cart" Rate approved by the County. Contractor may provide Bin service  
1062 upon Customer request and may charge the "Residential Bin" Rate  
1063 approved by the County.

1064 B. **Optional Recyclable Materials Collection.** At the Contractor's option, the Contractor shall Collect  
1065 Recyclable Materials one (1) time every other week in Contractor-provided Containers from Single-  
1066 Family Customers that subscribe to Solid Waste services and choose to also participate in Recyclable  
1067 Materials Collection. Contractor shall Transport all Recyclable Materials to the Approved Recyclable  
1068 Materials Processing Facility for Processing. Contractor may charge the "Recyclable Materials Cart"  
1069 Rate approved by the County.

1070 **Containers:** Carts  
1071 **Container Sizes:** 96-gallons (or similar size)  
1072 **Service Frequency:** One (1) time every other week  
1073  
1074 **Service Location:** Curbside  
1075 **Acceptable Materials:** Recyclable Materials  
1076 **Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste  
1077 **Additional Service:** Contractor shall provide one (1) Recyclable Materials Cart to Residential  
1078 Customers upon request and may charge the "Recyclable Materials Cart"  
1079 Rate approved by the County.

1080 C. **Optional Organic Materials Collection.** At the Contractor's option, the Contractor shall Collect  
1081 Organic Materials one (1) time per week in Contractor-provided Containers from Single-Family  
1082 Customers that subscribe to Solid Waste services and choose to also participate in Organic Materials  
1083 Collection. The Contractor shall Transport all Organic Materials to the Designated Organic Waste  
1084 Processing Facility for Processing. Contractor may charge the "Organic Materials Cart" Rate  
1085 approved by the County.

1086 **Containers:** Carts  
1087 **Container Sizes:** 96-gallons (or similar size)  
1088 **Service Frequency:** One (1) time every week  
1089 **Service Location:** Curbside  
1090 **Acceptable Materials:** Organic Materials  
1091 **Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste  
1092 **Additional Service:** Contractor shall provide additional Organic Materials Carts to Customers,  
1093 upon request, and may charge the "Organic Materials Cart" Rate  
1094 approved by the County.  
1095 **Other Requirements:** Single-Family Customers shall be permitted to place Compostable Plastics  
1096 and Organic Materials contained in Compostable Plastic Bags in the  
1097 Organic Materials Container for Collection.

1098 **Section 5.4: Commercial and Multi-Family Services in all Areas other than**  
1099 **Universal Collection Areas**

1100 Contractor shall provide the services described in this Section 5.4 to any Commercial or Multi-Family  
1101 Customer not located within a Universal Collection area or an Alternate Universal Collection Area in the  
1102 unincorporated area of the County that chooses to subscribe to their service.

1103 **Voluntary One-Container System**

1104 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided Containers as  
1105 requested by the Customer from Commercial and Multi-Family Customers that choose to subscribe  
1106 to their service and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

1107 **Containers:** Carts, Bins and Roll-Off Containers  
1108 **Container Sizes:** 96-gallon Carts (or similar size); 1-, 1.5-, 2-, 3-, 4-, and 6- cubic yard Bins;  
1109 and Roll-Off Containers. Container size to be negotiated between the  
1110 Customer and the Contractor based on Customer need and Container  
1111 availability  
1112 **Service Frequency:** Up to six (6) times per week, as requested by Customer  
1113 **Service Location:** Curbside; or other Customer-selected Service Location at the Commercial  
1114 or Multi-Family Premises  
1115 **Acceptable Materials:** Solid Waste  
1116 **Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste  
1117 **Additional Service:** Contractor shall not schedule County Solid Waste Collection service on  
1118 Sunday, except as authorized by the County.  
1119 **Other Requirements:** Contractor shall, at Customer’s request and for an additional charge  
1120 approved by the County, open and close gates, lock or unlock Customer  
1121 enclosures, or perform other services as reasonably necessary to access  
1122 and empty containers.

1123 B. **Optional Recyclable Materials Collection.** Contractor shall Collect Recyclable Materials in  
1124 Contractor-provided Containers as requested from Commercial and Multi-Family Customers that  
1125 subscribe to Solid Waste Collection service and choose to also participate in Recyclable Materials  
1126 Collection. Contractor shall Transport all Recyclable Materials to the Approved Recyclable Materials  
1127 Processing Facility for Processing.

1128 **Containers:** Carts, Bins, Roll-Off Containers  
1129 **Container Sizes:** 96-gallon Carts (or similar size); 1-, 1.5-, 2-, 3-, 4-, and 6- cubic yard Bins;  
1130 and Roll-Off Containers. Container size to be negotiated between the  
1131 Customer and the Contractor based on Customer need and Container  
1132 availability  
1133 **Service Frequency:** Up to six (6) times per week, as requested by Customer  
1134 **Service Location:** Curbside or other Customer-selected service location at the Customer’s  
1135 Premises  
1136 **Acceptable Materials:** Recyclable Materials  
1137 **Prohibited Materials:** Solid Waste, Organic Materials, Excluded Waste  
1138 **Additional Service:** Upon Customer request and to accommodate periodic additional service  
1139 needs, Contractor shall provide Collection service at a greater frequency

1140 than the Customer’s regularly scheduled service, up to the maximum  
 1141 Service Level and Contractor may charge the appropriate Rate for the  
 1142 higher Service Level.  
 1143 Contractor shall not schedule County Solid Waste Collection service on  
 1144 Sunday, except as authorized by the County.  
 1145 **Other Requirements:** Contractor shall, at Customer’s request and for an additional charge  
 1146 approved by the County, open and close gates, lock and unlock  
 1147 enclosures, or perform other services as reasonably necessary to access  
 1148 and empty Containers.

1149 C. **Optional Organic Materials Collection.** Contractor shall Collect Organic Materials in Contractor-  
 1150 provided Containers as requested from Commercial and Multi-Family Customers that subscribe to  
 1151 Solid Waste Collection service and choose to also participate in Organic Materials Collection.  
 1152 Contractor shall Transport all Organic Materials to the Approved Organic Waste Processing Facility  
 1153 for Processing.

1154 **Containers:** Carts, Bins, Roll-Off Containers  
 1155 **Container Sizes:** 96-gallon Carts (or similar size); 1-, 1.5-, 2-, and 3-cubic yard Bins; and  
 1156 Roll-Off Containers. Container size to be negotiated between the  
 1157 Customer and the Contractor based on Customer need and Container  
 1158 availability  
 1159 **Service Frequency:** Up to six (6) times per week  
 1160 **Service Location:** Curbside or other Customer-selected Service Location at the Customer’s  
 1161 Premises  
 1162 **Acceptable Materials:** Organic Materials  
 1163 **Prohibited Materials:** Solid Waste, Recyclable Materials, Excluded Waste.  
 1164 **Additional Service:** Upon Customer request and to accommodate periodic additional  
 1165 service needs, Contractor shall provide Collection service at a greater  
 1166 frequency than the Customer’s regularly scheduled service, up to the  
 1167 maximum Service Level and Contractor may charge the appropriate  
 1168 Rate for the higher Service Level.  
 1169 **Other Requirements:** Commercial and Multi-Family Customers shall be permitted to place  
 1170 Compostable Plastics and Organic Materials contained in Compostable  
 1171 Plastic Bags in the Organic Materials Container for Collection.  
 1172

1173 **Section 5.5: Collection Service Operating Requirements**

1174 A. **Regular Hours of Service.** The Contractor shall schedule no Collections from any Premises on any  
 1175 day earlier than 5:00 a.m. or later than 7:00 p.m. provided, however, that the County may, at its  
 1176 sole discretion, change the Collection time as required by the needs of the Customers or the  
 1177 Contractor.

1178 B. **Emergency Service.** Collection of Solid Waste necessitated by an emergency, which the County  
 1179 Contract Manager determines threatens the public health and safety within the County, will be  
 1180 made by the Contractor at the direction of the County Contract Manager. Such Emergency Services  
 1181 may be required outside of the regular Collection hours and schedule. If the County requests the  
 1182 Contractor to provide Emergency Services, the Contractor will use the Contractor's good faith best

1183 efforts to respond to such a request. The County shall reimburse the Contractor for all actual,  
1184 documented, and necessary additional costs incurred in order to comply with the provisions of this  
1185 Section 5.5.B provided that Contractor maintains and supplies complete and proper documentation  
1186 for said costs.

1187 C. **Noise Levels.** The Contractor shall perform the Collection Services in a manner that minimizes the  
1188 noise resulting from its equipment and personnel and shall ensure that it is in compliance with  
1189 Applicable Law and the County Code.

1190 D. **Holidays.** Collection of Discarded Materials shall not be required on the following legal holidays:  
1191 New Year's Day, Easter Sunday, Independence Day, Thanksgiving Day, and Christmas Day, except in  
1192 case of emergency or as otherwise required by the County Contract Manager. Whenever a regular  
1193 Collection falls on such a holiday, the Collection shall be made on the following working day, and  
1194 Collections throughout the County shall become current within one (1) week thereafter. Written  
1195 notice of this policy shall be provided to Customers no more than thirty (30) days prior to such  
1196 alternative service day. Collection shall not be rescheduled when the holiday falls on a Saturday or  
1197 Sunday, unless otherwise agreed to by the County and the Contractor.

1198 E. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a manner  
1199 as to protect the public health and safety. The Contractor agrees to establish procedures and  
1200 educate its employees as to such procedures regarding proper methods for the protection of the  
1201 general public, including, but not limited to, arranging for the proper and legal Disposal of hazardous  
1202 substances encountered during its performance under this Agreement.

1203 F. **Routing.** The County has a legal duty and obligation to ensure that the Contractor is performing the  
1204 required services in an efficient and cost-effective manner. As such, the Contractor shall establish  
1205 and maintain Collection Routes in such a manner as to provide for the uniform and efficient  
1206 Collection of Discarded Materials from all Customers. The Contractor shall provide the County with  
1207 its Collection Routes for approval by the County Contract Manager within 45 days of entering into  
1208 this Agreement. The Collection Routes submission shall at a minimum show the geographical area  
1209 to be covered by the route, the estimated timeframe for collections, and the number and types of  
1210 services that will be collected.

1211 Once approved, the Contractor may make adjustments to the approved Collection Routes provided  
1212 that the Contractor provides written notice the County Contract Manager at least 45 days prior to  
1213 the change. Written notice shall be provided to those effected by the change at least 30 days prior  
1214 to the change effecting their service. If the Contractor changes service days for over five percent  
1215 (5%) of Customers on a given Route over a cumulative twelve (12) month period, the Contractor  
1216 shall seek County approval for such a change and in doing so the Contractor shall provide no less  
1217 than ninety (90) days' advance written notice to the County and the County may require Contractor  
1218 to perform additional outreach prior to County approval of such service day changes.

1219 G. **Commingling Prohibition.**

1220 The Contractor shall not commingle County Collection Routes with Routes serving incorporated  
1221 Cities and/or local agency waste management jurisdictions. However, if for reasons of efficiency,  
1222 economy, or regulatory compliance it is impractical to keep Collection Routes separate, the  
1223 Contractor may seek written approval to commingle County Collection Routes BUT may only  
1224 commingle the routes after receiving said approval from the County Contract Manager. If the

1225 Routes are commingled, the Contractor shall submit to the County a detailed report setting forth  
1226 accurate account information from each Customer (both County and non-County) on the  
1227 commingled Routes, upon County request and in accordance with Exhibit D and/or any other  
1228 reports and submittals required in the County Contract Manager's written approval. The County  
1229 Contract Manager's written approval may be modified, amended, and/or rescinded from time to  
1230 time at the sole discretion of the County Contract Manager.

1231 **Section 5.6: Other Discarded Materials Services**

1232 A. **Bulky Waste Collection.** Contractor shall offer curbside Bulky Waste Collection Services to all Single-  
1233 Family and Multi-Family Customers at no additional charge in the Contractor's Discarded Materials  
1234 Service Area at least one time per month on a call-in basis. Contractor shall collect bulky waste  
1235 within one week of the call to request the service.

1236 Contractor shall Collect Bulky Waste from the Customer's curbside location and Transport the Bulky  
1237 Waste to the specified processing area at the Designated Disposal Facility.

- 1238 **Containers:** Not applicable
- 1239 **Service Level:** Call-in curbside pick-up service for Bulky Waste items
- 1240 **Service Frequency:** Up to twelve (12) pickups per year on a call-in basis for Single-Family  
1241 and Multi-Family Customers.
- 1242 **Service Location:** Curbside; side of street if no curb; at the normal Discarded Materials  
1243 Collection location; or other agreed-upon location if impractical to place  
1244 items curbside.
- 1245 **Acceptable Materials:** Two large items per pickup of Bulky Waste- which may include E-Waste.  
1246 Bulky items that have multiple pieces (such as a sectional couch or a  
1247 dining set) will be considered to be a single item.
- 1248 **Prohibited Materials:** Excluded Waste, C&D, Green Waste, liquid waste, manure, tires, vehicle  
1249 parts, pressurized containers, or any single item that exceeds five  
1250 hundred (500) lbs. in weight.
- 1251 **Additional Service:** Contractor shall host up to four (4) Bulky Waste Collection events per  
1252 year, at multiple sites within the unincorporated area of the County at  
1253 the request of the County Contract Manager.  
1254 The Contractor shall provide an annual tracking report of locations and  
1255 tonnage of Bulky Items Collected.
- 1256 **Other Requirements:** The Contractor shall coordinate Bulky Waste Collection services for Multi-  
1257 Family complexes directly with the property manager and provide the  
1258 pick-up service for monthly pre-scheduled Bulky Waste Collection days.

1259 B. **Illegal Dumping.** County shall accept any illegally dumped waste Collected by the Contractor at the  
1260 Designated Disposal Facility, whereby Contractor shall place Discarded Materials in such location(s)  
1261 as identified by County staff, at no additional charge to the Contractor. County Contract Manager  
1262 will supply Contractor with a Gate Fee Waiver that must be presented at the Designated Disposal  
1263 Facility with any illegal dumping.

1264 C. **County Facilities.** Contractor may Collect Discarded Materials from specified County facilities in the  
1265 Contractor's Service Area in the same manner as those services are provided to Commercial  
1266 Customers and as requested by the County.

1267 D. **Holiday Trees.** The Contractor shall Collect all Holiday trees properly placed curbside by Residential  
1268 Premises on the first two (2) regularly scheduled Collection days after December 25, or such other  
1269 days as agreed by the County Contract Manager and the Contractor, free of any additional charge  
1270 to any Customer. Contractor shall also accept any Holiday trees that have been properly placed in  
1271 an Organic Materials Cart at any time.

1272 E. **Special Services.** The Contractor shall have the right, but not the obligation, to provide additional  
1273 Special Services requested by any Customer which are directly related or ancillary to any of the  
1274 other Collection Services authorized hereunder, upon County approval. The nature and terms of  
1275 any such Special Services shall be negotiated with the Customer and compensation therefore shall  
1276 be paid by the requesting Customer. Prior to commencing the Special Services, the Contractor shall  
1277 submit a written request, providing supporting information for the Special Services Rates or charges  
1278 requested by the Contractor, to the County Contract Manager for review and approval. Upon  
1279 receipt and review of such information, the County Contract Manager may set the Rate, which shall  
1280 become binding on the Contractor.

1281 F. **Roll-Off Collection Services.** The Contractor shall provide Roll-Off Collection Services within the  
1282 Service Area. Such Roll-Off services may be provided by the Contractor directly or indirectly through  
1283 a Sub-contractor that holds a Solid Waste franchise in Kern County or who has been otherwise  
1284 approved by the County. In either case, the Contractor in whose Service Area the services are  
1285 performed shall be accountable to the County for the manner in which the Roll-Off Collection  
1286 Services are provided; the Rate charged, as designated in Exhibit C; and compliance with all other  
1287 relevant rules of the County and Applicable Law.

1288 G. **Reserved for Future Use.**

1289 **Section 5.7: Standard of Performance**

1290 Contractor shall at all times comply with then Applicable Law and provide services in a manner that is safe  
1291 to the public and the Contractor's employees. Contractor shall perform services in accordance with  
1292 Discarded Materials best management practices common to California, except to the extent that a higher  
1293 performance standard is specified in this Agreement.

1294 A. **Clean Up and Avoiding Damage to Property.** The Contractor shall use due care to prevent littering,  
1295 spills, or leaks of material placed for Collection. If any materials are littered, spilled, or leaked during  
1296 Collection or Transportation, the Contractor shall clean up all material before leaving the site or as  
1297 soon as practical thereafter. Failure to comply with the provisions of this Section may result in  
1298 Liquidated Damages, subject to the provisions of Article 14.

1299 B. **Protection of Public and Property.** The Contractor shall exercise best judgement in the protection  
1300 of the public and property. The Contractor shall close all gates after making collections and shall  
1301 not damage or trespass upon private or public property. Failure to comply shall be considered an  
1302 Event of Default and shall result in assessment of Liquidated Damages pursuant to Article 14.

1303 C. **Hazardous Waste.** The Contractor acknowledges its obligation to arrange for the disposal of  
1304 Hazardous Waste that inadvertently comes into its possession or control. The Contractor agrees to  
1305 establish all reasonable practices for the screening and elimination of Hazardous Waste from the  
1306 waste stream including, but not limited to, the training of personnel and the revision of such



1307 practices as necessary to reflect prudent waste screening considered to be good practice in the Solid  
1308 Waste Collection and Disposal industry at the time.

1309 If the Contractor finds what reasonably appears to be discarded Hazardous Waste or Household  
1310 Hazardous Waste at a Designated Collection Location, the Contractor, in addition to the procedure  
1311 outlined in the previous paragraph, shall either:

1312 1. Notify the Owner or Generator, if such can be determined, that the Contractor may not  
1313 lawfully Collect such waste and leave a tag specifying the nearest location available for such  
1314 appropriate Disposal; or,

1315 2. Follow other such procedure(s) as approved by the County Contract Manager.

1316 In the event of a threat to the public health and safety, the Contractor shall immediately contact  
1317 the local fire department. The Contractor shall notify the County Contract Manager of such incident  
1318 within one (1) calendar day.

1319 D. **Employees:**

1320 1. **Conduct and Uniform.** The Contractor shall take all steps necessary to ensure that its  
1321 employees performing Collection Services conduct themselves in a safe, proper, and  
1322 professional manner, and that they work as quietly as possible. All such employees shall at all  
1323 times of employment be dressed in uniforms with suitable identification. Additionally, any  
1324 time the employee exits their vehicle at a Designated Disposal Facility, a high visibility vest or  
1325 jacket must also be worn.

1326 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,  
1327 issued by the California Department of Motor Vehicles. Contractor shall use the Class II  
1328 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its  
1329 drivers for safety.

1330 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its  
1331 employees who operate Collection Vehicles or equipment. Contractor shall train its  
1332 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the  
1333 County Contract Manager's request, Contractor shall provide a copy of its safety policy and  
1334 safety training program, the name of its safety officer, and the frequency of its trainings.

1335 E. **Improper Loading of Containers.** The Contractor may decline to Collect any Discarded Materials  
1336 that have been left for Collection in any manner which would prohibit its safe Collection.

1337 F. **Record of Non-Collection.** When any Discarded Materials placed for Collection are not Collected by  
1338 the Contractor, the Contractor shall leave a tag on the Customer's Container, including the reasons  
1339 the materials were not Collected, the date the tag was left and the contact information for the  
1340 Contractor, and photographic evidence of the reasons for non-Collection (if available). If the non-  
1341 Collection is a result of observed Prohibited Container Contaminants during a Route review, the  
1342 Contractor shall follow the noticing protocol specified in Section 8.4. The Contractor shall maintain,  
1343 at its place of business, a log book (which may be electronic) listing all such circumstances in which  
1344 Collection is denied. The log book shall contain the names and/or addresses of the Collection  
1345 Premises involved, the date of such tagging, the reason for non-Collection, and the date and manner

1346 of disposition of each case. The log book shall be kept so that it may be conveniently inspected by  
1347 the County Contract Manager upon request.

1348 G. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or  
1349 Subcontractor employed by it, to accept, request, solicit, or demand, either directly or indirectly,  
1350 any compensation for the Collection of Discarded Materials or other Collection Services, except such  
1351 compensation as is specifically provided for herein as approved by the County.

1352 H. **Compliance with Applicable Law.** The Contractor shall comply with all Applicable Law relating to  
1353 any aspect of the Contractor's services and this Agreement, shall obtain and maintain all legal  
1354 entitlements required for the Operating Assets and the Collection Services, shall comply with all  
1355 valid acts, rules, regulations, orders, and directions of any governmental body applicable to the  
1356 Operating Assets and the Collection Services provided hereunder, and shall pay all taxes in  
1357 connection therewith.

1358 I. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in  
1359 respect of the Operating Assets or the Collection Services, or upon any part thereof or upon any  
1360 revenues of the Contractor there from and shall provide and pay the cost of all utilities necessary  
1361 for the operation of the Operating Assets and the provision of the Collection Services, when the  
1362 same shall become due.

## 1363 **Section 5.8: Collection Locations**

1364 A. **Alternative Service Location for Disabled Customers.** Residential walk-in service will be provided  
1365 at no charge to any Customer that provides a medical exemption authorized by a licensed  
1366 healthcare provider or facility.

## 1367 **Section 5.9: Other Wastes**

1368 The Parties acknowledge that this Agreement is granted only with respect to the Collection Services and  
1369 does not include the Collection, Transportation, Processing, or Disposal of Hazardous Waste, Medical  
1370 Waste, and Liquid Waste. If the Contractor elects to provide any such services with respect to Hazardous  
1371 Waste, Infectious Waste, or any other waste regulated by the Department of Toxic Substances Control,  
1372 such services shall only be performed by a separate legal entity separately insured and liable, and  
1373 according to Applicable Law. Failure to comply shall be considered an Event of Default pursuant to Article  
1374 14.

## 1375 **Section 5.10: Changes in Scope of Collection Services**

1376 As the stated above, the County is obligated to protect the public health and safety within its jurisdiction  
1377 and provide arrangements for the collection of Solid Waste in the County Jurisdiction. As a result, the  
1378 County may modify the scope of services performed by the Contractor pursuant to this Agreement from  
1379 time to time in its sole discretion and/or the County may seek to have others provide the modified service.  
1380 The Contractor acknowledges the County's rights and obligations to modify the scope of services  
1381 performed under this Agreement and the Contractor agrees that the failure to comply with such changes  
1382 shall be considered an Event of Default pursuant to Article 14.

1383 The County shall provide written notice of any requested modification to the scope of services provided  
1384 by Contractor pursuant to this Agreement, and the Contractor shall provide the County with any

1385 information requested by the County in connection with the proposed changes. The Contractor shall,  
1386 within sixty (60) days after receipt of such notice by the County, respond to the County's order. The  
1387 Contractor may seek, but the County is not required to provide, additional compensation in the event the  
1388 scope of services is modified in accordance with this Section 5.10. Likewise, the County may reduce the  
1389 Compensation provided to the Contractor if circumstances so warrant. The need for, and amount of,  
1390 additional compensation shall be calculated following a change in scope Rate review pursuant to Section  
1391 12.2. Further, the parties acknowledge their understanding that the compensation to be paid to  
1392 Contractor under this Agreement is the result of arms-length negotiations that must ultimately be  
1393 approved by the rate payers and is based upon the agreed level and scope of services existing at the  
1394 commencement of the term hereof. Neither party intends that a change in scope of collection services  
1395 shall result in the Contractor suffering losses which are substantially outside the commercially reasonable  
1396 expectations of the parties. The obligation of the parties in such event is to act reasonably toward each  
1397 other and to cooperate in arriving at an appropriate adjustment in rates. If Contractor can demonstrate  
1398 that its cost of service would meaningfully increase as a result of providing such additional or modified  
1399 services, Contractor shall be entitled to request an adjustment in its compensation. If County and  
1400 Contractor cannot agree on compensation adjustment for new or modified services, then the dispute will  
1401 be handled according to the procedures set forth in Article 15. If Contractor cannot receive an adjustment  
1402 in compensation due to application of Proposition 218, 26, judicial order and/or any other legal or  
1403 contractual restrictions, County will not require that Contractor implement the additional service or  
1404 change in scope and the County may exercise any, and all, legal options to have the service provided by  
1405 others regardless of any exclusivity provided in this Agreement and/or any County Ordinance.

1406 **Section 5.11: Billing**

1407 A. **General.** The Contractor shall perform the responsibilities and duties described in this  
1408 Agreement in consideration of the right to charge and collect fees from Generators of County  
1409 Solid Waste for Collection and Disposal services rendered at Rates set by the County on an  
1410 annual basis. The Contractor does not look to the County for payment of any sums in this  
1411 Agreement unless expressly and specifically included in this Agreement.

1412 B. **Billing for Residential Customers for the Service Area in Universal Collection Areas.** The County  
1413 shall be responsible for collecting payment from Residential Customers in the form of a charge  
1414 on the property tax roll in Universal Collection Areas specific to the Contractor's Service Area,  
1415 excepting Alternate Universal Collection Areas. In some Universal Collection Areas, this may  
1416 include Multi-Family properties. The County shall remit to Contractor, on a monthly basis, the  
1417 actual receipts from such parcel assessments within 15 days for Collection Services provided  
1418 during the prior month and shall have no liability to Contractor beyond the amounts actually  
1419 collected from Customers. Any amounts refunded to property owners of parcels for which the  
1420 County has paid the Base Rate to Contractor or any amounts paid to Contractor for parcels  
1421 where Collection Services were not provided shall be deducted from future payments to the  
1422 Contractor. For all fees in excess of the Base Rate, i.e., Special Services or requests for Bin  
1423 service instead of Cart service, the Contractor shall collect fees as provided below. If a parcel is  
1424 added to a Universal Collection Area at such time where the charge has not been included on  
1425 the property tax roll, then Contractor will bill the parcel owner directly until the start of the  
1426 following fiscal year. The County Contract Manager shall be notified of any such additions prior  
1427 to Contractor beginning service to the added parcel.

1428 C. **Billing for Commercial Customers in Universal Collection Areas and for all Customers not**  
1429 **located within a Universal Collection Area, excepting Alternate Universal Collection Areas.**  
1430 The Contractor shall be responsible for collecting payment and conducting billing as described  
1431 herein for Commercial Customers located in a Universal Collection Area and all Customers that  
1432 are not located in a Universal Collection Area. For any separate services not billed through the  
1433 property tax roll, the Contractor may bill up to the maximum service rates. Billing shall be  
1434 performed on the basis of services rendered and this Agreement shall create no obligation on  
1435 the part of any person on the sole basis of the ownership of property.

1436 1. **Payment Methods and Location.** Contractor’s website shall provide Customers with the  
1437 ability to pay their bills through an electronic check or credit card and include the ability  
1438 for Customer billings to be automatically charged on a recurring basis. Contractor shall  
1439 prepare, mail, and collect bills from Customers who decline to use such internet-based  
1440 billing system. Contractor shall make arrangements to allow Customers to pay bills by  
1441 cash, check, electronic check, money order, and credit card at Contractor’s office at a  
1442 location within the County (or in near proximity to) which shall be available to Customers  
1443 during normal business hours as set forth in Section 10.1.B.

1444 2. **Billing Records.** Contractor shall maintain copies of all billings and receipts, each in  
1445 chronological and type of service order, for the Term of this Agreement, for inspection  
1446 and verification by the County Contract Manager at any reasonable time but in no case  
1447 more than thirty (30) calendar days after receiving a request to do so.

1448 3. **Responsible Parties.** For the purposes of determining the parties ultimately responsible  
1449 for the purposes of billing, the Customer shall be determined to be the Owner of the  
1450 property. The only exceptions shall be for Single-Unit Dwellings or single businesses  
1451 where the tenant or occupant of that property, rather than the Owner, subscribes to  
1452 service and such service is not billed using the property taxes.

1453 D. **Bad Debt and Collections Procedures.** Contractor shall be responsible for collection of payment  
1454 from Customers with past due accounts (“bad debt”). Contractor shall make reasonable efforts to  
1455 obtain payment from delinquent accounts through issuance of late payment notices, telephone  
1456 requests or other electronic means for payments, and assistance from collection agencies.

1457 Invoices shall be provided and collected in accordance with then Applicable Law. At a minimum,  
1458 invoices are due no earlier than thirty (30) days following the date of the invoice’s mailing. The date  
1459 of the invoice shall not be prior to the first day of the service period for the billing. In the event that  
1460 any account becomes more than ten (10) calendar days past due, Contractor shall notify such  
1461 Customer of the delinquency via written correspondence and telephone contact. Should any  
1462 account become more than thirty (30) calendar days past due, Contractor shall provide notice to  
1463 the Customer via written correspondence, with a copy to the County Contract Manager, that service  
1464 may be discontinued if the account becomes more than forty-five (45) calendar days past due.  
1465 Should any account become more than forty-five (45) calendar days past due, Contractor may  
1466 discontinue providing service to the Customer. No less than seven (7) calendar days prior to  
1467 discontinuing service to a Customer, Contractor shall notify the County Contract Manager of the  
1468 address, Service Level, service frequency, and delinquent billing amount. If and to the extent  
1469 permitted by Applicable Law, Contractor may withhold service from a delinquent account until past  
1470 delinquencies are paid in full. Upon restoring service to a previously delinquent account, Contractor,

1471 if and to the extent permitted by Applicable Law, may require a deposit from the Customer not to  
1472 exceed one (1) month's billings at the Customer's Service Level. Contractor may charge interest at  
1473 a rate of 1 percent (1%) per month on the delinquent amount, or the highest rate of interest  
1474 allowable under law, whichever is less, on account balances that are more than forty-five (45)  
1475 calendar days past due.

1476 E. **Enrollment Verification.** Contractor recognizes that the County will need to verify that all  
1477 Generators that are not exempted via waiver within the County jurisdiction are enrolled in  
1478 Collection Service, in order to comply with the requirements of SB 1383. Contractor shall maintain  
1479 records of Customer account and billing information necessary for the County to verify the County-  
1480 wide enrollment of Generators for Collection Service and report this information in accordance with  
1481 Exhibit D and promptly upon County request.

## ARTICLE 6: PROCESSING AND TRANSFER

1482

### 1483 Section 6.1: Processing and Transfer Arrangements

1484 A. **General.** Contractor shall Transport all Discarded Materials collected under this Agreement to the  
1485 appropriate Designated Facilities or Approved Facilities (Exhibit A) as applicable for each material  
1486 type, in accordance with Articles 5, 6, and 7 of this Agreement. If Contractor Transports Discarded  
1487 Materials to a facility other than the applicable Designated Facility(ies) or Approved Facility(ies),  
1488 without prior County approval, Contractor's failure to comply shall be considered an Event of  
1489 Default pursuant to Article 14.

1490 B. **Approved Facilities.** The Contractor shall make its own Processing arrangements, except as  
1491 otherwise designated in this Article, for Recyclable Materials and C&D, so long as such arrangements  
1492 are in full compliance with this Agreement, State regulations (including SB 1383 requirements), and  
1493 other Applicable Law. The County may order the Contractor to modify or terminate its Processing  
1494 arrangements if, in the opinion of the County, full compliance with this Agreement is not being  
1495 achieved or the following circumstances exist:

- 1496 1. The County determines that such arrangements threaten public health or safety, or
- 1497 2. The County determines that the County is not adequately protected from liability for the  
1498 activities of the Processing entities, or
- 1499 3. The County determines that the diversion levels or other performance metrics of the  
1500 particular facility cause the County to be out of compliance with AB 939, AB 341, AB 1826, SB  
1501 1383, or any other rule or regulation regarding Discarded Materials management, and/or the  
1502 Contractor is handling Discarded Materials in a manner which does not constitute a reduction  
1503 in landfill Disposal pursuant to SB 1383 and does not result in significant diversion credit to  
1504 the County.

1505 Contractor may request a change in one or more of the selected Approved Facility(ies). County  
1506 Contract Manager may, but is not required to make such an approval, and if so approved, approval  
1507 may be conditioned on various factors, including, but not limited to: the performance of the current  
1508 versus proposed Facility, the permitting status of and LEA inspection records related to the  
1509 proposed Facility, the location and distance of the Facility from the Contractor's Service Area, the  
1510 Facility's compliance status with SB 1383 standards and other Applicable Law, and any other factor  
1511 that may reasonably degrade the value received by the County, and/or its constituents. If Contractor  
1512 elects to use a Facility(ies) that is(are) not defined as Approved Facility(ies), as defined in this  
1513 Agreement, Contractor shall submit a written request for approval to the County thirty (30) days  
1514 prior to the desired date to use the Facility and shall obtain the County Contract Manager's written  
1515 approval prior to use of the Facility.

1516 C. **Designated Facilities.** Contractor shall Transport Discarded Materials collected in accordance with  
1517 this Agreement that are required to be delivered to Designated Facilities to the relevant Designated  
1518 Facility(ies) for each Discarded Material type. Once Collected materials are deposited by Contractor  
1519 at the appropriate Designated Facility(ies), ownership of such materials shall transfer from the  
1520 Contractor to the owner or operator of the Designated Facility, which as of the Commencement  
1521 Date of this Agreement shall be the County or the County's Subcontractor, subject to the limitations

1522 of that Facility. The Contractor is not responsible for providing Transfer or Disposal services unless  
1523 otherwise provided for in this Agreement. Contractor may not initiate a change in Facility for any  
1524 Designated Facility.

1525 The Contractor's general manager shall have e-mail capabilities to enable the County Facility  
1526 operator and the Contractor's general manager to communicate via e-mail. Contractor's general  
1527 manager shall respond to the County's email correspondence within one (1) working day.  
1528 Contractor shall plan its Routes to be compatible with the Designated Facility(ies)' receiving hours.  
1529 Contractor shall deliver Collected materials to the Designated Facility(ies) during the receiving hours  
1530 of the Designated Facility(ies).

1531 Contractor shall cooperate with Facility operator and comply with Facility operator's requirements  
1532 as those may change from time to time, including, but not limited to: (i) how and where to unload  
1533 Collection Vehicles; (ii) respecting operations and construction of new Facilities; and (iii) the Facility  
1534 operator's Excluded Waste screening and exclusion or other load checking program(s). Contractor  
1535 shall also comply with the procedures and schedule for any waste evaluations, capacity planning  
1536 studies, contamination assessments, or similar studies conducted by the County.

1537 Within thirty (30) days prior to the commencement date, Contractor shall coordinate with the  
1538 County to ensure that all Collection Vehicles used by Contractor to Transport Discarded Materials  
1539 to Designated Facilities are weighed to determine unloaded ("tare") weights. Contractor shall work  
1540 with the Designated Facility operators to electronically record the tare weight, identify vehicle as  
1541 Contractor's, and provide a distinct vehicle identification number for each vehicle. Contractor shall  
1542 provide the County with a report listing the vehicle tare weight information, upon request.  
1543 Contractor shall promptly coordinate with the Designated Facility operator to weigh additional or  
1544 replacement Collection Vehicles prior to Contractor placing them into service. Contractor shall  
1545 check tare weights at least annually, or within fourteen (14) days of a County request, and shall re-  
1546 tare vehicles immediately after any major maintenance service that could impact the weight of the  
1547 vehicle by more than fifty (50) pounds.

1548 While not currently required, it is acknowledged that given the term length of this agreement and  
1549 improvements in technology that will undoubtedly occur during the term of this agreement, the  
1550 County may deem it necessary and/or prudent to require additional tracking and/or monitoring  
1551 devices to be installed on all, or some, Collection Vehicles. Contractor shall abide by that request  
1552 within the time frame established by the County Contract Manager and Contractor's failure shall be  
1553 deemed an Event of Default pursuant to Section 14.1.

1554 If Contractor Transports Discarded Materials to a facility other than the Designated Facility or an  
1555 Approved Facility without prior County approval, Contractor's failure shall be deemed an Event of  
1556 Default pursuant to Section 14.1.

1557 D. **Separate Handling Requirements.** Contractor shall Collect and Transfer Organic Materials,  
1558 Recyclable Materials, Solid Waste, C&D, and Bulky Items separately from each other and from other  
1559 Solid Waste streams; and shall process Recyclable Materials and C&D at the Approved Processing  
1560 Facilities separately from each other and from other Solid Waste streams.

1561 **Section 6.2: Recovered Materials Processing**

1562 **Section 6.2.1: Recyclable Materials Processing**

1563 A. **Transfer.** Contractor shall Transport Recyclable Materials to the Approved Recyclable Materials  
1564 Processing Facility. Contractor shall keep all existing permits and approvals necessary for use of the  
1565 facility in full regulatory compliance.

1566 B. **Processing.** Contractor shall Transport and deliver all Recyclable Materials placed by Customers in  
1567 Recyclable Material Containers to the Approved Recyclable Materials Processing Facility. The  
1568 Contractor’s approved Recyclable Materials Processing Facility shall be able to recover materials  
1569 designated for Collection in the Recyclable Materials Container, and in a manner deemed not to  
1570 constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a).

1571 The Contractor has title to and liability for all Recyclable Materials and shall indemnify and hold  
1572 harmless the County from any property damage, personal injury, or consequential damages  
1573 suffered by any person from exposure to or as a result of Processing any Recyclable Materials or  
1574 subsequent product made from the Recyclable Material based on any theory of liability. The  
1575 Contractor shall promptly notify the County of any claim by any person arising out of the marketing,  
1576 Disposal, or reuse of Recyclable Materials.

1577 All tipping fees and other costs associated with Transporting to and Processing of such Recyclable  
1578 Materials at the Approved Recyclable Materials Processing Facility and Disposing of the residue, in  
1579 accordance with Section 6.2.1.E below, shall be paid by the Contractor. Contractor shall keep and  
1580 Process Recyclable Materials separately from any other Discarded Materials or other Solid Waste  
1581 streams.

1582 The Contractor is entitled to all revenues or other consideration derived from its sale of Recyclable  
1583 Materials; conversely, the Contractor shall bear the entire risk of and have the responsibility of  
1584 disposing of Recyclable Materials.

1585 C. **Marketing.** The Contractor shall be responsible for marketing Recyclable Materials collected in the  
1586 County. Contractor’s marketing strategy shall make reasonable business efforts to promote the  
1587 highest and best use of materials presented in the waste management hierarchy established by AB  
1588 939. Where practical and cost-effective, the marketing strategy should include use of local, regional,  
1589 and domestic markets for Recyclable Materials. Contractor shall make available to the County  
1590 Contract Manager any and all documentation of the final disposition of marketed Recyclable  
1591 Materials as well as certification that such materials have not been Disposed or incinerated.

1592 The parties acknowledge that recycling markets are volatile and are often a matter of global  
1593 concern, such that no single Contactor has the ability to guaranty the sustained availability of  
1594 adequate markets for all of the potentially recyclable materials it collects, processes, or delivers to  
1595 others for processing. It is further understood that in the absence of a market for processed  
1596 Recyclable Materials, storing the material may be infeasible due to space limitations or facility  
1597 permit constraints, or may lead to material degradation or to a public health risk necessitating  
1598 disposal. Accordingly, and notwithstanding any other term or provision of this Agreement to the  
1599 contrary, the disposal of Recyclable Materials by the Contractor shall not constitute a failure to  
1600 implement service, a failure to implement a program, or an Event of Default under this Agreement  
1601 if (i) CalRecycle has determined that there are no commercially viable markets available for a



1602 specific type of Recyclable Material, or (ii) where, with written notice to the County, Contractor is  
1603 unable to identify a market for one or more types of Recyclable Materials despite the exercise of  
1604 commercially reasonable efforts to process and market the material.

1605 D. **Residue Disposal.** Residue from the processing of Recyclable Materials Collected under this  
1606 Agreement at the Contractor’s Approved Recyclable Materials Processing Facility, which cannot be  
1607 marketed, may be Disposed of by Contractor at the Designated Disposal Facility or other facility, in  
1608 accordance with Article 6. Residue delivered for Disposal shall not include any Excluded Waste.

1609 Upon request of the County, Contractor shall provide a certified statement documenting the  
1610 Approved Facility’s Residue level. The Residue level calculation method shall be reviewed and  
1611 approved by the County.

1612 **Section 6.2.2: Organic Materials Processing**

1613 Contractor shall Transport all Organic Materials Collected in accordance with this Agreement to the  
1614 Approved Organic Waste Processing Facility. Once Collected Organic Materials are deposited by  
1615 Contractor at the Approved Organic Waste Processing Facility, ownership of such materials shall transfer  
1616 from the Contractor to the County, subject to the provisions or limitations of that Facility.

1617 Customers may place Compostable Plastics in the Organic Materials Container for Collection, including  
1618 Compostable Plastic Bags used by Customers to contain Organic Materials, such as Food Waste, prior to  
1619 placement in the Organic Materials Container for Collection. Contractor shall Collect and Transport such  
1620 materials for Processing to the Approved Organic Waste Processing Facility.

1621 **Section 6.3: Title to Recovered Materials**

1622 As between the Parties, the Contractor has title to and liability for all Recovered Materials Processed at  
1623 Contractor’s owned or operated Approved Processing Facilities, and shall indemnify, defend, and hold  
1624 harmless the County from any property damage, personal injury, or consequential damages suffered by  
1625 any Person from exposure to or as a result of Processing any Recovered Materials or subsequent product  
1626 made from Recovered Materials based on any theory of liability. The Contractor shall promptly notify the  
1627 County of any claim by any Person arising out of the marketing, Disposal, or reuse of Recovered Materials.

1628 **Section 6.4: Rejection of Excluded Waste**

1629 A. **Inspection.** Contractor will use standard industry practices to detect and reject Excluded Waste in  
1630 a uniform and non-discriminatory manner and will not knowingly accept Excluded Waste during  
1631 Collection. Contractor will comply with the inspection procedure contained in its permit  
1632 requirements. Contractor will promptly modify that procedure to reflect any changes in permits or  
1633 Applicable Law.

1634 **Section 6.5: Facility Evaluations**

1635 A. **General.** Contractor shall conduct the following waste evaluations (if applicable) at relevant  
1636 Approved Facilities owned and/or operated by the Contractor:

1637 1. **Organic Waste Recovery Efficiency Evaluations.** Contractor shall conduct evaluations to  
1638 measure the efficiency of Organic Waste recovered, including Organic Waste subject to

- 1639 Collection in the Recyclable Materials Container (e.g., paper products), at the Approved  
1640 Recyclable Materials Processing Facility in accordance with the applicable protocols specified  
1641 in 14 CCR Sections 17409.5.1 and 17409.5.4.
- 1642 2. **Incompatible Material Limits.** Contractor shall conduct evaluations at the Approved  
1643 Recyclable Materials Processing Facility to measure the amount of Incompatible Materials in  
1644 accordance with the protocols set forth in 14 CCR Section 17409.5.8.
- 1645 3. **Evaluation of Organic Waste in Residuals.** Contractor shall conduct evaluations at the  
1646 relevant Approved Recyclable Materials Processing Facility to measure the amount of Organic  
1647 Waste in Residual material sent for Disposal in accordance with the requirements and  
1648 protocols set forth in 14 CCR Sections 17409.5.5.
- 1649 B. **Record Keeping and Reporting.** For each of the evaluations described above, Contractor shall  
1650 maintain records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3,  
1651 Article 6.3, as applicable. Contractor shall report this information to the County on a bi-monthly  
1652 basis in accordance with Exhibit D.
- 1653 C. **Scheduling and Observance of Studies.** The Contractor shall conduct the facility evaluations in  
1654 accordance with a County-provided schedule. The Contractor acknowledges that, upon request, a  
1655 representative of the County and/or CalRecycle may oversee its next scheduled evaluation at the  
1656 Approved Facility(ies); and the Contractor shall make modifications to evaluation schedule to  
1657 accommodate such observance.

## ARTICLE 7: SOLID WASTE DISPOSAL

1658

### Section 7.1: Solid Waste and Residue Disposal

1659

1660 A. **General.** The Contractor shall Transport and Dispose of all Solid Waste Collected in the Service Area  
1661 and may Transport all Residue from Contractor's Approved Processing Facilities at the Designated  
1662 Disposal Facility in accordance with the requirements of Applicable Law, and shall comply with the  
1663 requirements, rules and regulations of the County for operation of the Designated Disposal Facility.  
1664 The Failure to do so shall be an Event of Default pursuant to Article 14 of this Agreement.

1665 B. **Designated Disposal Facilities.** The County shall have the right during the Term of the Agreement  
1666 to designate, and/or change, the Designated Disposal Facility, or multiple concurrent Designated  
1667 Disposal Facilities, in its sole and absolute discretion. The initial Designated Disposal Facilities shall  
1668 be as set forth in Exhibit A as directed by the County Contract Manager based on the geographic  
1669 area where Collection is performed. The County shall notify the Contractor in writing of any changes  
1670 in or additions to the Designated Disposal Facility. It is acknowledged that, if the circumstances so  
1671 warrant, Rate adjustments, both increases and decreases, may need to be considered as the result  
1672 of a change in the Designated Disposal Facility.

1673 C. **Disposal Records.** The Contractor shall keep and maintain such logs, records, manifest, bills of lading  
1674 or other documents as the County Contract Manager may, from time to time, deem to be necessary  
1675 or appropriate to confirm compliance by the Contractor with this Agreement. At a minimum, the  
1676 Contractor shall keep and maintain a log of all material disposed in any type of Designated Facility  
1677 not owned by and/or not located in the County. This log will include type of material, weight of  
1678 material, location disposed and proof of disposal. This information will be provided to the County  
1679 Contract Manager upon request. At all times, Contractor shall retain all weight slips or other call  
1680 information provided to the Contractor's drivers by the Owner or operator of the Designated  
1681 Disposal Facility. The Failure to abide by these provisions shall be an Event of Default pursuant to  
1682 Article 14 of this Agreement.

1683 D. **Failure to Transport to Designated Disposal Facility.** The Contractor's failure to properly Transport,  
1684 or cause to be Transported, Solid Waste Collected in the Service Area and Residue from Approved  
1685 Processing Facilities or Diversion activities shall be an Event of Default pursuant to Article 14 of this  
1686 Agreement, unless the failure is the result of an Uncontrollable Circumstance or such waste has  
1687 been diverted by means of alternative technology that has been approved by the County, allows for  
1688 AB 939 diversion credit to the County, and is deemed a reduction in Landfill Disposal under SB 1383.  
1689 Likewise, Contractor shall not Dispose of Solid Waste or Residue by depositing it on any public or  
1690 private land, in any river, stream, or other waterway, in any sanitary sewer or storm drainage  
1691 system, or in any other manner which violates Applicable Law and to do so shall be an Event of  
1692 Default pursuant to Article 14 of this Agreement.

1693 E. **Flow Control Covenant.** The Contractor hereby waives any right which it may possess under  
1694 Applicable Law to contest on any ground, constitutional, statutory, case law, administrative or  
1695 otherwise: (a) the right, power, or authority of the County to engage in the practice of legal Solid  
1696 Waste Flow Control or to enter into or perform obligations under this Agreement; or, (b) the right,  
1697 power, or authority of the County to deliver or cause the delivery of all Discarded Materials  
1698 Collected within the County to the relevant Designated Facilities, in accordance with this  
1699 Agreement.

1700 **Section 7.2: Gate and Bin Fees**

1701 A. **Gate Fees.**

1702 1. **General.** To the extent that the Contractor delivers for the purpose of Disposal or Processing  
1703 of Commercially generated Discarded Materials or residential sourced C&D at the Designated  
1704 Facilities, it shall pay the Bin Fees and/or Gate Fees as approved by the County Board of  
1705 Supervisors. Contractor shall maintain an account with the County for the payment of Gate  
1706 Fees at County Discarded Materials facilities. Such account shall be kept in good standing and  
1707 Contactor’s failure to keep current with payments on such account may be grounds for  
1708 termination of this Agreement under Section 14.1.

1709 2. **Method of Calculation.** Gate Fees shall be based on either the actual weight of the material  
1710 being delivered, as measured by a scale; the estimated weight of the material being delivered  
1711 based on the type of material and its volume in cubic yards; the type of vehicle hauling the  
1712 material being delivered; the number of units being delivered; and/or, the special nature of  
1713 the load. The method used for a given load or material at a given facility shall be at the  
1714 County’s sole discretion. The schedule of Gate Fees shall be as approved by the Board of  
1715 Supervisors. Contractor may charge Customers for the direct cost of such Gate Fees based on  
1716 the actual charge to the Contractor by the County, without any mark-up.

1717 B. **Bin Fees.**

1718 1. **General.** A Bin Fee shall be charged for all Commercial Solid Waste and Organic Materials  
1719 Containers that are Collected by the Contractor for Disposal or Processing at a County  
1720 Discarded Materials Facility. The Bin Fee shall be based on the basic per ton Gate Fee for  
1721 Commercial Solid Waste, as approved by the Board of Supervisors. Bin Fees will not apply to  
1722 any type of Residential units including Multi-Family Dwellings with any number of units.

1723 2. **Verification of Weight.** The average weight of a cubic yard of County Solid Waste from  
1724 Commercial Discarded Materials Containers shall be confirmed by the County Contract  
1725 Manager by performing waste volume/weight studies, or other calculation(s) deemed  
1726 accurate by the County Contract Manager. The County Contract Manager shall report the  
1727 results of the waste volume/weight studies to the Board of Supervisors on an as-needed basis  
1728 and shall recommend modifications to the Bin Fee as may be appropriate.

1729 3. **Records and Reporting.** The Contractor shall maintain adequate and accurate records of the  
1730 number of Commercial Containers, the cubic yard capacity of each Commercial Container,  
1731 and the number of times each Commercial Container has been Collected for each Commercial  
1732 Customer served by the Contractor. The Contractor shall prepare a Commercial Bin Fee report  
1733 in accordance with Exhibit D. The information in the Commercial Bin Fee report shall match  
1734 the information that appears on the Contractor's invoices, statements, or other records, and  
1735 any information required in the Bin Fee reports may be audited by the County.

1736 4. **Commercial Customer Billing.** The Contractor shall calculate the amount owed by each  
1737 Commercial Customer for the Bin Fee for the Contractor's current billing period and shall  
1738 include that Bin Fee, in a separate line, or column, on the invoice or statement sent to each  
1739 Commercial Customer for that billing period. The Contractor's invoice or statement for a Bin  
1740 Fee shall become delinquent forty (40) days after it is due. Customers delinquent in Bin Fees

1741 shall be charged interest at a rate of 1 percent (1%) per month on the delinquent amount, or  
1742 the highest rate of interest allowable under law, whichever is less, on account balances that  
1743 are more than forty-five (45) calendar days past due.

1744 5. **Payment of Bin Fee.** In recognition of the Contractor's billing and keeping any penalties and  
1745 interest related thereto, the Contractor shall forward all amounts actually received from the  
1746 billing of Bin Fees. The Contractor shall forward amounts due to the County within thirty (30)  
1747 days from the last day of the prior month or thirty (30) days from the date that appears on  
1748 the invoices or statements sent by the Contractor to their customers with Commercial  
1749 Containers.

1750 6. **Exemption from payment of Bin Fee.** A Bin Fee shall not be charged for any Commercial  
1751 Containers that are Collected by the Contractor if (i) the materials from those Containers is  
1752 Transported to a Material Recovery Facility prior to Disposal at a County Waste Facility, and  
1753 (ii) the Contractor and the Material Recovery Facility have entered into a written agreement  
1754 with the County, approved by the Board of Supervisors, to use an alternate method of  
1755 payment for the service charges of those Containers.

1756 7. **Fidelity Bond.** The Contractor shall maintain a Fidelity Bond as per Section 13.2 covering each  
1757 of the Contractor's employees who has the responsibility or power to handle any Bin Fees  
1758 which are to be paid by the Contractor to the County pursuant to this Section. An approved,  
1759 equivalent Commercial Crime insurance policy may be substituted for this bond with the  
1760 approval of the County Contract Manager at its sole discretion.

1761

1762

## ARTICLE 8: OTHER PROGRAMS AND SERVICES

1763

### 1764 Section 8.1 Public Education and Outreach

1765 A. **General.** The Contractor agrees to provide public education and outreach information to  
1766 Customers, at its own expense unless otherwise specified, at least as frequently as specified in this  
1767 Section and Exhibit E, on such topics including but not limited to: the Contractor's Collection  
1768 services; service and operational information updates (e.g., holiday schedules, facility hours and  
1769 operations, billing updates, etc.); requirements of Applicable Law, including, but not limited to, AB  
1770 341, AB 1826, and SB 1383; proper Household Hazardous Waste Disposal; waste reduction,  
1771 Recycling, and Composting; notices of service changes; notices of violation; proper separation of  
1772 Discarded Materials for Collection; topics included as part of the Contractor's SB 1383  
1773 Implementation Plan (Exhibit F); and, any other information necessary to keep Customers informed  
1774 of services and requirements in relation to the services provided under this Agreement. All public  
1775 education and outreach materials must be approved in advance by the County Contract Manager.  
1776 To insure consistency of the messaging to the public, the County will develop information for the  
1777 Contractor's use on topics that apply to all customers such as, but limited to: requirements of  
1778 current and future Applicable Laws, proper Household Hazardous Waste Disposal, waste reduction,  
1779 Recycling, Composting, proper separation of Discarded Materials for Collection or any other topics  
1780 that the County deems appropriate. To the extent reasonably possible, the Contractor shall  
1781 accommodate the inclusion of any County-directed information on its regular billing statements  
1782 upon the request of the County Contract Manager, without cost to the County. For Customers that  
1783 do not receive a billing statement from the Contractor, the Contractor shall send a written notice  
1784 by direct mailing or use other electronic means. If the County requests the distribution of  
1785 information on a topic other than that required for compliance with this section or required by the  
1786 SB 1383 Implementation Plan in a form that cannot be printed, delivered by electronic means, or  
1787 included with the Contractor's regular bill, the County and Contractor will share in the cost of  
1788 printing (as applicable) and distribution.

1789 Contractor shall distribute instructional information, public education, and promotion materials in  
1790 advance of commencement of services, to any new Customers that subscribe for Contractor's  
1791 service during the Term of the Agreement, and on a regular basis as set forth in this Section and  
1792 Exhibit E. Contractor's education materials shall be made available using multiple media sources  
1793 including print and digital media; shall be available in English as well as Spanish, upon request; and  
1794 shall be consistent with the County in accordance with Section 8.1.C.

1795 B. **Multi-Family Recycling and Organics Toolkit.** Contractor shall distribute public education and  
1796 outreach materials for both building managers and residents of Multi-Family Premises on Recycling  
1797 and Organics programs. Materials distributed to tenants shall be full color, graphically-based, and  
1798 available in Spanish upon request. Materials shall include, at a minimum: i) a personal recycling  
1799 container and a kitchen compost container for each unit within the Multiple-Family Premises; ii) an  
1800 introductory letter about the Recycling and Organics programs; iii) a guide for the property manager  
1801 with information on how to manage a Multi-Family Recycling and Organics program; iv) door  
1802 hangers (of any type); v) Recyclable Materials and Organic Materials container labels; and, vi)  
1803 workshops at community outreach events. Contractor shall contact each individual property  
1804 manager during the first six months of this Agreement, and once annually thereafter, to introduce  
1805 the program, provide the Multi-Family Recycling and Organics Toolkit, and determine the best

1806 Recycling and Organic program for each Customer. Multi-Family property owners may request  
1807 these materials on a more frequent basis as needed to comply with the distribution requirements  
1808 of SB 1383.

1809 C. **Collaboration with County.** When developing outreach, educational, and promotional materials,  
1810 Contractor shall work with the County to understand the County’s goals and objectives and ensure  
1811 coordinated messaging. All outreach and educational materials shall be thematically branded with  
1812 consistent color, font, and graphic style; produced in English and other language(s) as requested by  
1813 County; and photo-oriented to appeal to varied language and literacy levels. Printed materials shall  
1814 be printed double-sided on at least 30% postconsumer recyclable paper and shall also be available  
1815 in digital form. Prior to finalizing any materials, and no fewer than four (4) weeks prior to the  
1816 deadline for distribution, the draft shall be provided to the County for a final review. The draft shall  
1817 then be sent for printing and distribution.

1818 Upon request from the County Contract Manager, the Contractor’s Contract Manager and/or the  
1819 Public Education and Outreach Coordinator(s) shall meet up to one (1) time per month to discuss  
1820 the status of the Contractor’s public education and outreach activities, upcoming education and  
1821 outreach campaigns, or other topics deemed appropriate by the County for the public education  
1822 and outreach program.

1823 D. **County Facilities.** All County facilities that receive service from the Contractor shall receive any and  
1824 all public education and outreach materials and services provided to Commercial Customers. Upon  
1825 County request, Contractor shall provide additional copies of all printed public education materials  
1826 to County offices and facilities to be made available to the public that visit those facilities, and shall  
1827 replenish the materials as requested by the County Contract Manager.

1828 E. **Contractor Website.** Contractor shall develop a website or webpage specific to its operations in the  
1829 County, that shall include, at a minimum: a comprehensive listing of the Contractor’s services and  
1830 maximum Rates; acceptable materials and Prohibited Container Contaminants for each Container  
1831 type; the facilities used by the Contractor; the Contractor’s Customer Service contact information,  
1832 digital copies of Contractor-produced and/or County-produced educational materials for download;  
1833 and, upon request, links to pages of the County’s website where further information can be found.

1834 F. **Public Education and Outreach Staff.** The Contractor shall designate staff member(s) to serve as  
1835 Public Education and Outreach Coordinator(s). The number of staff members serving as Public  
1836 Education and Outreach Coordinator(s) shall be adequate to perform the functions described in this  
1837 Section at the scale relative to the Contractor’s Customer base.

1838 The Contractor shall provide thorough training for the Public Education and Outreach  
1839 Coordinator(s) on the requirements of the County’s Discarded Materials collection program and  
1840 relevant regulations (including, but not limited to, SB 1383, AB 1826, and AB 341) such that they are  
1841 able to accurately communicate information to the public, including, but not limited to: Customers’  
1842 requirements under the County’s Collection program and SB 1383, AB 1826, AB 341, and other  
1843 Applicable Law; the accepted materials and Prohibited Container Contaminants for each material  
1844 stream; facility and Collection operations information; upcoming events and programs; and, other  
1845 information necessary to answer Customer questions and promote the County’s education and  
1846 outreach program.

1847 G. **Failure to provide Public Education.** The Contractor agrees and acknowledges outreach efforts  
1848 provided in this Article 8 are integral in meeting the County’s obligations to the public and as such  
1849 any failure to meet these provisions shall be an Event of Default pursuant to Article 14.

1850 **Section 8.2: Technical Assistance**

1851 A. **Contractor-Conducted Technical Assistance.** Contractor shall conduct technical assistance for  
1852 Customers upon first account set-up, and upon request of the Customer or County thereafter.

1853 At least ninety (90) days prior to the Commencement Date, Contractor will provide an outreach and  
1854 technical assistance plan to County for approval including a site visit schedule identifying when a  
1855 Contractor representative shall visit each Multi-Family and Commercial Customer’s Premises for the  
1856 purpose of assessing the amount of Recyclable Materials and Organic Materials being disposed of;  
1857 evaluating the Recyclable Materials and Organic Materials Collection Service Level needed to meet  
1858 the requirements of SB 1383 and Section 5.36 of the County Code; notifying Generators of their  
1859 requirements to subscribe to Recyclable Materials and Organic Materials Collection service under  
1860 SB 1383; and, providing educational materials to each Customer. In addition to conducting site visits  
1861 in accordance with the County-approved schedule, the Contractor shall also provide site visits upon  
1862 Customer request.

1863 B. **County-Conducted Technical Assistance.** The requirement for the Contractor to conduct technical  
1864 assistance pursuant to this Section does not preclude the County from conducting additional or  
1865 alternative technical assistance. Contractor shall cooperate with and support the technical  
1866 assistance efforts conducted by the County. Based on the results of County’s technical assistance  
1867 efforts, if any, the County may recommend and request a change in Service Level for certain  
1868 Customers. Within fourteen (14) business days of Contractor’s receipt of a request for a Service  
1869 Level change, Contractor shall adjust the Customer’s Service Level by updating the Customer’s  
1870 account records; revising the Customer’s billing information to reflect the Rate corresponding to  
1871 the updated Service Level; and, providing and/or removing any containers needed to reflect the  
1872 updated Service Level.

1873 **Section 8.3: Food Recovery Program Support**

1874 A. **General.** Pursuant to the requirements of SB 1383, 14 CCR, Division 7, Chapter 12, Article 10, the  
1875 County is responsible for developing and implementing a Food Recovery program in the  
1876 unincorporated areas of the County. The Contractor shall cooperate with and shall not impede,  
1877 interfere, or attempt to impede or interfere with the implementation, expansion, or operation of  
1878 Food Recovery program efforts in the County.

1879 B. **Identification of Commercial Edible Food Generators.** Contractor shall assist the County with  
1880 identifying Commercial Edible Food Generators for the purposes of the Food Recovery program. No  
1881 later than six (6) months after the Effective Date of the Agreement, and annually thereafter, the  
1882 Contractor shall identify and provide a list to the County of Commercial Customers that qualify, or  
1883 appear to qualify, as Tier One Commercial Edible Food Generators or Tier Two Commercial Edible  
1884 Food Generators, as defined. The list shall include, at a minimum: the Customer name; service  
1885 address; contact information; Tier One or Tier Two classification, or “Non-Covered” classification if  
1886 neither; and, type of business, as it relates to the categories of entities specified under the  
1887 definitions of Tier One Commercial Edible Food Generator and Tier Two Commercial Edible Food



1888 Generator. The Contractor shall update this information annually, maintain an up-to-date database,  
1889 and include a summary of this information in the Contractor's annual report, in accordance with  
1890 Exhibit D.

1891 **Section 8.4: Contamination Monitoring in Universal Collection Areas**

1892 A. **Annual Route Reviews.** The Contractor shall, at its sole expense, conduct Route Reviews of  
1893 Containers for Prohibited Container Contaminants in a manner that meets the requirements of this  
1894 Section and 14 CCR Section 18984.5(b); is approved by the County; and results in all Routes being  
1895 reviewed at least annually.

1896 The Contractor's Route Review shall include inspection of all Discarded Materials Container types  
1897 in service for all Customer types. The Containers shall be randomly selected prior to beginning the  
1898 route review through use of a random number generator; and the minimum number of Containers  
1899 to be sampled shall be based on weekly Route size, as follows:

- 1900 1. For weekly Routes with less than 1,500 Generators, the Contractor shall sample a minimum  
1901 of 25 Containers.
- 1902 2. For weekly Routes with 1,500-3,999 Generators, the Contractor shall sample a minimum of  
1903 30 Containers.
- 1904 3. For weekly Routes with 4,000-6,999 Generators, the Contractor shall sample a minimum of  
1905 35 Containers.
- 1906 4. For weekly Routes with 7,000 or more Generators, the Contractor shall sample a minimum of  
1907 40 Containers.

1908 The County shall, no later than January 15 of each calendar year, submit a Route Review  
1909 methodology and schedule to the Contractor, if different from the previous year's methodology  
1910 and schedule. The County or the County's designated third party maintain the right to observe all  
1911 aspects of the Route Review, and the Contractor shall modify timing or other aspects of the Route  
1912 Review, as reasonably requested, to accommodate observance by the County.

1913 B. **Contamination Notification.** Upon the first instance of Contractor's identification of Prohibited  
1914 Container Contaminants in a Customer's Container, Contractor shall not collect the materials and  
1915 shall attach a non-collection notice to the contaminated cart in accordance with Section 8.4.C.

1916 C. **Non-Collection Notices**

- 1917 1. **Non-Collection Notice.** Upon the first and any subsequent instance of identification of  
1918 Prohibited Container Contaminants in a Customer's Container in excess of standards agreed  
1919 upon by the Parties, Contractor shall provide a non-collection notice to the Customer. The  
1920 non-Collection notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-  
1921 Collection and specific material(s) of issue; (ii) include the date and time the notice was left  
1922 or issued; (iii) inform the Customer of their requirement to remove the Prohibited Container  
1923 Contaminants prior to return for Collection (iii) include information on the Customer's  
1924 requirement to properly separate materials into the appropriate Containers for future set-  
1925 outs, and the accepted and prohibited materials for collection in each Container and, (iv) may

1926 include photographic evidence of the violation(s). The format of the non-Collection notice  
1927 shall be designed by the Contractor and submitted to the County Contract Manager for review  
1928 and approval.

1929 2. **Contractor Return for Collection.** Upon request from the Customer, Contractor shall Collect  
1930 Containers that received non-Collection notices within three (3) Working Days of Customer's  
1931 request if the Customer has removed the Prohibited Container Contaminants. Upon the first  
1932 instance of a notification of non-Collection due to Container contamination, the Contractor  
1933 will provide a courtesy pick-up at no charge. For any subsequent instance of contamination,  
1934 the Contractor may bill the Customer for the extra Collection service event at the applicable  
1935 County-approved rates only if Contractor notifies Customer of the premium Rate for this  
1936 service at the time the request is made by Customer. The payment for this service will be  
1937 directly payable to the Contractor in all Collection Areas. Contractor shall notify the County in  
1938 its bi-monthly report of Customers to whom this Rate was assessed and the total dollar  
1939 amount Collected.

1940 D. **Reporting Requirements.** The driver or other Contractor representative shall record each event of  
1941 identification of Prohibited Container Contaminants in a written log or in the on-board computer  
1942 system including date, time, Customer's address, type of Container, and photographic evidence of  
1943 the Contamination. Additionally, on no less than a daily basis, the Contractor shall update the  
1944 Customer's account records to note the contamination event(s), if any, as identified by the driver(s)  
1945 or other Contractor representative. Contractor shall maintain records and report to the County bi-  
1946 monthly on contamination monitoring activities and actions taken, consistent with the  
1947 requirements of Exhibit D.

## 1948 **Section 8.5: Studies, Capacity Planning, and Pilot Programs**

1949 Contractor acknowledges that County, CalRecycle, or other governmental agencies may wish to perform  
1950 waste generation and characterization studies periodically with respect to materials covered under this  
1951 Agreement. Contractor agrees to participate and cooperate with County and its agents and to perform  
1952 studies and data collection exercises, as needed, to determine weights, volumes, and composition of  
1953 materials generated, Disposed, Diverted, or otherwise Processed. If County requires Contractor to  
1954 participate in such a study, Contractor and County shall mutually agree on the scope of services to be  
1955 provided by Contractor. In any event, Contractor shall permit and in no way interfere with the Collection  
1956 and handling of the subject materials by other Persons for such purposes.

1957 Contractor acknowledges that the County is required by SB 1383 to conduct Organic Waste and Food  
1958 Recovery capacity planning studies. The Contractor shall provide information and/or participate in studies  
1959 in order for the County to comply with such requirements; which may include, but is not limited to:  
1960 conducting or supporting waste characterization studies; providing information regarding existing and  
1961 potential new or expanded capacity in the Contractor's operations for the Collection, Transport, and/or  
1962 Processing of Recyclable Materials and/or Organic Materials; and, any other information deemed  
1963 necessary by the County for the purposes of the studies. The Contractor shall respond to any request for  
1964 information from the County within thirty (30) days, unless another timeframe is otherwise specified or  
1965 authorized by the County Contract Manager.

1966 Contractor acknowledges that the County may wish to conduct and/or participate in pilot studies related  
1967 to the Customers and materials that are the subject of this Agreement. If the County requires Contractor

1968 to participate in such pilot study(ies), Contractor and County shall mutually agree on the scope of services  
1969 to be provided by Contractor. In any event, Contractor shall permit and in no way interfere with the  
1970 Collection and handling of the subject materials by other Persons for purposes of the pilot studies.

1971 **Section 8.6: Waivers and Exemptions**

1972 **8.6.1: Customer Waivers**

1973 A. **General.** The County may, at its sole discretion, grant waivers to Customers as described in this  
1974 Section that may impact aspects of the Contractor’s provision of service to those Customers.  
1975 Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14 CCR  
1976 Section 18984.11, or other requirements specified by the County.

1977 B. **Potential Generator Waivers.**

1978 1. **De Minimis Waivers.** The County may waive a Commercial business property’s obligation to  
1979 comply with some or all of the Recyclable Materials and Organic Materials service  
1980 requirements set forth in Chapter 5.36 of the County Code, SB 1383, and this Agreement, if  
1981 the Generator provides documentation and/or the County has evidence demonstrating one  
1982 of the following de minimis conditions:

1983 a. The Commercial or Multi-Family Generator’s total Discarded Materials Collection service  
1984 is two (2) cubic yards or more per week, and Organic Waste subject to Collection in a  
1985 Recyclable Materials Container or an Organic Materials Container comprises less than  
1986 twenty (20) gallons per week, per applicable Container, of the Generator’s total waste;  
1987 or,

1988 b. The Commercial or Multi-Family Generator’s total Discarded Materials Collection service  
1989 is less than two (2) cubic yards per week, and Organic Waste subject to Collection in a  
1990 Recyclable Materials Container or an Organic Materials Container comprises less than  
1991 ten (10) gallons per week, per applicable Container, of the Generator’s total waste.

1992 2. **Physical Space Waivers.** The County may waive a Commercial or Multi-Family Generator’s  
1993 obligation to comply with some or all of the Recyclable Materials and Organic Materials  
1994 service requirements set forth in Chapter 5.36 of the County Code, SB 1383, and this  
1995 Agreement if the Commercial or Multi-Family Generator provides documentation, or the  
1996 County has evidence from its staff, the Contractor, licensed architect, engineer, or similarly  
1997 qualified source demonstrating that the Premises lacks adequate space for Recyclable  
1998 Materials Containers and/or Organic Materials Containers.

1999 3. **Collection Frequency Waivers.** The County may allow the Contractor to provide Collection of  
2000 Recyclable Materials Containers and/or Solid Waste Containers once every fourteen (14)  
2001 days, rather than once per week, for Customers that have been granted a Collection  
2002 frequency waiver from the County.

2003 C. **Service Level Updates.** When the County grants a waiver to a Customer, or the Customer’s waiver  
2004 status changes after a reverification determination, the County shall notify the Contractor within  
2005 seven (7) days of the waiver approval or status change with information on the Customer and any

2006 necessary Service Level changes for the Customer. Contractor shall have seven (7) days to modify  
2007 the Customer's Service Level, Customer account data, database, and billing statement, as needed.

2008 D. **Waiver Reverification.** The County shall be responsible for reverification of waivers. Upon request  
2009 of the County, the Contractor shall support the County in the waiver reverification process by  
2010 providing requested Customer information and/or inspecting the Customer's Premises. In the event  
2011 that a waiver status changes, Contractor shall update the Customer's information and Service Level  
2012 in accordance with Section 8.6.1.C above.

2013 E. **Recordkeeping.** Contractor shall maintain records of all Customers granted each type of waiver by  
2014 the County and documentation of waiver reverification inspections, if any, in accordance with  
2015 Exhibit D.

## 2016 **8.6.2: Contractor Service Exemptions**

### 2017 A. **Low Population Area Waivers.**

2018 As of the Commencement Date, certain census tracts of the County qualify as low-population areas,  
2019 as permitted by SB 1383, 14 CCR 14 CCR Section 18984.12(a). If approved by CalRecycle and based  
2020 on administrative direction from the County Contractor Manager, some Collection service  
2021 requirements may be waived for such low-population areas. Low-population waivers granted by  
2022 CalRecycle are reviewed periodically; therefore, the qualifying low-population areas are subject to  
2023 change. If during the Term of this Agreement the County is granted a waiver that expands the low-  
2024 population areas, or if the County's waiver(s) are no longer valid or certain census tracts no longer  
2025 qualify, any resulting Collection service changes shall be addressed based on administrative  
2026 direction from the County Contract Manager and shall not be considered a change in scope in  
2027 accordance with Section 5.

2028 B. **Disaster Waivers.** In the event of a disaster, the County may grant Contractor a waiver of some or  
2029 all Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7,  
2030 Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such  
2031 waiver has been approved by CalRecycle. In such case, the County and Contract shall meet and  
2032 confer on resulting Collection requirements for the duration of the waiver.

2033 C. **Removal of Material from Illegal Disposal Sites.** The Contractor may, but is not required to,  
2034 separate and recover Organic Waste that Contractor removes from illegal disposal sites as part of  
2035 an abatement activity to protect public health and safety. Contractor shall report the amount of  
2036 Discarded Materials removed for disposal from illegal disposal sites, in accordance with Exhibit D.

### 2037 D. **Processing Facility Temporary Equipment or Operational Failure Waiver.**

2038 1. **Notification to the County.** For facilities owned or operated by the Contractor, the  
2039 Contractor, or their Subcontractor (such as a Facility operator), shall notify the County of any  
2040 unforeseen operational restrictions that have been imposed upon an Approved Facility by a  
2041 regulatory agency or any unforeseen equipment or operational failure that will temporarily  
2042 prevent such Facility from Processing and recovering the relevant Discarded Materials at that  
2043 facility. The Contractor or Subcontractor shall notify the County as soon as possible and no  
2044 later than two (2) days from the time of the incident. The notification shall include the  
2045 following: (i) name of Approved Facility; (ii) the Recycling and Disposal Reporting System

2046 Number of the Approved Facility; (iii) date the Approved Facility became unable to Process  
2047 the specific Discarded Materials; (iv) description of the operational restrictions that have been  
2048 imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure  
2049 or operational restriction that occurred; (v) the period of time the Contractor anticipates the  
2050 temporary inability of the Approved Facility to Process Discarded Materials; (vi) Contractor's  
2051 proposed action plan to deliver materials to an alternative Facility for Processing or  
2052 Contractor's request for a waiver to deliver materials to the Designated Disposal Facility.

2053 2. **Use of Alternative Facility or Waiver for Disposal of Materials.** Upon notification by  
2054 Contractor or Subcontractor of an Approved Facility's inability to Process materials, the  
2055 County shall evaluate the notification and determine if the County shall require Contractor to  
2056 use an alternative Facility or allow the Contractor to Transport the Discarded Materials to the  
2057 Designated Disposal Facility for Disposal on a temporary basis for a time period specified by  
2058 the County. Upon County's decision, the County shall notify the Contractor of its requirement  
2059 to use an alternative Facility for Processing or to use the Designated Disposal Facility for  
2060 Disposal, and the period of time that the County will allow the materials to be redirected to  
2061 the alternative Facility or Designated Disposal Facility. Pursuant to 14 CCR Section 18984.13,  
2062 the approved Disposal period shall not exceed ninety (90) days from the date the Approved  
2063 Facility's Processing restriction or failure commenced. In such case, the Contractor must  
2064 receive written permission from the County Contract Manager prior to depositing any  
2065 Discarded Materials in a Landfill.

2066 3. **Record Keeping and Reporting.** For Facilities owned or operated by the Contractor, the  
2067 Contractor shall maintain a record of any Approved Facility incidents and report this  
2068 information to the County in accordance with Exhibit D.

2069 E. **Quarantined Waste.** If approved by the County, the Contractor may Dispose of, rather than Process,  
2070 specific types of Organic Waste that are subject to quarantine and meet the requirements described  
2071 in 14 CCR Section 18984.13(d) for a period of time specified by the County or until the County  
2072 provides notice that the quarantine has been removed and directs Contractor to Transport the  
2073 materials to the Approved Facilities for such material.

2074 In accordance with Exhibit D, the Contractor shall maintain records and submit reports regarding  
2075 compliance agreements for quarantined Organic Waste that are Disposed of pursuant to this  
2076 subsection.

## 2077 **Section 8.7: Compliance and Enforcement Program**

2078 The County shall implement an inspection and enforcement program that is designed to monitor overall  
2079 compliance with SB 1383, AB 1826, AB 341, Chapters 5.36 and 8.28 of the County Code, and other  
2080 Applicable Law, which may include, but is not limited to, desk review of records, annual Route Reviews,  
2081 and inspections of applicable regulated entities.

2082 Contractor shall cooperate with all Route Reviews, Customer inspections, or compliance reviews  
2083 conducted by the County, or its third-party designee. Contractor recognizes that the Route Reviews,  
2084 inspections, and compliance reviews may conflict with normal working operations or Route times  
2085 otherwise set out in this Agreement. Contractor shall make adjustments to its normal working operations  
2086 or Route times as reasonably requested by the County, and shall comply with the process, regardless of

2087 those impacts. Upon County request, Contractor shall support with the compliance and enforcement  
2088 process by providing data or equipment; conducting inspections; revising route sequencing or timing;  
2089 and/or, providing training or information necessary for County staff on Route safety. Upon County request  
2090 for information or support, Contractor shall provide a response to County requests in a timely manner,  
2091 not to exceed fifteen (15) days from receipt of the request.

2092 Upon County request, the Contractor shall generate a written and/or electronic record and maintain  
2093 documentation for each inspection or compliance review conducted, if any have been requested by the  
2094 County and performed by the Contractor. Each record shall include: i) the account name and service  
2095 address of Customer inspected; ii) the date of the inspection; and iii) copies of any written notices or  
2096 educational materials provided to noncompliant Generators or a description of direct outreach  
2097 conducted.

2098 The County shall provide educational materials to Generators in response to violations identified during  
2099 County-conducted reviews and inspections. Upon County request, the Contractor shall distribute  
2100 additional educational materials and/or conduct direct technical assistance for noncompliant Customers,  
2101 in accordance with Sections 8.1 and 8.2.

2102 **Section 8.8: The Contractor's Responsibility for Implementation**

2103 The Contractor shall implement the services and requirements in this Agreement in a manner approved  
2104 by the County Contract Manager, including the SB 1383 Implementation Plan submitted by the Contractor  
2105 in accordance with Section 8.9. Failure to implement services required under this Agreement shall  
2106 constitute an Event of Default and is subject to assessment of Liquidated Damages in accordance with  
2107 Article 14.

2108 In the event that the State of California's Diversion, Recycling, or Organic Waste Disposal reduction goals  
2109 or regulations are expanded or otherwise modified after the Effective Date of this Agreement, the  
2110 Contractor shall, at the request of the County Contract Manager, develop and submit revisions to its SB  
2111 1383 Implementation Plan or submit an additional plan for any requirements that extend beyond the  
2112 scope of SB 1383. After approval by the County Contract Manager, the Contractor shall implement such  
2113 revised plan(s). The County acknowledges that the Contractor shall nonetheless be entitled to recover,  
2114 through the Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the  
2115 Contractor incurred as the result of implementation of the revised plan(s).

2116 **Section 8.9: SB 1383 Implementation Plan**

2117 A. **General.** The Contractor has developed, and the County Contract Manager has approved an SB 1383  
2118 Implementation Plan that describes the Contractor's strategy for providing the necessary Collection  
2119 services and programs required by SB 1383. The Contractor's SB 1383 Implementation Plan which  
2120 is an essential part of the Contractor's and County's regulatory compliance strategy is attached  
2121 hereto as Exhibit F. Any amendment to the SB 1383 Implementation Plan must be approved by the  
2122 County Contract Manager. Failure to abide by the provisions of the Implementation Plan shall be  
2123 an Event of Default pursuant to Article 14.

2124 B. **SB 1383 Implementation Plan.** Topic areas covered under the Contractor's SB 1383 Implementation  
2125 plan shall include, but are not limited to, the following.

- 2126 1. **Transition to new Collection system.** A description of how the Contractor plans to roll out  
2127 Collection service of Organic Materials, Recyclable Materials, and Solid Waste to all Single-  
2128 Family, Multi-Family, and Commercial Customers; and to ensure proper Transfer, Transport,  
2129 and Processing of such materials.
- 2130 2. **Acquiring or modifying any necessary equipment.**
- 2131 a. **Containers.** Contractor shall describe its plan to ensure that Customers receive Organic  
2132 Materials, Recyclable Materials, and Solid Waste Containers that are compliant with the  
2133 requirements of SB 1383 and Section 9.3 of this Agreement. The plan shall include  
2134 information including, but not limited to: proposed method for designing and ordering  
2135 Containers that meet the color and labeling requirements of Section 9.3; a sample of the  
2136 proposed colors for the Container lids and bodies; a sample of the proposed label design,  
2137 labeling method, and location(s) for label placement on each type of container; the  
2138 timeline for removing non-compliant Containers and delivering new Containers to  
2139 Customers; and, the process for notifying Customers of the change in Containers both  
2140 before and after Containers have been delivered, including a copy of the proposed  
2141 Customer notifications to be distributed.
- 2142 b. **Fuel.** Contractor, if planning to use RNG fuel, shall include a plan for how the Contractor  
2143 plans to transition to this fuel type, including: number of vehicles, vehicle type(s), the  
2144 estimated amount of RNG that will be necessary, and where such fuel will be procured  
2145 from.
- 2146 c. **Other equipment.** Contractor shall describe any other necessary equipment to be  
2147 ordered or modified in order to implement the required programs and services.
- 2148 3. **Hiring and training personnel.** Contractor is responsible for hiring and training all personnel  
2149 needed in order to perform the duties required by this Agreement and shall describe its plan  
2150 for hiring and training new personnel as needed for the implementation of expanded  
2151 programs and services. All personnel that interface with the public shall be trained on the  
2152 requirements of SB 1383 such that they are able to provide accurate information to the public  
2153 on these programs and requirements.
- 2154 4. **Customer education and outreach materials.** Contractor shall describe its plan to educate  
2155 Customers on the new Collection services and other programs provided under this  
2156 Agreement. Contractor shall include, at a minimum, its proposal for education material types  
2157 to be used for each Customer Type, topics to be covered, method of distribution, and  
2158 schedule of distribution by material type or campaign.
- 2159 C. **Termination for Failure to Implement Strategies.** Failure to implement any one of the programs  
2160 listed in the SB 1383 Implementation Plan (Exhibit F) shall be deemed an Event of Default in  
2161 accordance with Article 14, unless Contractor can demonstrate to the satisfaction of the County  
2162 Contract Manager that implementation of such programs is beyond the reasonable scope of their  
2163 control despite their best efforts. For example, and not by way of limitation, it is beyond the  
2164 reasonable scope of the Contractor's control to affect ordinances adopted by the County Board of  
2165 Supervisors.

## ARTICLE 9: OPERATING ASSETS

2166

### 2167 Section 9.1: Operating Assets

2168 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,  
2169 Operating Assets which in number, nature, and capacity shall be sufficient to enable the Contractor  
2170 to provide the Collection Services in accordance with the terms hereof and such assets shall be  
2171 subject to inspection by the County at any time.

2172 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and vehicle or  
2173 equipment number shall be visibly displayed in letters not less than three (3) inches in height on  
2174 both sides of its vehicles or other Collection equipment used by the Contractor.

2175 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered  
2176 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall be  
2177 of a type approved by the County, shall be kept clean and in good repair, and shall be continuously  
2178 maintained in a watertight condition. Vehicles used to Collect, or Transport Discarded Materials  
2179 shall be kept covered at all times, except when such material is actually being loaded or unloaded  
2180 or when the Vehicles are moving along a Collection Route in the course of Collection. All Vehicles  
2181 shall carry a broom, shovel, and operable ABC fire extinguisher. Discarded Materials Collection  
2182 Vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to  
2183 maintain a clean appearance.

2184 All Vehicles must be made available for inspection upon reasonable notice by the County Contract  
2185 Manager.

2186 D. **Spillage.** Any cover or screen shall be so constructed and used that Discarded Materials shall not  
2187 blow, fall, or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload  
2188 during transit, the Contractor shall immediately arrange for the clean-up and transportation of the  
2189 payload to the appropriate Facility at the Contractor's sole cost and expense, shall pay any resulting  
2190 fines, assessments, penalties, or damages resulting therefrom, and shall indemnify and hold  
2191 harmless the County in accordance with the procedures provided in Section 13.1 hereof from all  
2192 loss-and-expense resulting therefrom. Failure to clean-up may result in Liquidated Damages  
2193 (Section 14.2).

2194 E. **Computer System Compatibility.** The Contractor shall maintain records and data in an electronic  
2195 format compatible with the versions of Microsoft Word and Excel currently in use by the County at  
2196 any given time during the Term of this Agreement. The Contractor will, at its cost and expense, if  
2197 requested by the County Contract Manager, provide any reports or data required by this Agreement  
2198 via email, on computer media device, through a shared database such as a cloud-based software  
2199 platform, or through another electronic format specified by the County. Raw or printed data may  
2200 not be submitted as a substitute to the Contractor's obligation to provide various reports under this  
2201 Agreement. Failure to abide by these shall be an Event of Default and result in assessment of  
2202 Liquidated Damages pursuant to Article 14.



2203 **Section 9.2: Operation and Maintenance of the Operating Assets**

2204 The Contractor, at its cost and expense, shall at all times: 1) operate the Operating Assets properly and in  
2205 a safe, sound, and economical manner; 2) maintain, preserve, and keep the Operating Assets in good  
2206 repair, working order, and condition; 3) staff the Operating Assets with the appropriate number of  
2207 licensed employees consistent with good management practice; and, 4) make all necessary and proper  
2208 repairs, replacements, and renewals, so that at all times the operation of the Operating Assets may be  
2209 properly and advantageously conducted. The Contractor shall maintain the safety of the Operating Assets  
2210 at a level consistent with Applicable Law, the Insurance Requirements, and prudent Solid Waste  
2211 management practices.

2212 The County shall have no obligation to Contractor related to the remaining value of any Operating Assets  
2213 at the expiration or earlier termination of this Agreement.

2214 **Section 9.3: Containers**

2215 A. **County Regulations.** The County Contract Manager shall approve the number, type, size, color,  
2216 labeling, and other specific physical requirements for Containers. The Contractor shall not be  
2217 required to Collect Discarded Materials from Containers which have not been approved by the  
2218 County.

2219 B. **General Requirements.** The Contractor shall supply Containers for each Customer free of charge  
2220 upon inception of Collection Services. After emptying any Container, the Contractor shall replace  
2221 the Container in an upright position at the place where such Container was placed for Collection.  
2222 The Contractor shall handle Containers in a manner so as to prevent damage or spillage, and shall  
2223 not throw, drop, or otherwise mishandle Containers during or after emptying them. The Contractor  
2224 shall repair or replace, at its own expense and within five (5) days, any Container which is damaged  
2225 by the Contractor, and which is no longer serviceable (e.g., broken wheels, cracked or missing lid,  
2226 broken axle, cracked or leaking body, etc.).

2227 C. **Containers for Residential Customers.** The Contractor shall supply all Containers required for the  
2228 services provided under this Agreement. The Containers shall be sturdy, watertight, and equipped  
2229 with heavy-duty wheels and closeable lids. Each Container shall be identified with the Contractor's  
2230 name and phone number. The Contractor shall maintain the Containers in good repair, shall bear  
2231 the cost of normal wear and tear, and shall replace the lids, wheels or the entire Container as  
2232 needed or upon request of the County Contract Manager. The Contractor may charge a fee to  
2233 Customers that have Containers that must be repaired or replaced due to other than normal wear  
2234 and tear and shall notify the County Contract Manager if such fee may be charged. If repairs require  
2235 removal of the Container from a Customer's Premises, the Contractor shall supply the Customer  
2236 with a replacement Container or "loaner" Container. The Contractor shall, within seven (7) days,  
2237 repair or replace damaged or dilapidated Containers. The Contractor shall provide the Containers  
2238 required pursuant to this Section at its own cost and expense and any such Containers shall  
2239 constitute Operating Assets. The Contractor shall promptly replace stolen Containers, provided that  
2240 the Contractor shall only bear the cost of a replacement Container the first time it is stolen, and  
2241 thereafter such cost shall be borne by the Customer. If the stolen Container is later recovered and  
2242 the Contractor has charged the Customer a fee, then the Contractor will refund the Customer the  
2243 same fee. Contractor shall replace any residential Container, upon Customer request, once every  
2244 ten years, free of charge.

2245 D. **Containers for Bin Customers.** The Contractor shall provide, as an Operating Asset the Containers  
2246 required pursuant to Section 9.3 at its own cost and expense. Each such Container shall be identified  
2247 with the Contractor's name and phone number and be equipped with heavy-duty casters and  
2248 closeable lids. Each such Container shall be watertight. The Contractor shall be responsible for the  
2249 general maintenance and repair of Containers so provided and shall provide an equivalent  
2250 Container as replacement during repairs and maintenance. If repairing, maintenance, steam  
2251 cleaning, and/or repainting is required as a result of abuse, neglect, or misuse on the part of any  
2252 Customer, the Contractor may charge the Customer a fee, to compensate for the cost thereof. The  
2253 Contractor shall, within seven (7) days, repair or replace any damaged, or dilapidated Container.  
2254 The Contractor shall promptly replace stolen Containers provided that the Contractor shall only bear  
2255 the cost of a replacement Container the first time it is stolen, and thereafter such cost shall be borne  
2256 by the Customer. If the stolen Container is later recovered and the Contractor has charged the  
2257 Customer a fee, then the Contractor will refund the Customer the same fee.

2258 E. **Container Colors.** On July 1, 2023, all new Containers provided by the Contractor shall comply with  
2259 the Container color requirements specified in this Section 9.3, or as otherwise specified in 14 CCR  
2260 Section 18984; 14 CCR, Division 7, Chapter 12, Article 3. Notwithstanding the requirements of this  
2261 Section, Contractor shall not be required to replace existing Containers, including Containers  
2262 purchased prior to January 1, 2022, that do not comply with the color requirements of this Section  
2263 prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes  
2264 first.

2265 1. Recyclable Materials Containers shall have a lid and body that comply with one of the  
2266 following options:

2267 a. Blue body with blue lid.

2268 b. Blue body with gray lid.

2269 c. Blue lid with any color body.

2270 2. Organic Materials Containers shall have a lid and body that comply with one of the following  
2271 options:

2272 a. Green body with green lid.

2273 b. Green body with gray lid.

2274 c. Green lid with any color body.

2275 3. Solid Waste Containers shall have a lid and body that comply with one of the following  
2276 options:

2277 a. Gray body with gray lid.

2278 b. Gray lid with any color body.

2279 For the purposes of this Agreement, "gray" means any shade of gray, including black.

2280 4. Containers used for the collection of C&D may be in any color, provided that the colors do not  
2281 conflict with the Container color requirements of this Section 9.3 and provided that the C&D  
2282 Container colors are consistent for all C&D Containers. The C&D Container color shall be  
2283 reviewed and approved by the County Contract Manager.

2284 5. Hardware such as hinges and wheels on the Containers may be a different color than  
2285 prescribed above.

2286 6. Prior to ordering or purchasing any Containers or repainting any metal Containers, Contractor  
2287 shall present the proposed colors to the County Contract Manager for review and approval.

2288 F. **Container Labels.** Commencing on or before July 1, 2023, Contractor shall label each new Container  
2289 body or lid with clear text indicating the Container type (e.g., Recyclable Materials, Organic  
2290 Materials or Solid Waste), and text and/or graphic images that indicate the primary materials  
2291 accepted and prohibited in that Container. Labels shall clearly indicate items that are Prohibited  
2292 Container Contaminants for each Container. Contractor may label Containers using paint, adhesive  
2293 label, hot-stamped lettering, in-mold design, or other County-approved method. In the event that  
2294 the County identifies during the Term of the Agreement that the Contractor's labeling method  
2295 results in excessive wear or rapid aging, the County may require the Contractor to use a different,  
2296 more durable technology for future purchases of labels or Containers. At all times, the labeling shall  
2297 be positioned and maintained on each Container such that it is easily visible to the Customer. Prior  
2298 to ordering any labels or Container components with in-mold labels, Contractor shall submit a  
2299 sample of its proposed label design, labeling method, and placement location on each type of  
2300 Container to the County Contract Manager for approval.

2301 Contractor shall label or install signs on Bins and Roll-Off Boxes used for Collection of C&D  
2302 identifying non-allowable materials for Collection in the C&D Containers. The Contractor shall  
2303 submit its proposed design and labeling method for the labels or signs for approval by the County  
2304 Contract Manager prior to purchase and installation.

2305 G. **New Container Distribution.** Beginning July 1, 2023, all new Containers shall comply with the color  
2306 and labeling requirements specified in subsections 9.3.E and 9.3.F above; however, the Contractor  
2307 shall not be required to replace existing Containers, including Containers purchased prior to January  
2308 1, 2022, that do not comply with such requirements prior to end of the useful life of those  
2309 Containers, or prior to January 1, 2036, whichever comes first.

2310 Contractor shall develop a detailed plan and timeline for distribution of new Containers to  
2311 Customers and the emptying and removal of existing Containers, which may involve coordination  
2312 with the County's current contractor, if applicable. In addition to the timeline and proposed process,  
2313 the plan shall also include: the proposed Container colors and labeling, as specified in subsections  
2314 9.3.E and 9.3.F above; and a description and copy of the notices that will be given to Generators  
2315 prior to removing or delivering Containers, and adhered to the new Containers, and the timeline for  
2316 such noticing process. Contractor shall submit the plan to the County Contract Manager at a  
2317 minimum of one hundred twenty (120) days prior to the Commencement Date for review and  
2318 approval and include this information in the Contractor's SB 1383 Implementation Plan in  
2319 accordance with Section 8.9.

2320 **Section 9.4: Vehicle Requirements**

2321 Contractor shall provide a fleet of Collection Vehicles sufficient in number and capacity to efficiently  
2322 perform the work required by the Agreement in strict accordance with its terms. Contractor shall have  
2323 available sufficient back-up Vehicles for each type of Collection Vehicle used to respond to scheduled and  
2324 unscheduled maintenance, service requests, complaints, and emergencies. All such Vehicles shall have  
2325 watertight bodies designed to prevent leakage, spillage, or overflow. All such Vehicles shall comply with  
2326 all Federal, State, and local laws and regulations including, without limitation, safety and emissions  
2327 requirements, and such compliance shall come at no additional cost to the County or Customers during  
2328 the Term of this Agreement.

2329 Collection Vehicles shall present a clean appearance while providing service under this Agreement.  
2330 Contractor shall inspect each Vehicle daily to ensure that all equipment is operating properly. Vehicles  
2331 that are not operating properly shall be taken out of service until they are repaired and operate properly.  
2332 Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which repairs are  
2333 needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and  
2334 operable condition.

2335 All Vehicles must be made available for inspection upon reasonable notice by the County Contract  
2336 Manager. While not currently required, it is acknowledged that given the term length of this Agreement  
2337 and improvements in technology that will undoubtedly occur during the term of this Agreement, the  
2338 County may deem it necessary and/or prudent to require additional tracking and/or monitoring devices  
2339 to be installed on all, or some, Collection Vehicles. Contractor shall abide by that request within the time  
2340 frame established by the County Contract Manager and the failure to do so Contractor's failure is deemed  
2341 an Event of Default pursuant to Section 14.1.

## ARTICLE 10: GENERAL REQUIREMENTS

2342

### 2343 Section 10.1: Public Access to the Contractor

2344 A. **Office Facilities.** The Contractor shall establish and maintain an office within the County (or in the  
2345 near proximity) through which the Contractor's representatives may be contacted by the public  
2346 during normal office hours.

2347 B. **Office Hours.** The Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 4:00 p.m. daily  
2348 except Saturdays, Sundays, and Holidays. Saturday hours shall be, at a minimum, from 8:00 a.m. to  
2349 12:00 noon for Contractors servicing non-residential accounts. These hours may be altered with the  
2350 written approval of the County Contract Manager.

2351 C. **Emergency Telephone Number.** The Contractor shall provide the County with an emergency  
2352 telephone number for use by the County Contract Manager outside normal business hours. The  
2353 Contractor shall have a representative, or an answering service to contact such representative,  
2354 available at the emergency telephone number during all hours other than normal office hours.

### 2355 Section 10.2: Service Complaints

2356 A. **Complaints to Contractor.** The Contractor shall maintain during office hours a complaint service  
2357 and telephone answering system having an answering capacity satisfactory to the County Contract  
2358 Manager. All service complaints and billing complaints will be directed to the Contractor. The  
2359 Contractor shall record all complaints in a log, including date, complainant name and address, and  
2360 nature and resolution of complaint. This log shall be available for inspection by the County Contract  
2361 Manager during the Contractor's regular office hours. Copies thereof shall be furnished to the  
2362 County Contract Manager upon request. Complaints regarding non-compliance with SB 1383 shall  
2363 be maintained separately, in accordance with Section 10.2.C below.

2364 B. **Required Response to Complaints.** The Contractor, within one (1) Business Day of its receipt of  
2365 notice from a Customer or the County Contract Manager of a failure to provide any service(s) as  
2366 required by the terms of this Agreement, shall provide such service in a manner consistent with the  
2367 requirements of this Agreement.

2368 C. **SB 1383 Noncompliance Complaints.** For complaints received in which the complainant alleges that  
2369 an entity is in violation of SB 1383 requirements, Contractor shall document the information listed  
2370 in Exhibit D.2.D and provide the complainant with the contact information for the County Contract  
2371 Manager for further handling of the complaint. Contractor shall notify in writing the County within  
2372 three (3) days of receipt of such complaint, including a brief complaint report with the information  
2373 collected during the call. Contract shall maintain a record of all complaints received in the calendar  
2374 month and submit this information in accordance with Exhibit D.

### 2375 Section 10.3: Accounting and Records

2376 A. **Maintenance and Audit of Accounting Records.** The Contractor shall maintain in its principal office  
2377 in the County full and complete financial statements and accounting records for the operations  
2378 under this Agreement. Said financial statements and accounting records shall only pertain to the

2379 operations under this Agreement and they may not contain any information from an ancillary  
2380 business. Contractor shall account for the specific revenues received and expenses incurred as a  
2381 result of this Agreement separate from the accounting for other operations performed by  
2382 Contractor or its affiliates. Revenues and expenses shall be broken down in a manner approved by  
2383 the County Contract Manager in writing and at a minimum the break down shall clearly show the  
2384 expenses and revenues to provide solid waste residential service and commercial services. The  
2385 gross receipts derived from the Collection Services under this Agreement, whether such services  
2386 are performed by the Contractor or by a Subcontractor, shall be recorded as revenues in the  
2387 accounts of the Contractor. Upon demand, the Contractor shall permit the County Contract  
2388 Manager to examine and audit the books of account of the Contractor at any and all reasonable  
2389 times for the purpose of verifying Contractor's performance under this Agreement. Upon request,  
2390 the Contractor shall allow the County Contract Manager to examine the reports of gross receipts  
2391 and the invoices pertaining to any fee or charge approved by the County Board of Supervisors for  
2392 services provided under this Agreement. Such request shall be made at reasonable times and with  
2393 reasonable notice and at a minimum said information shall be provided at least once every five  
2394 years.

2395 Upon County request and within one hundred twenty (120) calendar days after the close of an  
2396 Agreement Year, Contractor shall deliver to the County one (1) hard copy of the reviewed  
2397 consolidated financial statements of Contractor for the preceding Agreement Year. Financial  
2398 statements shall include a supplemental combining schedule (Exhibit L) showing Contractor's results  
2399 of operations, including the specific revenues and expenses in connection with the operations  
2400 provided for in this Agreement separate from others included in such financial statements. The  
2401 financial statements and footnotes shall be prepared in accordance with Generally Accepted  
2402 Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and  
2403 Contractor's financial condition. Annual financial statements shall be reviewed, in accordance with  
2404 Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in  
2405 good standing) to practice public accounting in the State as determined by the State Department of  
2406 Consumer Affairs Board of Accountancy.

2407 B. **Confidentiality.** The County agrees to hold financial statements delivered pursuant to this Section  
2408 as confidential and shall not disclose the same unless and to the extent disclosure is required  
2409 pursuant to Applicable Law.

## 2410 **Section 10.4: Record Keeping and Reporting**

2411 A. **Record Keeping.** In addition to the financial records maintained in accordance with Section 10.3,  
2412 Contractor shall maintain on file at its business premises documentation setting forth its Routing  
2413 and Collection System; list of all its Collection Premises in the County, organized alphabetically or  
2414 by address, and the identification of all services each receives; Customer account information and  
2415 contact information; Customer service information; and, all other statistical, operational, and  
2416 programmatic records and associated documentation related to the Contractor's performance of  
2417 the services under this Agreement. This information shall be updated and provided at no additional  
2418 cost to the County along with Contractor's monthly, bi-monthly and annual reports (as required in  
2419 Exhibit D). Contractor's records shall be stored in one central database that can be readily accessed  
2420 by Contractor. Upon request, any such records shall be retrieved in a timely manner, not to exceed  
2421 ten (10) Business Days of a request by the County Contract Manager and made available to the  
2422 County Contract Manager; including any record or documentation necessary for the County to fulfill

2423 obligations under applicable law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB  
2424 901, SB 1383, and other current or future federal, State, or local regulations, as amended from time  
2425 to time. Records and data shall be in chronological and organized form that is readily and easily  
2426 interpreted to facilitate the flexible use of data to structure reports. From time to time during the  
2427 term of this Agreement the County Contract Manager may prescribe a particular format to be  
2428 followed for said data collection, organization and reporting. The Contractor's failure to abide by  
2429 these requirements or change prescribed thereto by the County Contract Manager shall be deemed  
2430 an Event of Default pursuant to Section 14.1.

2431 Contractor shall retain all records and data required by this Agreement in a database that is in an  
2432 accessible location for the Term of this Agreement plus five (5) years after its expiration or earlier  
2433 termination, unless another timeframe is otherwise specified in this Article, or the County agrees in  
2434 writing to an earlier disposition.

2435 Contractor shall maintain adequate record security to preserve records from events that can be  
2436 reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and  
2437 records shall be protected and backed-up. The County reserves the right to require the Contractor  
2438 to maintain the records required herein through the use of a County-selected web-based software  
2439 platform, at Contractor's expense. The Contractor will utilize its computer system to comply with  
2440 record keeping and reporting requirements under this Agreement, and shall, on a monthly basis,  
2441 save all system-generated reports supporting those record keeping and reporting requirements in  
2442 an electronic format and submit the data to the County Contract Manager on a bi-monthly basis in  
2443 a manner prescribed by the County Contract Manager. It is acknowledged that said manner may  
2444 change from time to time during the term of this Agreement.

2445 Contractor shall permit the County, or its designee, to audit, inspect, examine, and make excerpts  
2446 or transcripts from data and records, including Customer-specific records, and make copies of all  
2447 data relating to all matters covered by this Agreement and the County Code. Such inspection and  
2448 copying by the County shall occur during regular business hours with reasonable advance notice.

2449 Contractor agrees that all data regarding business operations, customer lists, Routing, tonnage,  
2450 Service Levels, work orders issued from dispatch, Customer service logs and account notes, and  
2451 workforce and bargaining agreements do not constitute proprietary information or Trade Secrets  
2452 and shall be made available to the County Contract Manager or their designee upon request and  
2453 within the timelines required by this Section.

2454 The County views its ability to defend itself against any actions related to rates and charges as well  
2455 as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a  
2456 matter of great importance. For this reason, the County regards its ability to prove the costs  
2457 associated with and where Collected Discarded Materials are taken for Transfer, Processing, and/or  
2458 Disposal of great importance and the failure of the Contractor to abide by any provisions related  
2459 thereto in this Agreement shall be deemed an Event of Default pursuant to Section 14.1. Contractor  
2460 shall maintain records which can establish where Discarded Materials Collected were Transferred,  
2461 Processed, and/or Disposed. This provision shall survive the expiration or earlier termination of this  
2462 Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond  
2463 expiration or earlier termination of the Agreement. Contractor shall provide these records to County  
2464 upon request or at the end of the record retention period in an organized and indexed manner.

2465 B. **Reporting.** Contractor shall maintain records and submit reports in accordance with Exhibit D.  
2466 County reserves the right to require Contractor to provide additional reports or documents as  
2467 County Contract Manager determines at their sole discretion to be required for the administration  
2468 of this Agreement or compliance with Applicable Law.

2469 Information in the Contractor's reports relating to Customers and services provided shall match the  
2470 information that appears on the Contractor's invoices or statements, where applicable, which is  
2471 subject to review and audit by the County.

## 2472 **Section 10.5: CalRecycle Regulatory Compliance**

2473 The Contractor shall provide on a bi-monthly basis all necessary reporting data requested by the County  
2474 relating to compliance requirements detailed in Exhibit D pertaining to AB 939, AB 341, AB 1826, AB 901,  
2475 and SB 1383 as it affects the County's Integrated Waste Management Plan, the County's SRRE, or other  
2476 reports required of the County by the State. Such reports shall be provided to the County within thirty  
2477 (30) days after the end of the appropriate month. The Contractor shall cooperate in activities requested  
2478 by the County to measure Diversion of Solid Waste from Landfills including, but not limited to, providing  
2479 a location for conducting waste sorting at the Contractor's Facility, and re-routing trucks on a temporary  
2480 basis to facilitate composition analysis, or other support for County-conducted activities as described in  
2481 Section 8.5. Such report shall include, but not necessarily be limited to, throughput, recovery rates per  
2482 material type, Residue, costs, Recyclable Material commodity values, final disposition of Recyclable  
2483 Materials or Organic Materials, or other information required in Exhibit D. The Contractor shall also supply  
2484 any other information reasonably requested by the County Contract Manager to meet State or Federal  
2485 regulatory requirements as those requirements may be amended from time to time.

## 2486 **Section 10.6: Personnel and Subcontractors**

2487 A. **Employment Practices.** The Contractor shall at all times maintain and follow employment practices  
2488 in accordance with all state and federal laws and regulations and shall indemnify the County for any  
2489 legal proceeding relating to its noncompliance with such laws or regulations.

2490 B. **Non-Discrimination.** In the performance of the Terms of this Agreement, the Contractor agrees that  
2491 it will not engage in nor permit such Subcontractors as it may employ to engage in discrimination  
2492 against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry,  
2493 national origin, marital status, age or as a qualified individual with a disability. This prohibition shall  
2494 pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or  
2495 termination; rates of pay and other forms of compensation; selection for training, including  
2496 apprenticeship, and any other action or inaction pertaining to employment matters.

2497 C. **Personnel.** The Contractor shall employ personnel sufficient in number, training, experience, and  
2498 capability to ensure that the Collection Services required to be performed under this Agreement  
2499 are properly carried out.

2500 D. **Subcontractors.** The Contractor shall not utilize any Affiliates or Subcontractors for the performance  
2501 of any Services under this Agreement, except with the written consent of the County Contract  
2502 Manager, which may be withheld or delayed if the County Contract Manager determines, in their  
2503 sole discretion, that such consent is not in the best interest of the public health, safety, or general  
2504 welfare. In the event Subcontractors are utilized, the Contractor shall provide the County with direct



2505 access to a designated representative from the Subcontractor, such designation not to be changed  
2506 without prior approval of the County Contract Manager, except in cases of termination of the  
2507 employee. The Parties acknowledge the County's direct contact with any Subcontractors in no way  
2508 eliminates the Contractor's responsibility to fulfill its obligations under this Agreement.

2509 E. **Contract Administrator Designation.** The Contractor shall designate in writing on or immediately  
2510 following the Agreement Date, a person ("Contract Administrator") to transmit instructions, receive  
2511 information, and otherwise coordinate service matters arising pursuant to this agreement. The  
2512 Contractor may designate a successor or substitute Contract Administrator at any time by written  
2513 notice to the County. The Contract Administrator will be the primary point of contact for the County  
2514 Contract Manager.

## 2515 **Section 10.7: County Contract Manager**

2516 The County has designated the County Contract Manager (which may be changed time to time by the  
2517 County) to be responsible for the monitoring and administration of this Agreement. Contractor shall meet  
2518 and confer with the County Contract Manager to resolve differences of interpretation and implement and  
2519 execute the requirements of this Agreement in an efficient and effective manner that is consistent with  
2520 the stated objectives of this Agreement.

2521 From time to time, the County Contract Manager may designate other agents at the County to work with  
2522 Contractor on specific matters. In such cases, those individuals should be considered designees of the  
2523 County Contract Manager for those matters to which they have been engaged. Such designees shall be  
2524 afforded all of the rights and access granted thereto. In the event of a dispute between the County  
2525 Contract Manager's designee and Contractor, the County Contract Manager's determination shall be  
2526 conclusive.

2527 In the event of dispute between the County Contract Manager and the Contractor regarding the  
2528 interpretation of, or the performance of services under, this Agreement, the County Contract Manager's  
2529 determination shall be conclusive. If the Contractor can demonstrate a significant and material impact to  
2530 the Contractor's cost of operations, then they may seek review under Article 15. For the purposes of this  
2531 section, "material impact" is an amount equal to or greater than one percent (1%) of Contractor's annual  
2532 Gross Receipts under this Agreement.

2533 County Contract Manager or their designate shall have the right to observe and review Contractor  
2534 operations and Processing Facilities and enter Premises for the purposes of such observation and review,  
2535 including review of Contractor's records, during reasonable hours with reasonable notice. In no event  
2536 shall Contractor prevent access to such Premises for a period of more than one (1) Business Day after  
2537 receiving such a request.

## 2538 **Section 10.8: Performance and Financial Reviews**

2539 The County may conduct and Contractor shall cooperate with up to two (2) performance reviews every  
2540 five years and detailed financial reviews at any point during the Term of this Agreement in the County  
2541 Contract Manager's sole discretion, to verify Contractor has fulfilled its financial and operational  
2542 obligations under this Agreement. The purpose of such reviews shall be, without limitation, to review  
2543 complaints, billings, and fee payments to County, and to determine if Contractor has met the performance  
2544 standards described in this Agreement (including, without limitation, direct services provided to

2545 Customers, Processing services, public education and outreach, recordkeeping and reporting,  
2546 contamination monitoring, and other performance standards established under this Agreement). County,  
2547 at its sole discretion, may choose to enlist third-party professional service providers to perform such  
2548 reviews. Contractor may not influence or control the County's selection of third-party professional service  
2549 providers nor the specific review items covered by the review. Contractor shall cooperate with the County  
2550 and its agents during the review process. If any noncompliance with the Agreement is found, the County  
2551 may direct the Contractor to correct the inadequacies in accordance with Article 14 of this Agreement.

2552 At the County's sole option, with at least thirty (30) calendar days written notification to the Contractor,  
2553 the County may conduct a public hearing at which time the Contractor shall be present and be given the  
2554 opportunity to participate, to review the Contractor's performance and quality of service and provide for  
2555 evaluation of technological and regulatory changes. The reports required by Exhibit D to this Agreement  
2556 regarding Customer complaints may be utilized as a basis for review as well as any findings from  
2557 performance reviews and/or audits. Performance and service quality review hearings may be scheduled  
2558 by the County at its discretion throughout the Term of the Agreement.

2559 **ARTICLE 11: COUNTY FEES AND REIMBURSEMENTS**

2560 **Section 11.1: County Payments**

- 2561 A. **Administration Fee.** The Contractor shall pay an Administration Fee to the County in accordance  
2562 with Kern County Code, as amended, supplemented, superseded, and replaced from time to time.
- 2563 B. **Other Payments.** The County shall reserve the right to set other fees or reimbursement payments  
2564 as it deems necessary.

2565 **Section 11.2: Adjustment to County Payments**

2566 Pursuant to the County Code and Applicable Law, the County Board of Supervisors may adjust the  
2567 payments established in this Article from time to time during the Term of this Agreement.

2568 **Section 11.3: Payment Schedule and Late Fees**

2569 Within thirty (30) days of the end of each payment cycle, during the Term of this Agreement and including  
2570 the final month or portions thereof at the end of the Term of this Agreement, Contractor shall remit to  
2571 County all payments as described in this Article 11 and Article 7 unless specified otherwise. Such payments  
2572 shall be payable to County and sent or delivered to the County Contract Manager or their designee. Any  
2573 Solid Waste Administration Fee payments due to the County for all Universal Collection Area residential  
2574 properties will be deducted monthly from the amounts due to the Contractor that are collected on the  
2575 tax rolls. Solid Waste Administration Fee payments due to the County for all other areas and types of  
2576 properties shall be paid as set forth in the ordinance for the Solid Waste Administration Fee.

2577 All payments due shall become delinquent forty-five (45) days after it is due. All payments due shall be  
2578 subject to a delinquency penalty of three percent (3%), which attaches on the first day of delinquency.  
2579 The delinquency penalty shall be increased an additional three percent (3%) and applied to both the  
2580 original amount due as well as any delinquency penalties previously applied for each additional month  
2581 the payment remains delinquent. For example, if the amount of the original payments owed equals one  
2582 hundred thousand dollars (\$100,000), the initial delinquency amount applied on the first day of

2583 delinquency will be three thousand dollars (\$3,000), bringing the total amount to one hundred three  
2584 thousand dollars (\$103,000). If that amount becomes past due for an additional month, the additional  
2585 delinquency penalty shall be applied to the one hundred three thousand dollars (\$103,000) therefore, the  
2586 new total amount due would be one hundred six thousand ninety dollars (\$106,090). Failure to submit  
2587 payment within ninety (90) days after the due date shall be an Event of Default under this Agreement,  
2588 unless the County Contract Manager agrees in writing to extend the time for payment.

2589 Each remittance to the County shall be accompanied by a statement listing the amount of each payment  
2590 submitted; calculation of each payment; and, if appropriate, a statement of Gross Receipts, by line of  
2591 business for the period collected from all operations conducted or permitted by this Agreement. The  
2592 County Contract Manager may, at any time during the term, request a detailed calculation of Gross  
2593 Receipts which may include, but is not necessarily limited to, the number of Customers charged at each  
2594 Service Level and Rate for each billing period for all properties including those properties included within  
2595 a Universal Collection Area, residential non-tax roll billed area, or non-residential non-tax roll billed area.

2596 The County Contract Manager may, at any time during the Term or within five (5) years following the  
2597 expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment  
2598 of fees. Contractor shall fully cooperate with the County Contract Manager in any such audit. Should the  
2599 County or its agent perform this review and identify billing errors or other errors in payment of fees valued  
2600 at one (1%) percent or more of Gross Receipts, Contractor shall, in addition to compensating the County  
2601 for lost payments and applicable delinquency penalties, reimburse the County's cost of the review.

2602 **ARTICLE 12: CONTRACTOR'S COMPENSATION AND RATE**  
2603 **SETTING**

2604 **Section 12.1: General**

2605 The Contractor's compensation for the performance of all its obligations under this Agreement shall be  
2606 Gross Receipts collected on the tax rolls for residential properties located in the appropriate universal  
2607 collection areas or Gross Receipts paid directly to the Contractor from all other customers and there shall  
2608 be no other compensation provided for by the County. Contractor's compensation provided from those  
2609 Gross Receipts shall be the full, entire and complete compensation due Contractor pursuant to this  
2610 Agreement for any, and all, things necessary to perform all the services required by this Agreement in the  
2611 manner and at the times prescribed. This Agreement is the complete and full agreement between the  
2612 Parties, and nothing herein shall obligate the County, in any way, to provide any compensation to  
2613 Contractor beyond Gross Receipts from customers.

2614 It is understood and acknowledged that if Contractor's actual costs, including fees due to the County, are  
2615 more than the Gross Receipts, Contractor shall not seek and shall not be compensated for the difference  
2616 in actual costs and actual Gross Receipts. If Contractor's actual costs, including fees due to the County,  
2617 are less than the actual Gross Receipts, Contractor shall retain the difference to the extent provided by  
2618 Applicable Law.

2619 It is also readily understood and acknowledged that at the time of entering into this Agreement,  
2620 Applicable Law is such that the conservative approach is to assume that the rates and charges to  
2621 customers for the majority of items herein are subject to Article XIII D of the California Constitution  
2622 (commonly referred to as Proposition 218). Pursuant to the provisions of Article XIII D Section 4, it is also  
2623 readily understood and acknowledged that the County bears the risk if the rates and charges to customers  
2624 were not adopted in accordance with Article XIII D of the California Constitution. It is also understood and  
2625 agreed that some could argue that the provisions of Proposition 26 would apply if Proposition 218 did not  
2626 apply. Given these circumstances, and the sole risk falling upon the County, it is readily understood and  
2627 acknowledged that the rates and charges to customers provided for in this Agreement shall be subject to  
2628 the provisions of Article XIII D of the California Constitution at the time this agreement is entered into.  
2629 Moving forward, it is readily understood and acknowledged that other changes in the law may occur. As  
2630 a result, it is readily understood and acknowledged that the County shall be entitled to, and the Contractor  
2631 shall, in the time frame requested, provide any, and all, information which the County Contract Manager  
2632 deems, in their sole discretion, to be necessary to meet the requirements of Applicable Law.

2633 Should a court of competent jurisdiction determine that the County and/or Contractor cannot charge  
2634 and/or increase its Rates for charges related to any new or increased fees and charges, the Contractor  
2635 shall reduce the Rates it charges Customers a corresponding amount and shall discontinue collection  
2636 and/or payment of any new or increased fees and/or charges which have been invalidated by the court.  
2637 Likewise, if a Rate, or Rate increase, is rejected during the Proposition 218 process (or if applicable the  
2638 Proposition 26) the Contractor shall retain or reduce the Rates as the case may be. If Contractor  
2639 discontinues providing a service, the County may exercise any, and all, legal options to have the service  
2640 provided by others regardless of any exclusivity provided in this Agreement and/or any County Ordinance.

2641 Under this Agreement, Contractor shall have the right and obligation to charge and collect from  
2642 Customers Rates that are approved by the County for provision of services to Customers. The Rates for

2643 Rate Period One are set forth in Exhibit C. The Rates established by the County are maximum Rates and  
2644 Contractor may, in its sole discretion, charge Customers any amount up to and including the approved  
2645 maximum Rate for a given level of service provided that the Rate is charged on a uniform basis to all  
2646 accounts.

2647 **Section 12.2: Rates and Annual Adjustments**

2648 A. **General.** The County shall be responsible for processing and seeking customer approval of Rates  
2649 and memorializing those Rates on the County-approved Rate schedule. If at any time during the  
2650 Term of the Agreement, the Contractor comes to believe there is a need for an increase to a Rate,  
2651 or a new Rate that does not appear on the County-approved Rate schedule in Exhibit C, Contractor  
2652 shall immediately notify the County Contract Manager and request establishment of such Rate.  
2653 The Contractor may, in its sole discretion, charge Customers a rate lower than the established  
2654 Rate on the County-approved Rate schedule provide that the lower rate is charged on a uniform  
2655 basis to all accounts provided that same level of service. If the Contractor believes there is  
2656 sufficient grounds to deviate from this uniformity requirement, the Contractor may seek written  
2657 approval for such deviation from the County Contract Manager. It is readily understood and  
2658 agreed that provisions described in Section 12.1 have a material impact on the establishment of,  
2659 and increases to, the Rates and Contractor acknowledges that regardless of the Contractor’s belief  
2660 in the justification, Rates are to be processed by the County at its sole discretion and approved by  
2661 the appropriate customer base.

2662 B. **Rates.** Rates may be set annually by ordinance and/or resolution in accordance with Applicable  
2663 Law. Notwithstanding judicial intervention, the Rates set forth in Exhibit C shall remain in force  
2664 commencing with the Agreement Date and continuing until a new rate is approved by the Board  
2665 of Supervisors. The Contractor may request but is not entitled to an annual adjustment of Rates.  
2666 Each Rate, excluding Special Charges, will be subject to a “Rate Adjustment Factor” that is based  
2667 on a Consumer Price Index for Trash and Garbage as set forth in Exhibit B, provided that the rate  
2668 payers have approved the “Rate Adjustment Factor” in accordance with applicable law, including  
2669 the Proposition 218 Omnibus Act and any subsequently applicable law. For direct bill customers,  
2670 the Contractor shall be required to meet the rate increase notice provision provided by law  
2671 including those found in the Proposition 218 Omnibus Act.

2672 C. **Charges for Special Services.** If a Special Service is required and at that time the service does not  
2673 have a Rate established for the service in the County-approved Rate schedule, the Contractor and  
2674 Customer shall agree upon the requested terms of service and an appropriate Rate for said  
2675 service. Before commencing the Special Service, Contractor shall submit to the County Contract  
2676 Manager, a written request for review and approval of the terms of service and the Rate to be  
2677 billed for the Special Service. Any applicable Special Service charges will be billed directly by the  
2678 Contractor and will not be billed on property taxes in any type of Collection Area. Contractor may  
2679 request, but is not entitled to, an annual adjustment using the Rate Adjustment Factor of any of  
2680 the rates for these Special Services, if appropriate. Contractor will provide any documentation  
2681 required supporting the request for an adjustment.

2682 D. **Special Circumstances Rate Review.** The parties acknowledge that there may be infrequent  
2683 extraordinary events which, although they do not prevent either party from performing,  
2684 nevertheless increase the cost of providing service such that Contractor’s compensation and the  
2685 rate adjustment mechanisms elsewhere provided in this Agreement result in the Contractor’s

2686 suffering losses that are outside the commercially reasonable expectations of the parties.  
2687 Accordingly, at its option, the Contractor may apply to the County at any time, but not more  
2688 frequently than once annually, for an extraordinary rate adjustment should an event or  
2689 circumstance arise, including without limitation a change in law, which negatively impacts the  
2690 economic operation of Contractor, and which is in excess of the rate adjustment resulting from  
2691 the application of the annual adjustment formula set forth above. An interim adjustment in rates  
2692 may be deemed justified if it is necessary for the Contractor to make a substantial change in  
2693 operations, or a substantial capital expenditure or investment in order to perform its obligations  
2694 under this Agreement due to the occurrence of an event or circumstance which is beyond the  
2695 reasonable control of Contractor. In the event Contractor makes application for an extraordinary  
2696 rate increase, the Contractor shall bear the burden of demonstrating to the reasonable  
2697 satisfaction of the County the basis for the request.

2698 **Section 12.3: Publication of Rates**

2699 The Contractor shall provide written notice to Customers of any Rate changes in accordance with  
2700 Applicable Law and in particular the provisions of Proposition 218 and any, and all, statutes pertaining to  
2701 Proposition 218, such as the Proposition 218 Omnibus Implementation Act. Additionally, Contractor shall  
2702 provide written notice to all Customers as part of billing statement the Contractor sends to Customers  
2703 and such written notice shall be provided at least 30 days prior to the Effective Date of the Rate change.  
2704 Contractor shall also publish current Rates in a convenient and easily found location on its website and  
2705 Rate changes notices shall be published on the website at least 30 days prior to the Effective Date of the  
2706 Rate change.

2707 **ARTICLE 13: INDEMNITY, INSURANCE, AND PERFORMANCE**  
2708 **BOND**

2709 **Section 13.1: Indemnification**

2710 A. **General.** Contractor shall indemnify, defend with counsel acceptable to and approved by the  
2711 County Counsel, and hold harmless (to the full extent permitted by law) County and its officers,  
2712 officials, employees, volunteers, and agents from and against any and all claims, liability, loss,  
2713 injuries, damage, expense, and costs (including without limitation costs and fees of litigation,  
2714 including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out  
2715 of or in connection with Contractor's performance under this Agreement, or its failure to comply  
2716 with any of its obligations contained in the Agreement, except to the extent such loss or damage  
2717 was caused by the sole negligence or willful misconduct of the County.

2718 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire  
2719 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or  
2720 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

2721 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of  
2722 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take  
2723 all investigatory and/or remedial action reasonably required for the remediation of such  
2724 environmental contamination. Prior to undertaking any investigatory or remedial action,  
2725 however, Contractor shall first obtain the County's approval of any proposed investigatory or  
2726 remedial action. Should Contractor fail at any time to promptly take such action, the County may  
2727 undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse the  
2728 County for all such expenses within thirty (30) calendar days of being billed for those expenses,  
2729 and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed  
2730 delinquent and subject to the delinquent fee payment provision of Section 11.3. These obligations  
2731 are in addition to any defense and indemnity obligations that Contractor may have under this  
2732 Agreement. The provisions of this Section shall survive the termination or expiration of this  
2733 Agreement.

2734 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any  
2735 claims arising from the disposal of Solid Waste at the Designated Disposal Facility, including, but  
2736 not limited to, claims arising under Comprehensive Environmental Response, Compensation and  
2737 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful  
2738 misconduct.

2739 C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold the County harmless  
2740 against, and from, any and all actions, claims, suits, losses, penalties, damages, and liability for  
2741 damages of every name, kind and description, including attorneys' fees and costs incurred,  
2742 attributable to the negligence or willful misconduct of Contractor in handling Excluded Waste.

2743 D. **Related to State Regulations.** Contractor's duty to defend and indemnify herein includes all fines  
2744 and/or penalties imposed by CalRecycle (or its successor) and/or the County's costs for  
2745 compliance with associated compliance orders or plans, if the requirements of AB 939, AB 341,  
2746 AB 1826, SB 1383, or other current or future State regulations applicable to this Agreement are

2747 not met by the Contractor with respect to the waste stream collected under this Agreement  
2748 and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the  
2749 failure of Contractor to meet its obligations under this Agreement; or, (ii) due to misreporting by  
2750 the Contractor or Contractor delays in providing information that prevents Contractor or the  
2751 County from submitting accurate reports to regulators in a timely manner.

2752 E. **Third Parties.** These indemnification provisions are for the protection of the County only and shall  
2753 not create, of themselves, any liability to third parties. The provisions of the subsection shall  
2754 survive termination of this Agreement.

## 2755 **Section 13.2: Insurance**

2756 **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times during  
2757 the Term of this Agreement not less than the following coverage and limits of insurance:

2758 A. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times  
2759 maintain, at its expense, the following coverages and requirements. The comprehensive general  
2760 liability insurance shall include broad form property damage insurance.

2761 1. Insurance coverage shall be with limits not less than the following:

2762 **Comprehensive General Liability** – \$10,000,000 combined single limit per occurrence  
2763 for bodily injury, personal injury, and property damage.

2764 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily injury  
2765 and property damage (include coverage for hired and non-owned Vehicles).

2766 **Workers' Compensation – Statutory Limits/Employers' Liability** - \$1,000,000/accident  
2767 for bodily injury or disease.

2768 **Employee Blanket Fidelity Bond** – \$500,000 per employee covering dishonesty, forgery,  
2769 alteration, theft, disappearance, and destruction (inside or outside). An approved,  
2770 equivalent Commercial Crime insurance policy may be substituted for this bond with the  
2771 approval of the County Contract Manager, said approval is in their sole discretion.

2772 **Pollution Legal Liability** – \$1,000,000 per claim and \$2,000,000 aggregate for bodily  
2773 injury, property damage, and remediation of contaminated site.

2774 2. The County, its officers, agents, employees, and volunteers shall be named as additional  
2775 insured on all but the workers' compensation and professional liability coverages.

2776 3. Said policies shall remain in force through the life of this Agreement and, with the exception  
2777 of professional liability coverage, shall be payable on a "per occurrence" basis unless the  
2778 County Contract Manager specifically consents in writing to a "claims made" basis. For all  
2779 "claims made" coverage, in the event that the Contractor changes insurance carriers  
2780 Contractor shall purchase "tail" coverage or otherwise provide for continuous coverage  
2781 covering the Term of this Agreement and not less than three (3) years thereafter. Proof of  
2782 such "tail" or other continuous coverage shall be required at any time that the Contractor  
2783 changes to a new carrier prior to receipt of any payments due.



- 2784 4. The Contractor shall declare all aggregate limits on the coverage before commencing  
 2785 performance of this Agreement, and the County Contract Manager reserves the right to  
 2786 require higher aggregate limits to ensure that the coverage limits required for this Agreement  
 2787 as set forth above are available throughout the performance of this Agreement.
- 2788 5. The deductibles or self-insured retentions are for the account of Contractor and shall be the  
 2789 sole responsibility of the Contractor.
- 2790 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be  
 2791 suspended, voided, canceled by either Party, reduced in coverage or in limits except after  
 2792 thirty (30) calendar days prior written notice by certified mail, return receipt requested, has  
 2793 been given to the County Contract Manager ten (10) Business Days for delinquent insurance  
 2794 premium payments).
- 2795 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-,VII,  
 2796 unless otherwise approved by the County Contract Manager.
- 2797 8. The policies shall cover all activities of Contractor, its officers, employees, agents and  
 2798 volunteers arising out of or in connection with this Agreement.
- 2799 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be  
 2800 primary, including as respects the County, its officers, agents, employees, and volunteers. Any  
 2801 insurance maintained by the County shall apply in excess of, and not contribute with,  
 2802 insurance provided by Contractor's liability insurance policy.
- 2803 10. The Contractor shall waive all rights of subrogation against the County, its officers, employees,  
 2804 agents, and volunteers related to the performance of services under this Agreement.
- 2805 B. **Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish the  
 2806 County Contract Manager with certificates or original endorsements reflecting coverage required  
 2807 by this Agreement. The certificates or endorsements are to be signed by a person authorized by  
 2808 that insurer to bind coverage on its behalf. All certificates or endorsements are to be received by,  
 2809 and are subject to the approval of, the County Contract Manager before work commences.
- 2810 C. **Renewals.** During the Term of this Agreement, Contractor shall furnish the County Contract  
 2811 Manager with certificates or original endorsements reflecting renewals, changes in insurance  
 2812 companies, and any other documents reflecting the maintenance of the required coverage  
 2813 throughout the entire term of this Agreement. The certificates or endorsements are to be signed by  
 2814 a Person authorized by that insurer to bind coverage on its behalf.
- 2815 D. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by  
 2816 State law, and prior to the Effective Date pursuant to this Agreement, Contractor shall file the  
 2817 following statement with the County.
- 2818 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer to  
 2819 be insured against liability for workers' compensation or to undertake self-insurance in accordance  
 2820 with the provisions of that code, and I will comply with such provisions before commencing any  
 2821 services required by this Agreement.

2822 The Person executing this Certificate on behalf of Contractor affirmatively represents that they have  
2823 the requisite legal authority to do so on behalf of Contractor, and both the person executing this  
2824 Agreement on behalf of Contractor and Contractor understand that the County is relying on this  
2825 representation in entering into this Agreement.”

2826 E. **Failure to Maintain Coverages.** At any time during the term of this Agreement, Contractor's failure  
2827 to provide the County Contract Manager with a certificate of insurance, and/or the actual executed  
2828 policies or binder, shall constitute a material breach and an Event of Default as provided in Section  
2829 14.1, provided notice of failure to provide coverage has been sent to Contractor and Contractor has  
2830 failed to provide the required certificate within fifteen (15) days from the date of the notice. In such  
2831 circumstances, the County, at its sole option and discretion may terminate this Agreement and  
2832 obtain damages from Contractor resulting from said breach. Alternatively, the County may  
2833 purchase such required insurance coverage, and without further notice to Contractor, County shall  
2834 deduct from sums due to the Contractor any premiums and associated costs advanced or paid by  
2835 the County for such insurance. If the balance of monies obligated to Contractor pursuant to this  
2836 Agreement are insufficient to reimburse County for the premiums and any associated costs,  
2837 Contractor agrees to reimburse County for the premiums and pay for all costs associated with the  
2838 purchase of said insurance. Any failure by the County to take this alternative action shall not relieve  
2839 Contractor of its obligation to obtain and maintain the insurance coverages required by this  
2840 Agreement.

2841 Contractor agrees that Contractor shall not operate within the Solid Waste Franchise Area at any  
2842 time that the required insurance is not in full force and effect as evidenced by a certificate of  
2843 insurance and/or the actual executed policies, or official binder being in possession of the County  
2844 Contract Manager. In no event shall assurances by the Contractor, its employees, agents, including  
2845 any insurance agent, be construed as adequate evidence of insurance. The County Contract  
2846 Manager will only accept a valid certificate of insurance, and/or the actual executed policies, or  
2847 insurance binder as adequate evidence of insurance. Contractor also agrees that upon cancellation,  
2848 termination, or expiration of Contractor's insurance, the County Contract Manager may take  
2849 whatever steps are necessary to interrupt any operation of the Contractor within the Solid Waste  
2850 Franchise Area until such time as the Agreement is reinstated by the County Contract Manager.

2851 The County Contract Manger shall retain the right at any time to review the coverage, form and  
2852 amount of the insurance required hereby. If, in the opinion of the County Contract Manager,  
2853 insurance provisions in this Agreement do not provide adequate protection for the County and  
2854 members of the public within the Solid Waste Franchise Area, the County Contract Manager may  
2855 require Contractor to obtain insurance sufficient in coverage, form, and amount to provide  
2856 adequate protection. The County Contract Manager's requirements shall be reasonable but shall  
2857 be designed to assure protection from and against the kind and extent of the risks which exist at  
2858 the time a change in insurance is required. The County shall notify Contractor in writing of changes  
2859 in the insurance requirements; and if Contractor does not deposit copies of acceptable insurance  
2860 certificates with the County incorporating such changes within thirty (30) days of receipt of notice,  
2861 this Agreement shall be in default without further notice to Contractor.

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2863 **Section 13.3: Performance Bond**

2864 Within seven (7) calendar days of the County's notification to Contractor that the County has executed  
2865 this Agreement, Contractor shall file with the County a bond, payable to the County, securing the  
2866 Contractor's performance of its obligations under this Agreement and such bond shall be renewed  
2867 annually if necessary so that the performance bond is maintained at all times during the Term. The  
2868 principal sum of the bond shall be based on the number of Contractor Vehicles with carrying capacity of  
2869 one ton or more, as follows: (a) Six (6) or less - \$10,000; (b) Seven (7) to ten (10) - \$15,000; and (c) Eleven  
2870 (11) or more - \$20,000. The bond shall be executed as surety by a corporation authorized to issue surety  
2871 bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key  
2872 Rating Guide, and that has a record of service and financial condition satisfactory to the County.

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## ARTICLE 14: DEFAULT, REMEDIES AND TERMINATION

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### Section 14.1: Default and Remedies

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A. **Events of Default.** The County is expressly and specifically obligated to protect the public health and safety within its jurisdiction. Additionally, the County is obligated to provide appropriate and cost-effective arrangements for Solid Waste collection and management within its jurisdiction. The provisions provided for in this Agreement are all mutually, exclusively, and individually material to meeting the County’s obligations and goals with this Agreement. As such, whether specifically called for or not, any violation of the provisions of this Agreement by the Contractor shall be deemed a material breach and an Event of Default that could be grounds for termination of this Agreement. The following is a nonexclusive list of events that constitute a material breach and an Event of Default:

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1. The failure by the Contractor for any reason, or at any time, to deliver to the Designated Disposal Facility all Solid Waste Collected by the Contractor.

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2. The failure by the Contractor for any reason, or at any time, to deliver to the Approved Organic Waste Processing Facility all Organic Materials collected by the Contractor.

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3. The failure by the Contractor for any reason, or at any time, to deliver to the Approved Recyclable Materials Processing Facility all Recyclable Materials Collected by the Contractor.

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4. The failure by the Contractor for any reason, or at any time, to the use of the Approved Transfer Facility as prescribed by the County Contract Manager.

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5. Any criminal conviction, plea bargain, or settlement, of Contractor, its officers, managers, or employees related directly, or indirectly, to operations and performance of this Agreement or any other agreement held with the County.

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6. Failure or refusal of the Contractor to perform any term, covenant, obligation or condition in this Agreement not otherwise delineated in this Section 14.1; excepting that no such failure or refusal shall give the County the right to terminate this Agreement under this Section unless the County has given prior written notice to the Contractor of the specific failure, or refusal to perform. If said failure or refusal does not in the County’s opinion constitute an immediate threat to the public, the Contractor shall be given no more than fifteen (15) days to take corrective action. Additional time to take corrective action may be granted at the sole discretion of the County Contract Manager. However, if the County is of the opinion that the failure or refusal constitutes an immediate threat to the public, the Contractor must take immediately corrective action to avoid the possibility that the County may terminate this Agreement.

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7. 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,

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- 2911 receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of  
2912 the Contractor's property or business.
- 2913 8. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition  
2914 under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until  
2915 the same is no longer being contested by the Contractor nor until the order of the adjudication  
2916 is no longer appealable.
- 2917 9. The failure of the Contractor to provide or maintain the Performance Bond required pursuant  
2918 to Section 13.3 hereof.
- 2919 10. Failure of the Contractor to submit the Administration Fee in accordance with Section 11.1 or  
2920 any Gate or Bin Fees due to County, within ninety (90) days of the due date.
- 2921 11. Failure to provide any records, data, or reports within thirty (30) days of County Contract  
2922 Manager's written request.
- 2923 12. The denial of access to any equipment and/or facilities upon County Contract Manager's  
2924 access request.
- 2925 13. Any failure by the Contractor to comply with any the Applicable Law, rule or regulation,  
2926 including, but not limited to, the County Code, and as they may be change from time to time,  
2927 following the specified notice and opportunity to cure.
- 2928 14. Failure of the Contractor to timely implement the operational changes and adjusted  
2929 maximum Rates resulting from any change in law or County-directed change in scope. The  
2930 Contractor shall have thirty (30) days after notice of breach from the County to implement  
2931 the operational changes. Should the Contractor thereafter not implement the operational  
2932 changes, it shall be in material default of the Agreement. In addition to being liable for all  
2933 damages and penalties to the County resulting from such default, the County may terminate  
2934 the Agreement in accordance with Section 14.1.B.
- 2935 15. Failure of the Contractor to maintain insurance coverages in accordance with Section 13.2.
- 2936 B. **Right to Terminate Upon Default.** Upon a determination by the County Contract Manager that an  
2937 Event of Default has occurred, the County Board of Supervisors shall conduct a public hearing upon  
2938 at least ten (10) days' notice to the Contractor to determine if termination of the Agreement is in  
2939 the best interests of the citizens of the County. If the Board of Supervisors makes such a  
2940 determination, the Contractor shall be deemed to have waived any right it may have under  
2941 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth  
2942 herein.
- 2943 C. **County's Remedies Cumulative: Specific Performance.** The County's right to terminate this  
2944 Agreement under this Section 14.1 is not exclusive, and the County's termination of the Agreement  
2945 shall not constitute an election of remedies. Instead, they shall be in addition to any and all other  
2946 legal and equitable rights and remedies which the County may have, including but not limited to  
2947 specific performance, and fees and expenses incurred by or on behalf of the County in enforcing  
2948 payment or performance of the Contractor's obligations hereunder if such non-performance results  
2949 in a judicially determined Event of Default by the Contractor. Moreover, the County's right to

2950 terminate this Agreement under this Section 14.1 shall not be deemed in any way to limit, or  
2951 interfere with, the County's rights to terminate this franchise under Applicable Law.

2952 D. **Possession of Property upon Termination or Suspension.** In the event of termination or suspension  
2953 for default, the County shall have the right to take possession of any and all of Contractor's  
2954 equipment and other property used or useful in the Collection, Transportation, Processing, and  
2955 Disposal of Solid Waste or Recyclable Materials and the billing and collection of fees for these  
2956 services and to use such property. The County shall have the right to retain the possession of such  
2957 property until such time as Contractor remedies the default or substitute services can be provided  
2958 by another contractor. If the County retains possession of Contractor's equipment or other property  
2959 after the period of time for which Contractor has already been paid by means of bills issued in  
2960 advance of providing service for the service involved, the Contractor shall be entitled to the  
2961 reasonable rental value of such property (which shall be offset against any damages due the County  
2962 for the Contractor's default). Contractor shall furnish the County with immediate access to all of its  
2963 business records related to its Customers and billing of accounts for Collection services.

2964 **Section 14.2: Liquidated Damages**

2965 A. **General.** In addition to any other remedies provided for in this Agreement, the County Contract  
2966 Manager may levy a charge in the amounts listed below for the Contractor's failure to meet the  
2967 requirements enumerated below that constitute a breach of the terms and conditions of this  
2968 Agreement. The County Contract Manager's decision to levy such a charge shall not be deemed an  
2969 election of remedies but shall be cumulative with any other remedies provided for in this  
2970 Agreement. The County Contract Manager's decision not to levy any such charge shall not be  
2971 deemed a waiver of any breach by Contractor under this Agreement. The Parties agree that the  
2972 following Liquidated Damages represent a reasonable estimate of the amount of such damages,  
2973 considering all of the circumstances existing on the date of the Agreement, including the  
2974 relationship of the sums to the range of harm to the County that reasonably could be anticipated  
2975 and anticipation that proof of actual damages would be costly or inconvenient. In signing this  
2976 Agreement, each Party specifically confirms the accuracy of the statements made above and the  
2977 fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation  
2978 of this Liquidated Damage provision at the time that this Agreement was entered into. Given the  
2979 lengthy term of this Agreement it is further agreed to and understood that the Liquidated Damages  
2980 provided for herein shall increase by a factor of one percent (1%) per year.

2981 In the event the Liquidated Damages permitted to be imposed under this Section exceed fifty  
2982 thousand dollars (\$50,000) during any three hundred sixty-five (365) day period, the Contractor  
2983 shall be deemed in material default of this Agreement and this Agreement may be terminated  
2984 pursuant to Section 14.1.B. The possibility, or actual, imposition of Liquidated Damages shall not in  
2985 any way diminish or prohibit the County's other rights in this Agreement including the right to  
2986 terminate this Agreement pursuant to Section 14.1.B.

2987 The County Contract Manager shall give the Contractor written notice of charges levied pursuant to  
2988 this Section. Any such damages shall be paid directly to the County and **may not** be included by the  
2989 Contractor as justification for an upward adjustment in the rate schedule or offset against any fees.

2990 The decision of the County Contract Manager shall be final and binding on the Contractor unless  
2991 the Contractor files with the Clerk of the County Board of Supervisors a Notice of Appeal within

2992 fifteen (15) days of receipt of the County Contract Manager's decision. The Notice of Appeal shall  
 2993 be in writing and shall contain a detailed statement of the basis for the appeal. Upon receipt of the  
 2994 Notice of Appeal, the County Contract Manager shall set the matter for a public hearing within thirty  
 2995 (30) days. The County Contract Manager shall give the Contractor and any interested person  
 2996 requesting the same, ten (10) days written notice of the time and place of the hearing. At the  
 2997 hearing, the County Board of Supervisors shall determine, based on the record, the appropriate  
 2998 action to be taken. The decision of the County Board of Supervisors shall be final and conclusive.

2999 B. **Liquidated Damages.** The County wishes to establish standards of performance under the  
 3000 Agreement in each of the "Performance Areas" listed below. The County Contract Manager may  
 3001 monitor Contractor's performance in each of those areas based on the "Specific Performance  
 3002 Measures" within that performance area, or other relevant metrics related to this Agreement. If the  
 3003 County Contract Manager determines that Contractor has failed to meet the performance standard  
 3004 established for any "Specific Performance Measure", the County may assess Liquidated Damages.  
 3005 Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other  
 3006 measure in excess of the acceptable performance level.

3007 1. **Performance Area: Provision of Universal Service**

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to provide Recyclable Material and Organic Material Collection services to every Customer after Customer list has been defined.	For each occurrence of failing to provide Customers with the three- Container system, including Recyclable Materials and Organic Materials, required by and compliant with Article 5.	No acceptable failure level	\$100/Customer

3008 The County shall not assess Liquidated Damages item 1, above, under the following circumstances:

- 3009 a. County has granted the Customer a waiver pursuant to Section 8.6.1 of this Agreement.
- 3010 b. Contractor documents that Customer is compliant with Recycling and Organic Waste  
 3011 Self-Hauling requirements pursuant to County Code Section 5.36 and 14 CCR Division 7,  
 3012 Article 12, Article 7.
- 3013 c. Contractor documents to the County that the Customer is being provided Recyclable  
 3014 Materials and/or Organic Materials Collection services from a County-permitted,  
 3015 Recycler or Discarded Materials service provider.
- 3016 d. Contractor documents that Customer is sharing Recyclable Materials and/or Organic  
 3017 Materials Collection services with another Customer in a manner approved by the  
 3018 County.
- 3019 e. The County has failed to adopt a mandatory Recycling and Organic Waste Diversion  
 3020 ordinance.

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2. **Performance Area: Service Quality and Reliability**

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Missed Collections	Each Service Opportunity where Contractor fails to Collect a Container from a Customer who properly placed said Container for Collection, unless Contractor leaves a Non-Collection Notice specifying the reasons for non-Collection and available remedies.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$50/Event
2.	Failure to Correct Missed Collections	Each "Missed Collection" as defined above which is not Collected by the end of the working day following the receipt of the Customer complaint about the missed Collection if the complaint is received by 3:00 p.m. on a Working Day and by the end of the following Working Day for such complaints received after 3:00 p.m. on a Working Day where physical conditions allow	Less than one (1) per one hundred (100) Missed Collections	\$50/Event
3.	Failure to Return Empty Container	Failure to properly return empty Carts or Bins to the Collection location, or to place Carts upright where physical conditions allow.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$20/Event
4.	Failure to Clean-Up Spillage	Each failure by Contractor to clean up: (1) any items or materials spilled during the Collection of a Container; or (2) any fluids spilled or leaked from a Container or Collection Vehicle within 24 hours after receiving notification of spillage or leakage.	No acceptable failure level	\$100/Event



<b>Item</b>	<b>Specific Performance Measure</b>	<b>Definition</b>	<b>Acceptable Performance Level</b>	<b>Liquidated Damage Amount</b>
5.	Damage to Property	Each event of damage to either public or private property as a result of Collection activity, including without limitation curbs, sidewalks, landscapes, Container enclosures and gates, signs, light fixtures, and overhead wires and cables.	Less than two (2) per one thousand (1,000) Service Opportunities	\$200/Event unless the damage has been repaired/resolved by the Contractor
6.	Damage to Public Streets	Each event of damage to public streets within the County that can be proven to be caused by Contractor.	No acceptable failure level	Actual cost of repair to County's satisfaction.
7.	Failure to Maintain Equipment	Each event of failure to maintain equipment and, Vehicles, in a clean, safe, and sanitary manner.	No acceptable failure level	\$100/Item/Day
8.	Failure to Comply with Container Standards	Failure to comply with Container labeling and color requirements as specified in this Agreement.	No acceptable failure level	\$200/Container/Occurrence
9.	Failure to Provide/ Utilize Required Vehicles/Equipment	Failure to provide and utilize required Vehicles, and communications equipment as specified in this Agreement	No acceptable failure level	\$100/Item/Day
10.	Unlicensed Vehicle Operator	Failure to have a Vehicle operator properly licensed.	No acceptable failure level	\$500/Operator/Day
11.	Failure to Display Contractor's Name	Failure to display and maintain visibility of Contractor's name and Customer service phone number on collection Vehicles, Bins and other Containers.	No acceptable failure level	\$100/Instance/Day
12.	Failure to Wear Uniform	Failure to have Contractor personnel in proper uniform.	No acceptable failure level	\$100/Person/Day
13.	Discourteous Behavior	For each occurrence that is reported to the County Contract Manager of uncourteous behavior of Contractor's employees to a Customer.	Less than five (5) per one thousand (1,000) Service Opportunities	\$250/Event

<b>Item</b>	<b>Specific Performance Measure</b>	<b>Definition</b>	<b>Acceptable Performance Level</b>	<b>Liquidated Damage Amount</b>
14.	Failure to Complete Route	Failure or neglect to complete at least ninety percent (90%) of each Route on the regular scheduled Collection service Working Day unless previously approved by the County Contract Manager.	No acceptable failure level	\$1,000/Route
15.	Changing Routes	Changing Routes without proper notification and approval by the County Contract Manager.	No acceptable failure level	\$500/Route/Day
16.	Overweight Vehicles	Loading Collection Vehicles in excess of State or local weight restrictions.	No acceptable failure level	\$150/Event
17.	Uncovered Loads	Failure to properly cover materials in Collection Vehicles.	No acceptable failure level	\$500/Event
18.	Failure to Cure in Timely manner	Failure to cure non-compliance with the provisions of this Agreement in the manner and time set forth in this Agreement.	No acceptable failure level	\$150/Incident/Day
19.	Failure to Implement Contractor's SB 1383 Implementation Plan Strategy.	Failure to implement any one of the strategies listed in the Contractor's SB 1383 Implementation Plan.	No acceptable failure level	\$50/day for each day in excess of fifteen (15) days following Contractor's receipt of written notice from County
20.	Failure to Perform Other Requirement	Each failure to perform any obligation of the Agreement not specifically stated above.	No acceptable failure level	\$100/Event

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## 3. Performance Area: Customer Service

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Commence Service	Any failure by Contractor to deliver a Container and begin providing Collection to a Customer, at the level of service requested by said Customer, within three (3) calendar days of receiving such request. This may include a new Customer receiving new service or an existing Customer requesting a change in or addition to existing Service Levels.	Less than ten (10) per one hundred (100) Service Requests	\$50/Event
2.	Failure to Exchange Container	Any failure by Contractor to exchange Container within ten (10) Working Days of notification that a change in the size or number of Containers is required.	No acceptable failure level	\$100/Container/Day
3.	Failure to Replace Container	Any failure by Contractor to replace a damaged or defaced Container within five (5) Working days' notice by the Customer or County Contract Manager.	No acceptable failure level	\$100/Container/Day
4.	Excessive Complaints that are specifically based on Contractor's performance	Contractor receipt of excessive complaints, defined as over one percent (1%) of its client base within a six (6) month period.	No acceptable failure level	\$25/complaint/occurrence; and an additional \$25 per each 24 hours until the complaint is reasonably resolved.
5.	Failure to Resolve Complaint	Any failure or neglect by Contractor to resolve each complaint within five (5) Working days' notice by the Customer or County Contract Manager.	No more than one (1) per one hundred (100) Complaints	\$100/Event
6.	Failure to Answer Phones	Any failure by Contractor to answer a telephone call from a Customer during normal business hours. A call is not deemed answered if the Customer does not speak with a live operator. If a message is left, the call must be returned by no later than the next business day.	Less than five (5) per one hundred (100) calls received under this Agreement	\$50/Event

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
7.	Failure to Maintain Office Hours	Failure to maintain Monday through Friday office hours.	No acceptable failure level	\$100/Event
8.	Provision of Inaccurate Information	Each event of a Customer Service Representative providing inaccurate information in response to a Customer question or complaint that is reported to the County Contract Manager and is determined to be inaccurate.	Less than five (5) per one hundred (100) calls received under this agreement.	\$50/Event
9.	Unauthorized Hours of Operation	Each occurrence of Contractor collecting from Customers before 5 am or after 7 pm.	Less than two (2) per one thousand (1,000) Service Opportunities	\$100/occurrence
10.	Failure to Conduct Route Audits and Contamination Monitoring	Failure to conduct Route audits and contamination monitoring as required by this Agreement.	No acceptable failure level	\$150/Audit/Day

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4. Performance Area: Diversion

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Perform Education and Outreach Activities	Each individual failure by Contractor to produce and distribute public education material or perform community outreach activities in the form and manner required under Section 8.1.	No acceptable failure level	\$100/Activity
2.	Failure to Provide Targeted Technical Assistance	Each individual failure to provide targeted technical assistance in the manner required under Section 8.2 if reported to the County Contract Manager..	No acceptable failure level	\$250/Customer

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5. Performance Area: Facilities

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Delivery to Non-Approved Facility	Each individual occurrence of delivering materials to a Facility other than the Approved or Designated Facility for each material type under this Agreement.	No acceptable failure level	\$5,000 first failure  \$25,000 each subsequent failure
2.	Disposal of Targeted Diversion Materials	Each individual occurrence of delivering properly segregated Recyclable Materials, Organic Materials, or Reusable Materials set out for Collection by the customer for disposal rather than processing.	No acceptable failure level	\$1,000/Load
3.	Mixing Materials During Collection	Each individual Container that is Collected by Contractor in a Vehicle intended or designated for the purpose of Collecting a different material type (e.g., Recyclable Materials collected in Solid Waste Vehicle, Solid Waste Collected in Organic Materials Vehicle, etc.).	No acceptable failure level	\$500/ Container
4.	Unapproved Commingling with Non-County Materials	Commingling of materials Collected on County Collection Routes with Routes serving incorporated Cities, unless approved in accordance with Section 5.5.F.	No acceptable failure level	\$1,000/Event
5.	Delivery to Designated Disposal Facility of Non-County Materials commingled with County Materials	Delivery to the Designated Disposal Facility of any Solid Waste Collected outside of the unincorporated County commingled with that Collected as part of this Agreement, unless approved by the County Contract Manager.	No acceptable failure level	\$5,000 first delivery  \$25,000 each subsequent delivery
6.	Failure to Conduct Waste Evaluations at Contractor owned or operated Approved Facilities	Failure to conduct Facility Waste Evaluations as required by this Agreement.	No acceptable failure level	\$150/Audit/Day

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
7.	Failure to Meet Facility Standards	Failure of the Contractor to meet the Facility standards set forth in Section 6.2 for the Contractor's Approved Facilities	No acceptable failure level	\$1,000/Day
8.	Failure to Support Capacity Planning	Failure of Contractor to respond to County or provide support for capacity planning studies in accordance with Section 8.5.	No acceptable failure level	\$500/occurrence

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6. **Performance Area: Reporting & Records**

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Late Report	Each occurrence of a report, as required under Exhibit D to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format.	No acceptable failure level	\$250/Report/ Day
2.	Failure to Maintain or Provide Access to Records	Each occurrence of County Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information within the time window specified in this Agreement.	No acceptable failure level	\$500/Working Day
3.	Misleading/Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate reports or information to the County under or regarding this Agreement and failing to correct within three (3) Working Days of notification of the error. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement.	No acceptable failure level	\$250/Event

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
4.	Failure to Remit County Payments	Failure to remit to the County the payments required under this Agreement in accordance with Article 11.	Fees submitted before the fifth Working Day following due date for such fees	\$50/day for first 5 days, then \$500/day each day after the first 5 days
5.	Failure to Correct Submittal of Inaccurate Data in a Timely Manner	Failure to correct submittal of inaccurate data within three (3) Business Days (or such other time period as may be agreed to in writing between County and Contractor) of notification by County.	No acceptable failure level	\$500/Day
6.	Failure to Maintain and/or Provide Access to Information Systems that pertain to County operations.	Each day that Contractor fails to provide access to Contractor's information systems to the County Contract Manager.	No acceptable failure level	\$500/Day

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3035 **Section 14.3: Uncontrollable Circumstances**

3036 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations  
3037 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a Default of this  
3038 Agreement, so long as the Party in good faith has used its best efforts to perform its respective  
3039 obligations.

3040 The Party claiming excuse from performance shall, within five (5) days after such Party has notice  
3041 of the effect of such cause, give the other Party written notice of the facts constituting such cause  
3042 and asserting its claim to excuse under this Section. Specifically, such information shall include the  
3043 following:

- 3044 1. The Uncontrollable Circumstance and the cause thereof (to the extent known).
- 3045 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated  
3046 duration, and the estimated time during which the performance of such Party's obligations  
3047 hereunder will be delayed.
- 3048 3. Its estimated impact on the other obligations of such Party under this Agreement.
- 3049 4. Potential mitigating actions which might be taken by the Contractor or County and any areas  
3050 where costs might be reduced and the approximate amount of such cost reductions.

3051 While the delay continues, the Contractor or County shall give daily notice to the other Party  
3052 updating the information previously submitted.

3053 In the event that either Party validly exercises its rights under this Section, the Parties hereby waive  
3054 any claim against each other for any damages sustained thereby.

3055 B. **County's Right to Terminate.** The partial or complete interruption or discontinuance of the  
3056 Contractor's services caused by one (1) or more of the events described in this Section 14.3 shall  
3057 not constitute a Default by the Contractor under this Agreement. Notwithstanding the foregoing,  
3058 however, if the Contractor is excused from performing its obligations hereunder because of any  
3059 Uncontrollable Circumstance for a period of thirty (30) days or more, the County shall nevertheless  
3060 have the right, in its sole discretion, to terminate this Agreement by giving sixty (60) days' notice.

3061 C. **Work Stoppages.** Notwithstanding anything in this Agreement to the contrary, any strikes, work  
3062 stoppages, or other labor disputes or disturbances occurring with respect to an activity performed  
3063 or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with  
3064 the Operating Assets or the Collection Services and which last beyond seven (7) days shall not  
3065 constitute an Event of Default under Section 14.1.A.

3066 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to  
3067 Collect, Transport and Dispose of any or all the Solid Waste and Recyclable Materials which it is  
3068 obligated under this Agreement to Collect, Transport or Dispose of for a period of more than  
3069 seventy-two (72) hours and the County Contract Manager, in their discretion, should find that such  
3070 accumulation endangers or menaces the public health, safety or welfare, then County shall have  
3071 the right, upon twenty-four (24) hours' notice to Contractor, to find the Contractor in Default and  
3072 to contract with any other third parties to Collect and Transport any and all Solid Waste and  
3073 Recyclable Materials which Contractor would otherwise be obligated to Collect and Transport  
3074 pursuant to this Agreement. Contractor agrees that in such event, it will fully cooperate with County  
3075 and its third-party contractor to affect such transfer of operations in as smooth and efficient a  
3076 fashion as is practicable. All costs, fees, rates or other expenses incurred by County and/or its third-  
3077 party contractor that exceed those that would have been incurred by County had no such  
3078 emergency arisen shall be the responsibility of the Contractor and shall be paid to County within  
3079 thirty (30) days of receipt of written notice to pay.

#### 3080 **Section 14.4: Right to Demand Assurances of Performance**

3081 If the County believes in good faith that the Contractor's ability to perform under the Agreement has been  
3082 placed in substantial jeopardy by one (1) or more of the events enumerated below, the County Contract  
3083 Manager may, at their option and in addition to all other remedies the County may have, require that  
3084 Contractor provide County Contract Manager with sufficient proof that none of the events enumerated  
3085 below will in fact impair Contractor from performing its obligations under the Agreement:

3086 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,  
3087 picketing, or other concerted job action.

3088 B. Contractor appears, in the reasonable judgment of the County, to be unable to regularly pay its bills  
3089 as they become due.

3090 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, state, regional,  
3091 or local agency for violation of any law, including, but not limited to environmental law.



3092 D. Contractor is subject to unusual circumstances which the County believes could lead to an  
3093 interruption in service.

3094 If the Contractor fails or refuses to provide to the County adequate information to establish its ability to  
3095 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of Section  
3096 14.1.A.

3097 **Section 14.5: Waiver of Defenses**

3098 In order to ensure the non-interruption of a vital public service, except as provided in Section 14.3, the  
3099 Contractor acknowledges that it is solely responsible for providing the services described herein, and  
3100 hereby irrevocably waives the following defenses to the payment and performance of its obligations  
3101 under this Agreement: any defense based upon failure of consideration, contract of adhesion,  
3102 impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-  
3103 existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that  
3104 may be a basic assumption of the Contractor with regard to any provision of this Agreement.

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## **ARTICLE 15: RESOLUTION OF DISPUTES**

3106 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any  
3107 time during the term of this Agreement, the provisions of this Article shall apply. Either Party shall give  
3108 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to  
3109 meet and confer in good faith to resolve any dispute that may arise. In the event such dispute cannot be  
3110 resolved by the Parties themselves within thirty (30) days of such notice, either Party may propose the  
3111 appointment of a mediator. If the other Party is in agreement, both Parties may refer the matter in dispute  
3112 to such mediator for advice and non-binding mediation. If the mediator is unable, within 30 days  
3113 thereafter, to reach a determination as to the matter in dispute in a manner acceptable to the Parties  
3114 hereto, the matter may be referred by either Party to a court of competent jurisdiction; provided however  
3115 that nothing herein diminishes the Contractor's requirements to abide by applicable provisions of the  
3116 Government Claims Act (Government Code Section 810 *et seq.*).

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## **ARTICLE 16: MISCELLANEOUS PROVISIONS**

### **Section 16.1: Relationship of the Parties**

Neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contract obligations or liabilities assumed by the other Party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The Contractor is an independent Contractor and Agreement holder and nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

### **Section 16.2: Notice to Parties**

All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change the address to which notice is given by giving notice as provided herein.

To County:

County of Kern  
Attn: County Contract Manager  
2700 'M' Street  
Suite 450  
Bakersfield, CA 93301

To Contractor:

Varner Bros., Inc.  
c/o Burrtec  
9890 Cherry Ave.  
Fontana, CA 92335

### **Section 16.3: Actions of the County in its Governmental Capacity**

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

### **Section 16.4: Binding Effect**

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

3151 **Section 16.5: Amendments**

3152 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except  
3153 by written agreement duly executed by both Parties.

3154 **Section 16.6: Further Assurance**

3155 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or  
3156 reasonably requested by the other in order to give full effect to this Agreement.

3157 **Section 16.7: Assignment and Transfer of Agreement**

3158 A. **Consent of the County Required.** This Agreement shall not be transferred, sold, pledged,  
3159 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,  
3160 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto or  
3161 thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or vest  
3162 in any Person, except the Contractor, either by action or inaction of the Contractor, or by operation  
3163 of law, without the prior written consent of the County, which may be withheld or delayed in its  
3164 sole and absolute discretion.

3165 The Contractor shall provide written notice of any request to assign or transfer this Agreement and  
3166 shall provide the County with any information requested by the County in connection with the  
3167 proposed transfer, including but not limited to information regarding the general business  
3168 qualifications of the proposed assignee, as well as its ability to perform the Collection Services and  
3169 a statement of its financial resources. The Contractor's notice of intention to assign this Agreement  
3170 shall contain a statement of the allocation of dollars in the consideration to be paid by the assignee  
3171 to the Contractor for (a) the exclusive franchise, (b) goodwill, (c) equipment, and (d) any other asset  
3172 transfer which has any connection with said assignment, all as agreed upon by the Contractor and  
3173 the assignee. The notice shall also contain a statement showing the method of payment for the  
3174 consideration and whether the Contractor proposes to hold some security interest as security for  
3175 the payment of the unpaid balance of the consideration.

3176 The County shall respond to any such request within sixty (60) days after receipt of any information  
3177 requested by the County pursuant to the preceding sentence. The Contractor acknowledges that,  
3178 prior to approving such a transfer, the County must find that such a transfer is in the best interests  
3179 of the public health, safety, and general welfare. Any attempt by the Contractor to effectuate any  
3180 of the foregoing without such consent of the County shall be null and void, and any effectuation of  
3181 any of the foregoing without such consent of the County shall constitute an Event of Default  
3182 resulting in the immediate termination of this Agreement as provided in Section 14.1.A hereof.  
3183 Notwithstanding anything herein to the contrary, this Section shall not apply to assignments or  
3184 transfers of this Agreement between immediate family members.

3185 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of Section  
3186 16.7(A) above, the Contractor shall not, without the prior written consent of the County which may  
3187 be withheld or delayed in its sole and absolute discretion, consolidate with or merge with another  
3188 entity or permit one (1) or more other entities to consolidate with or merge into it; provided  
3189 however, that this Section shall not apply to transactions between immediate family members.

- 3190 C. **Transfer of Voting Stock.** The County's prior written consent, which may be withheld or delayed in  
 3191 its sole and absolute discretion, shall be required for the sale or transfer by any means, whether by  
 3192 agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce),  
 3193 of any of the voting stock of the Contractor; provided however, that this Section shall not apply to  
 3194 transfers of voting stock between immediate family members or as part of an unqualified  
 3195 employees stock ownership plan.
- 3196 D. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of  
 3197 the County for any transaction described in Section 16.7 hereof, the proposed assignee, as a  
 3198 condition of assignment, shall reimburse the County for all costs and expenses incurred by the  
 3199 County in reviewing, examining, and analyzing the request, including all direct and indirect  
 3200 administrative expenses of the County and consultants and attorney's fees and expenses and the  
 3201 County may request a reasonable upfront deposit. Such costs shall be supported with evidence of  
 3202 the expense or cost incurred.

### 3203 **Section 16.8: Interpretation**

3204 In this Agreement, unless the context otherwise requires:

- 3205 A. **References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms refer  
 3206 to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before,  
 3207 the date of execution of this Agreement.
- 3208 B. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,  
 3209 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal  
 3210 entitles, including governmental bodies, as well as individuals.
- 3211 C. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and  
 3212 subsections of this Agreement shall be solely for convenience of reference and shall not constitute  
 3213 a part of this Agreement, nor shall they affect its meaning, construction, or effect.
- 3214 D. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with  
 3215 respect to the transactions contemplated by this Agreement. Furthermore, nothing in this  
 3216 Agreement is intended to confer on any person other than the parties hereto and their respective  
 3217 successors and assigns hereunder any rights or remedies under or by reason of this Agreement.
- 3218 E. **Reference to Days.** All references to days herein are to calendar days, including Saturdays, Sundays,  
 3219 and holidays, except as otherwise specifically provided.
- 3220 F. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.  
 3221 Standard terms of measurement, unless State or Federal law or regulation specifies the system of  
 3222 measurement to be used.
- 3223 G. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such  
 3224 counterparts shall constitute but one and the same Agreement.
- 3225 H. **Applicable Law.** This Agreement shall be governed by and construed in accordance with then  
 3226 Applicable Law. This Agreement is intended to be fully consistent with the requirements of the  
 3227 County Code and any subsequent amendments thereto. In the event there is an inconsistency or

3228 conflict between this Agreement and the County Code, the County Code is controlling and shall  
3229 substitute for the inconsistent provision. Nothing in this Agreement shall be construed to limit the  
3230 County's legal rights to make subsequent changes to the County Code.

3231 I. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be  
3232 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:

3233 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article which  
3234 shall, to the greatest extent legally permissible, effect the intent of the Parties therein.

3235 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared such  
3236 invalidity for a judicial construction of the invalidated portion of this Agreement.

3237 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this  
3238 Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above,  
3239 to effect the intent of the Parties in the invalid provision. The invalidity of such clause,  
3240 provision, subsection, section, or article shall not affect any of the remaining provisions  
3241 hereof, and this Agreement shall be construed and enforced as if such invalid portion did not  
3242 exist.

3243 **Section 16.9: Jurisdiction**

3244 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the  
3245 courts of Kern County in the State of California, which shall have exclusive jurisdiction over such lawsuits.  
3246 With respect to venue, the Parties agree that this Agreement is made in and will be performed in Kern  
3247 County.

3248 **Section 16.10: Entire Agreement**

3249 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with  
3250 respect to the matters covered herein. Each of the Exhibits identified as Exhibits "A" through "L" is  
3251 attached hereto and incorporated herein and made a part hereof by this reference.

3252

3253 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below:

3254 Dated: 2-7, 2023

Dated: Jan 30, 2023

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3256 **County of Kern, California**

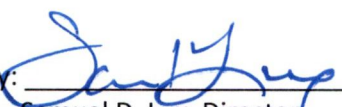
**Varner Bros., Inc.**

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3259 By: \_\_\_\_\_  
3260 Chairman, Board of Supervisors

By:   
\_\_\_\_\_  
Cole Burr, President

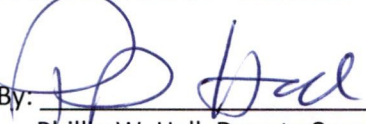
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3263 APPROVED AND RECOMMENDED:

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3265 PUBLIC WORKS DEPARTMENT

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3268 By: \_\_\_\_\_  
3269 Samuel D. Lux, Director

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3271 APPROVED AS TO FORM:

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3273 OFFICE OF COUNTY COUNSEL

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3275 By: \_\_\_\_\_  
3276 Phillip W. Hall, Deputy County Counsel

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3297 **Section 17: Exhibits**

3298 **EXHIBIT A. Approved and Designated Facilities**

3299 **EXHIBIT B. Rate Adjustment Methodology**

3300 **EXHIBIT C. Initial Rates for Collection Services**

3301 **EXHIBIT D. Reporting Requirements**

3302 **EXHIBIT E. Public Education and Outreach Plan**

3303 **EXHIBIT F. SB 1383 Implementation Plan**

3304 **EXHIBIT G. Reserved**

3305 **EXHIBIT H. Approved Subcontractors**

3306 **EXHIBIT I. Reserved**

3307 **EXHIBIT J. County Franchise Zone and Area**

3308 **EXHIBIT K. Contractor’s Service Area**

3309 **EXHIBIT L. Supplemental Schedule**



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**EXHIBIT A  
APPROVED AND DESIGNATED FACILITIES**

**DESIGNATED FACILITIES**

**Designated Disposal Facility**

- American Refuse – Shafter Landfill or Bena Landfill
- South Tulare-Richgrove Refuse – Shafter Landfill or Bena Landfill
- Westside Waste Management – Taft Landfill, Shafter Landfill or Bena Landfill
- Varner Brothers – Bena Landfill or Shafter Landfill
- Price Disposal – Bena Landfill or Shafter Landfill
- Varner & Son – Bena Landfill or Shafter Landfill
- Lamont Sanitation – Bena Landfill or Shafter Landfill
- Howard’s Garbage – Bena Landfill or Shafter Landfill
- Superior Sanitation – Bena Landfill or Shafter Landfill
- Valley Garbage – Bena Landfill or Shafter Landfill
- Thomas Refuse – Bena Landfill or Ridgecrest Landfill
- Mountainside Disposal – Bena Landfill or Shafter Landfill
- USA Waste of California, Inc. – Ridgecrest Landfill, Mojave Landfill, Tehachapi Landfill or Bena Landfill

**Designated Transfer Facility**

- Mountainside Disposal – Lebec Transfer Station (Kern County only – no “out of County” waste)
- Thomas Refuse – Kern Valley Transfer Facility

**APPROVED FACILITIES**

**Approved C&D Processing Facility**

- Hauler Preferences

**Approved Recyclable Materials Processing Facility**

- Hauler Preferences

**Approved Organic/Green Waste Processing/Transfer Facility**

- American Refuse – Shafter Diversion Area or Mt. Vernon Composting Facility
- South Tulare-Richgrove Refuse – Shafter Diversion Area or Mt. Vernon Composting Facility
- Westside Waste Management – Shafter Diversion Area or Mt. Vernon Composting Facility
- Varner Brothers – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- Price Disposal – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- Varner & Son – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- Lamont Sanitation – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- Howard’s Garbage – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- Superior Sanitation – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility

- 3350 Valley Garbage – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3351 Thomas Refuse – Kern Valley Transfer Station, Ridgecrest Diversion Area, or Bena Diversion Area
- 3352 Mountainside Disposal – Bena Diversion Area, Shafter Diversion Area, Lebec Transfer Station or Mt.
- 3353 Vernon Composting Facility
- 3354 USA Waste of California Inc. – Ridgecrest Diversion Area, Mojave Diversion Area, Tehachapi Diversion Area
- 3355 or Bena Diversion Area
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3357 **Approved Green Waste Processing Facility**

- 3358 American Refuse – Shafter Diversion Area or Mt. Vernon Composting Facility
- 3359 South Tulare-Richgrove Refuse – Shafter Diversion Area or Mt. Vernon Composting Facility
- 3360 Westside Waste Management – Shafter Diversion Area or Mt. Vernon Composting Facility
- 3361 Varner Brothers – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3362 Price Disposal – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3363 Varner & Son – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3364 Lamont Sanitation – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3365 Howard’s Garbage – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3366 Superior Sanitation – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3367 Valley Garbage – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3368 Thomas Refuse – Bena Diversion Area or Mt. Vernon Composting Facility
- 3369 Mountainside Disposal – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
- 3370 USA Waste of California, Inc. – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting
- 3371 Facility
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**EXHIBIT B  
RATE ADJUSTMENT METHODOLOGY**

3380 **A. General**

3381 Subject to the terms herein, the Contractor may request, but is not entitled, to an annual adjustment of  
3382 all Rates. Each Rate, excluding special charges, will be subject to a "Rate Adjustment Factor" that is based  
3383 on a "Consumer Price Index for Trash and Garbage Component" which is annually adjusted.

3384 Changes in Rates are subject to approval with properly noticed protest hearings and the process requires  
3385 a substantial amount of time. Therefore, the RAF will be based on the data from the previous fiscal year  
3386 as noted in the example below.

3387

3388 **B. Calculation**

3389 The adjustment to the Rates will be made using the following methodology:

3390 **Step 1:** Determine the "Rate Adjustment Factor" or "RAF". The RAF shall be the annual percentage  
3391 change of the CPI for Garbage and Trash Collection, rounded to the nearest tenth percent. The Rate  
3392 Period will be a 12-month period based on fiscal years, commencing July 1 and concluding June 30.

3393 Reference: Bureau of Labor Statistics, CPI for All Urban Consumers, Garbage and Trash Collection,  
3394 Series ID: CUUR0000SEHG02 (<https://data.bls.gov/timeseries/CUUR0000SEHG02>)

3395 For example:

3396 To determine the RAF to be used in calculating Rates for Fiscal Year 2022-2023 (July 1, 2022 –  
3397 June 30, 2023):

3398 a) Since Fiscal Year 2021-2022 will not be completed at the time when the new Rates are to  
3399 be calculated, data from Fiscal Year 2020-2021 will be used.

3400 • Sum of all monthly CPIs beginning with July 2020 and ending with June 2021 /  
3401 12 = Annual CPI = 509.866 (see table)

3402 b) Compare to the prior Fiscal Year to determine the percentage change in the CPI.

3403 • Sum of all monthly CPIs beginning with July 2019 and ending with June 2020 /  
3404 12 = Annual CPI = 489.715 (see table)

3405

Trash CPI by Fiscal Year

FY	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Annual	Annual %Δ
19-20	482.138	483.987	484.346	486.133	486.485	486.708	491.003	494.429	495.288	494.432	494.946	496.679	489.715	2.64%
20-21	498.564	500.882	501.756	503.315	504.970	508.190	512.722	517.270	518.505	518.579	516.440	517.202	509.866	4.11%

3406 c) Calculate the percentage change to determine the RAF to be used to calculate the Rates  
3407 for Fiscal Year 2022-2023.

3408                                   •    $RAF = (509.866 - 489.715) / 489.715 = 4.11$  or rounded to nearest tenth = 4.1%

3409           **Step 2:** Calculate the adjusted Rate, rounded to the nearest cent, for each Rate as follows:

3410                   Adjusted Rate = Then-current Rate x (1 + RAF)

3411                   For example, assuming:

- 3412                   1.       Then-current Rate = \$50.00 (Deduct Admin Fee if included in the current Rate)
- 3413                   2.       Rate Adjustment Factor = 4.1%
- 3414                   3.       Adjusted Rate =  $\$50.00 \times (1 + 0.041) = \$52.05$

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**EXHIBIT C**  
**INITIAL RATES FOR COLLECTION SERVICE**  
**PENDING APPROVAL BY THE BOARD OF SUPERVISORS AND**  
**THROUGH THE PROPOSITION 218 PROCESS**

<b>RESIDENTIAL MONTHLY RATES</b> <b>ZONE 2</b> <b><u>Haulers</u></b> <b>Howard's Garbage, Lamont Sanitation, Price Disposal,</b> <b>Superior Sanitation, Varner and Sons, Varner Bros.,</b> <b>Valley Garbage</b>	<b>Effective</b> <b>July 2023</b>
<u>Metro Bakersfield Universal Collection Area - Mandatory Service</u> Three Cart Service including Refuse, Recycling and Organics*	<b>\$30.72</b>
<u>Non-Tax Roll Billed Area - Voluntary Service</u> Residential Refuse Service - Single Family Home per unit* Refuse + Organics Service	<b>\$26.09</b>
Residential Refuse Service - Multi-Family (2-4 units) per unit* Refuse + Organics Service	<b>\$23.27</b>
Residential Refuse Service - Mobile Homes per unit* Refuse Service (96 gals)	<b>\$19.82</b>
Residential Refuse Service - Mobile Homes per unit* Refuse + Recycling Service (96 gals)	<b>\$25.07</b>
Residential Refuse Service - Mobile Homes per unit* Refuse + Recycling Service (64 gals)	<b>\$18.25</b>
Residential Refuse Service - Mobile Homes per unit* Refuse + Recycling Service (64 gals)	<b>\$23.46</b>
Additional Cart Refuse Service per unit	<b>\$13.61</b>
Additional Cart Recycling Service per unit**	<b>\$7.00</b>
Additional Cart Organics Service per unit**	<b>\$10.98</b>

\*Charges shown include the Admin Fee of \$1.00 per month per unit.

\*\*Recycling and Organics Service may not be available in voluntary locations.

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**EXHIBIT C  
(CONTINUED)  
INITIAL RATES FOR COLLECTION SERVICE  
PENDING APPROVAL BY THE BOARD OF SUPERVISORS AND  
THROUGH THE PROPOSITION 218 PROCESS**

<b>COMMERCIAL BIN AND CART RATES - JULY 2023</b>
<b>Zone 2</b>
<b>Uncompacted Waste*</b>

Container**			Service Frequency	1st Commercial Container**	Each Additional Commercial Container	Each Additional Service Pickup
Size	Units	Type	Service/Week	\$/Cont./Month	\$/Cont./Month	\$/Cont./Month
96	Gal	Cart	1	\$ 51.22	\$ 43.30	\$ 20.79
1	CY	Bin	1	\$ 108.00	\$ 100.08	\$ 61.18
1.5/300	CY/Gal	Bin	1	\$ 125.70	\$ 117.78	\$ 68.89
2	CY	Bin	1	\$ 150.99	\$ 143.07	\$ 82.60
3	CY	Bin	1	\$ 190.11	\$ 182.19	\$ 92.41
4	CY	Bin	1	\$ 236.24	\$ 228.32	\$ 119.12

\* Bins of mechanically compacted waste or extreme density bins (density > 330 lbs/CY) shall be charged at three times the rate established above.

\*\* Rates include the monthly Admin Fee; \$1.00 per commercial unit per month is included.

<b>ORGANIC WASTE - JULY 2023</b>						
96	Gal	Cart***	1	\$ 48.78	\$ 43.30	N/A
2	CY	Bin	1	\$ 297.10	\$ 286.15	\$ 165.20
3	CY	Bin	1	\$ 375.34	\$ 364.39	\$ 184.82

\*\*\* Commercial carts will only be picked up one time per week, commercial bins can be picked up multiple times per week

<b>ROLL-OFF CONTAINER RATES - JULY 2023</b>	
<b>Zone 2</b>	
Standard Roll-Off Service Fee	\$ 293.23
Rental Per Month <sup>(1,2,3)</sup>	\$ 250.83
Delivery Charge	\$ 135.36
Per Hour Charge	\$ 163.37
Roll-Off Compactor Service Fee	\$ 358.61

<sup>(1)</sup> Monthly rental may be prorated for periods less than one month.

<sup>(2)</sup> Rates include the monthly Admin Fee; \$1.00 per commercial unit per month is included.

<sup>(3)</sup> If account does not include a rental, Admin Fee of \$1.00 per month and SB 1383 Fee of \$1.44 per month will be added

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**EXHIBIT C  
(CONTINUED)  
INITIAL RATES FOR COLLECTION SERVICE  
PENDING APPROVAL BY THE BOARD OF SUPERVISORS AND  
THROUGH THE PROPOSITION 218 PROCESS**

<b>SOURCE SEPARATED RECYCLING RATE SCHEDULE ZONE 2</b>
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<b>Level of Service</b>	<b>Service Rate \$ per Container per month July 2023</b>
96/101 Gallon Commercial Recycling Weekly service*; includes cart rental \$4	<b>\$31.61</b>
96/101 Gallon Commercial Recycling Bi-Weekly service, includes cart rental \$4	<b>\$17.84</b>
300 Gallon Commercial Recycling Weekly service*; includes cart rental \$4	<b>\$71.27</b>
300 Gallon Commercial Recycling Bi-Weekly service, includes cart rental \$4	<b>\$38.25</b>
3 CY Bin Commercial Recycling Weekly service*, includes bin rental \$14	<b>\$117.02</b>
3 CY Bin Commercial Recycling Bi-Weekly service, includes bin rental \$14	<b>\$67.68</b>
6 CY Bin Commercial Recycling Weekly service*, includes bin rental \$20	<b>\$168.74</b>
6 CY Bin Commercial Recycling Bi-Weekly service*, includes bin rental \$20	<b>\$97.45</b>

\*Each additional pick up per week is the Basic Rate minus the cart/bin rental.

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**EXHIBIT D**  
**REPORTING REQUIREMENTS**

3553 **1. General Requirements**

3554 A. **General.** Records shall be maintained in forms and by methods that facilitate flexible use of data  
3555 contained in them to structure reports, as needed. Reports are intended to compile recorded data  
3556 into useful forms of information that can be used to, among other things:

- 3557 1. Determine, set, and if needed defend, Rates and evaluate the financial efficacy of operations.
- 3558 2. Provide concise and comprehensive program information and metrics for use in fulfilling  
3559 reporting requirements under AB 939, AB 341, AB 1826, SB 1383, or other Applicable Law.
- 3560 3. Determine needs for adjustment to programs.
- 3561 4. Evaluate Contractor compliance with the provisions of this Agreement.
- 3562 5. Evaluate Customer service and complaints.

3563 B. **Report Format and Submittal.** Contractor shall submit monthly reports within thirty (30) calendar  
3564 days after the end of the calendar month, bi-monthly reports within thirty (30) calendar days after  
3565 the end of the appropriate calendar month and annual reports no later than forty-five (45) calendar  
3566 days after the end of each calendar year, unless another timeframe is otherwise specified in this  
3567 Agreement for certain provisions. Monthly, bi-monthly and annual reports shall, at a minimum,  
3568 include all data and information described in this Exhibit D.

3569 Contractor shall submit all reports using a report template and format designated or by the County.  
3570 In addition to the completed template report, the Contractor shall submit the system-generated  
3571 source reports or other source data used to complete the template. The Contractor may propose  
3572 modifications to the report template and format to the County Contract Manager for consideration;  
3573 however, the County is in no way obligated to make such changes and retains the right to determine  
3574 the designated report format. The County Contract Manager may, from time to time during the  
3575 Term of the Agreement, review and make changes to the report template and format. The County  
3576 shall provide the updated template to the Contractor at least thirty (30) days prior to the next  
3577 required bi-monthly reporting period, and such change shall not be considered a change in scope  
3578 pursuant to Section 5.10. If County does not specify an updated format, Contractor shall use the  
3579 report format specified for the prior reporting period.

3580 All Contractor reports shall be submitted to the County Contract Manager electronically via e-mail  
3581 and shall be fully compatible with Microsoft Excel, or other software specified by the County  
3582 Contract Manager. The County reserves the right to require the Contractor to maintain records and  
3583 submit the reports required herein through use of alternative formats, such as a County-selected  
3584 web-based software platform, at the Contractor's expense.



3585 **2. Bi-monthly Report Content**

3586 Bi-monthly reports shall be presented by Contractor to show the following information for each calendar  
3587 month and include a year-to-date summary page that includes the data submitted from the past twelve  
3588 (12) months for data comparison (the first twelve (12) months of the Agreement shall only include the  
3589 available monthly information). Contractor shall report the information included in the following  
3590 subsections. If any information is not available, please so state and reason for unavailability.

3591 **A. Tonnage Report**

- 3592 1. Tonnage delivered to each Approved or Designated Facility, listed by Customer Type, material  
3593 type, and Facility name (including facilities owned/operated by the Contractor); subtotaling  
3594 and clearly identifying those Tons that are Disposed and those that are Recovered and  
3595 Diverted.
- 3596 2. Report Residue level and Tonnage for all Discarded Materials processed, listed separately by  
3597 material type Collected and Approved Facility(ies) used.
- 3598 3. Tonnage collected at Bulky Waste Collection Events..
- 3599 4. Recyclable Materials Tonnage marketed (by commodity and including average commodity  
3600 value for each, if available) and Processing Residue Tonnage Disposed.

3601 **B. Customer Report**

- 3602 1. Number of Customers by Customer Type; including a list of all Customer account numbers,  
3603 names, addresses, and Service Levels.
- 3604 2. Number of Containers at each Service Level by Customer Type and program. Summarizing the  
3605 total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of  
3606 Roll-Off Container service by Customer Type, including the number of times the Containers  
3607 were serviced. Report should calculate the average volume of service received per Single-  
3608 Family Customer, Multi-Family Customer, and Commercial Customer.
- 3609 3. The type(s) of Collection service(s) provided, a list of all Routes serviced, and a record of the  
3610 addresses served on each Route. If route has commingled loads, the jurisdiction and  
3611 percentages must be specified.
- 3612 4. Number of Bulky Item Collection events by Customer Type.
- 3613 5. Participation percentage by program and Customer Type where the participation percentage  
3614 is calculated as the number of Customers who have subscribed to or requested service under  
3615 the program relative to the number of Customers of that Customer Type subscribing to Solid  
3616 Waste service. Contractor shall not be required to submit participant Customer names and  
3617 addresses as part of the regular reporting; however, such information shall be provided to the  
3618 County Contract Manager upon request.
- 3619 6. Number of Customers subscribing to each County-approved service exemption by Customer  
3620 Type, including the Customer name and address for each waiver; and the total number of de

3621 minimis waivers, physical space constraint waivers, and Collection frequency waivers granted  
3622 in the month in accordance with Section 8.6.

3623 7. The number of waivers reviewed and number of reverification inspections performed by the  
3624 Contractor upon County request, pursuant to Section 8.6 of this Agreement in the month, if  
3625 any, including a copy of documentation for each review and reverification inspection.

3626 8. Upon County request, the Contractor shall submit a report containing the information  
3627 specified in Exhibit D.2.B above for all Customers that receive service on a commingled County  
3628 and City Collection Route, if such combined Routes are approved in accordance with Section  
3629 5.5.F.

3630 **C. Customer Service Report**

3631 1. Number of Customer calls listed separately by complaints and inquiries (where inquiries  
3632 include requests for Recycling information, Rate information, etc.). For complaints, list the  
3633 number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing  
3634 concerns, damage claims, non-compliance, etc.).

3635 2. Record of SB 1383 non-compliance complaints received, including the following information:

3636 a. Total number of SB 1383 non-compliance complaints received in the month.

3637 b. Copies of documentation recorded for each complaint received, which shall at a  
3638 minimum include the following information: (i) The complaint as received; (ii) The name  
3639 and contact information of the complainant, if the complaint is not submitted  
3640 anonymously; (iii) The identity of the alleged violator, if known; (iv) A description of the  
3641 alleged violation; including location(s) and all other relevant facts known to the  
3642 complainant; (v) Any relevant photographic or documentary evidence submitted to  
3643 support the allegations in the complaint; and, (vi) The identity of any witnesses, if  
3644 known.

3645 c. Copies of the complaint reports submitted to the County and the dates of submittal,  
3646 pursuant to Section 10.2.C of this Agreement.

3647 3. Number of new service requests for each Customer Type and program.

3648 4. Number of events of Discarded Materials being tagged for non-Collection summarized by the  
3649 reason for tagging (e.g., inclusion of Prohibited Container Contaminants and type of  
3650 contaminant, improper set-out, etc.)

3651 5. Number of hits and unique visitors to the Contractor's website, if available.

3652 **D. Education and Outreach Report**

3653 1. Provide a status report of Contractor's education and outreach activities completed. For each  
3654 completed item, document the results including what date the activity was performed or  
3655 when the materials were distributed, how many Customers were targeted or participated,

3656 and what methods were used to accomplish the task (e.g., direct outreach, billing insert,  
3657 mailing, etc.).

3658 2. A copy of all education and outreach materials provided to Customers, or otherwise used for  
3659 education and outreach efforts in accordance with Section 8.1 of the Agreement, including,  
3660 but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and  
3661 website and social media postings.

3662 3. For any mass distribution through mailings or bill inserts, provide a record of the date, a copy  
3663 of the information distributed, and the type and number of accounts that received the  
3664 information.

3665 4. A copy of all electronic media, including the dates posted or sent of: social media posts, e-  
3666 mail communications, or other electronic messages, as applicable.

3667 5. Summarize the technical assistance provided to Customers in accordance with Section 8.2,  
3668 including identifying the number of site visits conducted each month, listed separately by  
3669 Customer Type and including the address, contact name, and telephone number of Persons  
3670 contacted. Contractor shall also include the Recyclable Materials, Organic Materials, and Solid  
3671 Waste Service Levels for each Premises, and document any Service Level changes resulting  
3672 from such visits.

3673 6. Dates, times, and group names of meetings and events attended by the Contractor where  
3674 outreach or educational information was provided.

3675 **E. Pilot and New Programs Report**

3676 For the first 180 days of each pilot and/or new program, if any, provide activity-related and narrative  
3677 reports on goals, milestones, and accomplishments. Describe problems encountered, actions taken, and  
3678 any recommendations to facilitate progress. Describe Vehicles, personnel, equipment, or other resources  
3679 utilized for each program.

3680 **F. Revenue Report**

3681 1. Provide a statement detailing Gross Receipts from all operations conducted pursuant to this  
3682 Agreement.

3683 2. Maintain a list of Customers that are forty five (45) or more calendar days past due and include  
3684 the following information for each delinquent account: name; service address; contact  
3685 information; number of days the account is delinquent; method(s) the Contractor has used to  
3686 attempt collection of the bad debt including date of such attempt(s); and, identification if and  
3687 when the Contractor plans to or did stop service to a delinquent account.

3688 **G. Contamination Monitoring and Waste Evaluations Report**

3689 1. The number of Route reviews conducted pursuant to Section 8.4 of this Agreement.

3690 2. Description of the Contractor's process for determining the level of contamination during  
3691 Route reviews.

- 3692 3. A record of each inspection and contamination incident, which shall include, at a minimum:
- 3693 a. Name and address of the Customer.
- 3694 b. The date the contaminated Container was observed.
- 3695 c. The total number of violations found and a description of what action was taken for  
3696 each.
- 3697 d. Copies of all notices to Customers with Prohibited Container Contaminants.
- 3698 e. Photographic documentation (which may include hyperlinks or other digital means of  
3699 access).
- 3700 4. Documentation of the total number of Containers with contents Disposed of due to  
3701 observation of Prohibited Container Contaminants.
- 3702 5. Summary report of courtesy pick-up notices, non-Collection notices, which for each notice  
3703 shall include the date of issuance, Customer name, and service address.
- 3704 6. For Contractor owned or operated facilities, results of the facility evaluations conducted and  
3705 copies of the required records kept in accordance with Section 6.5.
- 3706 7. Any other information reasonably requested by the County or specified in contamination  
3707 monitoring provisions of this Agreement.

3708 H. **Commercial Service Levels and Commercial Bin Fee Report**

3709 The Contractor shall provide monthly reports in a standardized format provided by the County on  
3710 Commercial Bin Fees and shall provide bi-monthly reports on Commercial services, which shall  
3711 include, but is not limited to:

- 3712 1. A list of Commercial Customers in the service area; the name, address and account number  
3713 of the Commercial business or property serviced; and the name of the Generator and/or  
3714 Customer (if different) for Solid Waste, Recyclable Materials, and/or Organic Materials  
3715 management.
- 3716 2. The volume per month of Solid Waste Collection service provided to the Commercial business  
3717 or property.
- 3718 3. The cumulative volume, calendar year-to-date, of Solid Waste Collection service provided to  
3719 the Commercial business, or property.
- 3720 4. The volume per month of Source Separated Recyclable Materials Collection service provided  
3721 to the Commercial business or property.
- 3722 5. The cumulative volume, calendar year-to-date, Recyclable Materials Collection service  
3723 provided to the Commercial business or property.

- 3724 6. The volume per month of Organic Materials collection service provided to the Commercial  
3725 business or property.
- 3726 7. The cumulative volume, calendar year-to-date, of Organic Materials Collection service  
3727 provided to the Commercial business or property.
- 3728 8. The total volume per month of combined Solid Waste, Recyclable Materials, and Organic  
3729 Materials Collection service provided to the Commercial business or property.
- 3730 9. The cumulative volume, calendar year-to-date, of combined Solid Waste, Recyclable  
3731 Materials, and Organic Materials Collection service provided to the Commercial business or  
3732 property.
- 3733 10. The location of the Recyclable Materials Processing Facility(ies) to which the Recyclable  
3734 Materials were taken during the previous quarter, including the tonnage of Recyclable  
3735 Materials delivered to such facility each month.
- 3736 11. Information about changes in Recyclable Materials service such as new Customers or  
3737 cancellations, including Customer name and address.
- 3738 12. The location of the Organic Materials Processing Facility to which the Organic Materials were  
3739 taken during the previous quarter, including the tonnage of Organic Materials delivered to  
3740 such facility each month.
- 3741 13. Information about changes in Organic Materials service such as new Customers or  
3742 cancellations, including Customer name and address.

3743 **3. Annual Report Content**

3744 The annual report shall be the final bi-monthly report plus the following additional information.

3745 **A. Summary Assessment**

- 3746 1. Provide a summary assessment of the programs performed under this Agreement from  
3747 Contractor's perspective relative to the financial and physical status of the program; provide  
3748 recommendations and plans to improve; and highlight significant accomplishments and  
3749 problems. The physical status assessment shall reflect how well the program is operating in  
3750 terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this  
3751 Agreement, particularly the SB 1383 program implementation. Results shall be compared to  
3752 other similar size communities served by the Contactor in the State.

3753 **B. Collection Report**

- 3754 1. A summary of Customer subscription data, including the number of accounts and the total  
3755 number of Generators enrolled with Contractor for service, listed separately by: Customer  
3756 type, Discarded material type, Container type (Cart, Bin, and Roll-Off service), and Service  
3757 Level.

3758 2. A detailed list of Single-Family, Multi-Family, and Commercial Customer information,  
3759 including Service Levels, Customer type, Customer name or account number, and Customer  
3760 service addresses.

3761 3. The total Tonnage amount of Discarded Materials, listed separately by Discarded Material  
3762 type, removed from illegal disposal sites as part of an abatement activity or as otherwise  
3763 required by this Agreement, with each Collection event listed separately by date, location,  
3764 and Tons Collected.

3765 4. A record of Bulky Waste Collection events conducted in accordance with Section 5.6.A,  
3766 including the event date, location, and Tonnage of Bulky Waste Collected during the event.

3767 C. **Processing Report**

3768 1. A record of all compliance agreements for quarantined Organic Waste that is Disposed of,  
3769 including the name of Generator, date issued, location of final disposition, and the amount of  
3770 quarantined Organic Waste that was required to be Disposed at a Landfill, pursuant to Section  
3771 8.6 of the Agreement.

3772 2. Temporary Equipment or Operations Failure Report. If the Contractor is granted a Processing  
3773 Facility temporary equipment or operational failure waiver, in accordance with Section 8.6.2  
3774 of the Agreement, the Contractor shall include the following documents and information:

3775 a. The number of days the Processing Facility temporary equipment waiver or operation  
3776 failure waiver was in effect.

3777 b. Copies of any notifications sent to the County pursuant to Section 8.6.2 of the  
3778 Agreement, and copies of County notices to Contractor pursuant to Section 8.6.2 of the  
3779 Agreement.

3780 c. Documentation setting forth the date of issuance of the waiver and the timeframe for  
3781 the waiver.

3782 d. A record of the tons of Discarded Materials redirected to an alternative facility or  
3783 Disposed at the Designated Disposal Facility as a result of the waiver, by material type.

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3785 D. **Recyclables Markets Report**

3786 Contractor shall include a listing of markets for Recyclable Materials and the end use of these materials.  
3787 This type of information is intended to help the County gauge the sustainability of Recycling markets and  
3788 the ultimate Disposal of all types of materials Collected.

3789 E. **Operational Information Report:**

3790 1. Routes by Customer Type:

3791 a. Number of Routes per day.

- 3792 b. Types of vehicles.
- 3793 c. Crew size per route.
- 3794 d. Number of full time equivalent (FTE) routes.
- 3795 e. Number of accounts and cubic yards scheduled per route.
- 3796 f. Total Route hours per Customer Type per year.
- 3797 g. Average cost per Route.
- 3798 2. Personnel:
  - 3799 a. Organizational chart.
  - 3800 b. Job classifications and number of employees (e.g., administrative, Customer service
  - 3801 representatives, drivers, supervisors, educational staff).
  - 3802 c. Wages by job classification.
  - 3803 d. Number of full-time equivalent positions for each job classification.
  - 3804 e. Number of hours per job classification per year.
- 3805 3. Productivity Statistics:
  - 3806 a. Average number of accounts per Route per day by Customer Type.
  - 3807 b. Average number of setouts per Route per day by Customer Type.
  - 3808 c. Average Tons per Route per day by vehicle type (i.e., side-loader, front-loader, and roll-
  - 3809 off).
  - 3810 d. Average cubic yards of Collection scheduled per Route.
- 3811 4. Vehicles:
  - 3812 a. List of Collection Vehicles including year purchased and mileage.
  - 3813 b. Average age of mobile equipment with oldest and newest.
- 3814 5. Operational Changes:
  - 3815 a. Number of Routes.
  - 3816 b. Staffing.
  - 3817 c. Supervision.

3818 d. Collection services.

3819 F. **Commercial Edible Food Generator Report**

3820 A list of all Commercial Customers, including the Customer name, service address, contact information,  
3821 and identification of which Commercial Customers that qualify or appear to qualify as Tier One  
3822 Commercial Edible Food Generators, Tier Two Commercial Edible Food Generators, or “Non-covered”  
3823 Edible Food generators (i.e., a business that sells or otherwise generates Edible Food, but does not meet  
3824 the specifications of either a Tier One or Tier Two Commercial Edible Food Generator), including the  
3825 specific type of entity for each (e.g., grocery store, restaurant, food distributor, etc.).

3826 G. **Compliance Program Report.**

3827 A copy of all written and/or electronic records for each inspection or compliance review conducted upon  
3828 County request, if any, in accordance with Section 8.7, which, for each review shall include the following  
3829 information:

- 3830 1. The account name and service address of the Customer(s) inspected or reviewed.
- 3831 2. Date of the review.
- 3832 3. Copies of any written notices or education materials provided to non-compliant Generators,  
3833 or a description of direct outreach conducted.

3834 **4. Other Reports**

3835 A. **AB 901 Reporting.** At the County’s option, County may require that Contractor provide the County  
3836 copies of Contractor’s AB 901 reports on a regular basis (such as monthly, bi-monthly, quarterly, or  
3837 annually) or within ten (10) business days of County request as appropriate.

3838 B. **Customized Reports.** The County reserves the right to request Contractor to prepare and provide  
3839 customized reports from records Contractor is required to maintain; or specify a different format  
3840 or submission system, such as the use of a web-based software platform.

3841 C. **New Reports.** Given the lengthy term of this Agreement, it is understood and acknowledged that  
3842 the County’s reporting, documents, and/or data needs may change in the future. Therefore, the  
3843 County reserves the right to require the Contractor to prepare and provide reports additional  
3844 reports, documents, and/or data which are not currently provided for in this Agreement.

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**EXHIBIT E  
PUBLIC EDUCATION AND OUTREACH**

Contractor shall, at its own expense, provide education and outreach materials to Customers in accordance with Section 8.1 at the frequencies specified in this Exhibit E, unless otherwise specified in Section 8.1. Contractor is required to conduct all public education and outreach requirements specified in the Agreement, including the Contractor’s SB 1383 Implementation Plan, regardless of whether the activities are specifically listed in the summary table below. All Contractor-produced materials shall be approved by the County Contract Manager prior to distribution. Distribution may be in the form of printed materials or may be delivered by electronic means.

<b>Program or Topic***</b>	<b>Distribution Frequency*</b>
Bulky Waste Collection	Twice per year, or more frequently as requested
Mandatory Residential Recyclables and Organic Materials Collection; including SB 1383 requirements	Quarterly **
Mandatory Commercial Recycling and Organic Materials Collection; including AB 1826, AB 341, and SB 1383 requirements	Quarterly**
Household Hazardous Waste (HHW)	Annually, or more frequently as requested
Home-Generated Sharps Program	Annually, or more frequently as requested (if applicable)
Facility information and Facility drop-off events	Twice per year, or more frequently as requested (if applicable)
Other topics	As requested

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\*In addition to the frequencies specified above, Contractor shall provide education and outreach materials to all Customers prior to commencement of the agreement and to any new Customers that subscribe to service during the Term of the Agreement.

\*\*Multi-Family and Commercial property owners may request materials more frequently in order to comply with SB 1383 requirements to provide educational information to new tenants.

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**EXHIBIT F**  
**SB 1383 IMPLEMENTATION PLAN**

3873 **SB 1383 Implementation Plan – Hauler Operations**

	<b>SB 1383 Requirement</b>	<b>County Responsibility</b>	<b>Hauler Responsibility</b>
<b>Hauler Regulation</b>			
1.	A jurisdiction may designate a public or private entity to fulfill its responsibilities under SB 1383 through a contract with a hauler or agreements such as MOUs with other jurisdictions. (§18981.2)	County currently uses Franchise Haulers and will continue this process but will restate all agreements for compliance with the requirements of SB 1383.	Contractor has negotiated with County on a restated agreement.
2.	A jurisdiction shall require haulers providing residential, commercial, or industrial organic waste collection services to generators within its boundaries to meet the requirements and standards of SB 1383. (§18988.1)	County will provide restated franchise agreements to all Haulers that include the requirements of SB 1383.	Contractor to review and coordinate with the County to reach a final signed agreement shortly after the start of 2023.
3.	A hauler providing residential, commercial, or industrial organic waste collection shall transport organic waste to a facility approved by the jurisdiction. (§18988.2)	County will provide designated disposal locations and approve organic disposal facilities and recycling facilities as per requirements of the regulation.	Contractor may identify preferred facilities and will transport the appropriate waste to the appropriate facility as designated and approved by the County.
<b>Collection</b>			
4.	A jurisdiction shall provide Organic Waste Collection Services by providing a three container system (or other appropriate system). (§18984.1)	County chose 3 container system (green, blue and gray containers) for all Universal Collection Areas and will establish new or expanded Universal Collection Areas that meet the Census Tract population requirements and may also establish new Universal Collection Areas where the three container system would be advantageous.	Contractor to provide collection services in all of the mandatory areas and transport each type of waste to the appropriate facility.

	<b>SB 1383 Requirement</b>	<b>County Responsibility</b>	<b>Hauler Responsibility</b>
5.	A jurisdiction may comply with the requirements by implementing the three container system and providing a green container, blue container, and a gray container. The green container is for the collection of organic waste only. The blue container is provided for the collection of non-organic recyclables but may also include paper products and printing and writing materials. The gray container shall be for the collection of non-organic waste only. (§18984.1)	County will designate materials for inclusion in each container.	Contractor will transport materials from each type of container to the approved facility for that container type.
6.	A jurisdiction may allow organic waste to be collected in plastic bags and placed in the green container if the facilities that recover the source separated organic waste provides annual written notice to the jurisdiction that the facility can remove plastic bags when it recovers source separated organic waste. (§18984.1.d)	County will include compostable plastic bags for use in the green container in the agreement.	Contractor may Collect Organic Material in compostable plastic bags placed inside Organic Material Containers for Processing.
7.	A jurisdiction will provide Collection Containers to generators that have lids that comply with color requirements when replacing containers or by January 1, 2036, whichever comes first. (§18984.7)	County to review and approve Container colors to be provided to Customers by Contractor. County will also review and approve a detailed plan and timeline for distribution.	Contractor to provide Containers to Customers that comply with SB 1383 requirements. Contractor shall not be required to replace existing Containers, including Containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.
8.	A jurisdiction shall clearly label or imprint all new containers or lids to include language or graphic materials indicating primary materials that are accepted and rejected in each container. (§18984.8)	County to review, comment on, and approve Container labels.	Contractor to place County-approved labels on all new Containers; labels should include text and/or graphic images that indicate primary materials that are accepted and primary materials that are not accepted for each Container type. Labels shall be placed on new Containers before or at time of initial Container delivery to Customer.

	<b>SB 1383 Requirement</b>	<b>County Responsibility</b>	<b>Hauler Responsibility</b>
<b>Contamination Monitoring</b>			
9.	<p>A jurisdiction shall monitor the containers to minimize prohibited contaminants. This requirement may be met by conducting route reviews such that all hauler routes are inspected annually. During each route review, inspect randomly selected containers for contaminants and determine organic waste generator compliance (organic waste generators must subscribe to collection service or self-haul organic materials; commercial organic waste generators are also required to provide color-compliant containers to their customers).</p> <p>If contamination is found during route reviews or if inspected generators are out of compliance, notify such generators of recycling requirements (§18984.5; §18995.1; §18984.9)</p> <p>“Route review(s)” means a visual inspection of containers along a hauler route for the purpose of determining contamination, and may include mechanical methods such as the use cameras. (§18982)</p> <p>“Hauler route” means the designated itinerary or sequence of stops for each segment of the jurisdictions collection services. (§18982)</p>	<p>County to review, comment on, and approve route review plan and methodology provided by Contractor.</p> <p>County to review, comment on, and approve content and design of notices to be distributed by Contractor to noncompliant generators.</p>	<p>Contractor shall develop a plan and methodology, to be approved by County, for conducting annual route reviews such that an adequate number of Containers are inspected on all routes annually.</p> <p>The amount of Containers that must be inspected per Route shall be based on guidelines provided below.</p> <ol style="list-style-type: none"> <li>1. For routes with less than 1,500 generators the review shall include a minimum of 25 samples.</li> <li>2. For routes with 1,500-4,000 generators the review shall include a minimum of 30 samples.</li> <li>3. For routes with 4,001-7,000 generators the review shall include a minimum of 35 samples.</li> <li>4. For routes with more than 7,000 generators the review shall include a minimum of 40 samples.</li> </ol> <p>(Franchise Agreement – Section 8.4)</p> <p>In the event that Contractor identifies contamination, Contractor shall be responsible for affixing a County-approved notice on to Customer's Containers, documenting the location or account where contamination was present.</p> <p>Contractor shall provide bi-monthly reports to County summarizing the results of each route review and recording, at a minimum, each contamination location, corresponding photographic evidence, and date of Customer contamination identified.</p>

	<b>SB 1383 Requirement</b>	<b>County Responsibility</b>	<b>Hauler Responsibility</b>
<b>Waivers</b>			
10.	A jurisdiction may grant one or more waivers to a generator of organic waste (de minimis, physical space or collection frequencies) (§18994.11)	County shall provide Contractor with a list of commercial accounts that have received County-approved organics collection waivers.  County shall be responsible for reverification of any waiver.	Contractor shall maintain records of all Customers granted each type of waiver by the County and documentation of reverifications and may be required to update Service Levels.
<b>Edible Food Recovery Program Support</b>			
11.	A jurisdiction shall implement an edible food recovery program. (§18991.1)	Other County departments will handle the Food Recovery Program	Contractor shall identify and provide a list to the County of Commercial Customers that qualify, or appear to qualify as Tier One and Tier Two Commercial Edible Food Generators and update annually.
<b>Education &amp; Outreach</b>			
12.	A jurisdiction shall initially, and annually thereafter, provide generators with information on properly separating materials, organic waste prevention, on-site recycling, community composting, methane reduction benefits, how to recycle organic waste, a list of approved haulers, and information related to food recovery. (§18985.1.a)	County to collaborate with the Contractor and will provide the content and design of public education and outreach materials.	Contractor to distribute County-approved educational material to any new customer and on a regular basis as per Section 8.1 and Exhibit E and otherwise provided in the section using multiple media sources including print and digital media and shall be available in English and Spanish.  Contractor will provide educational and outreach materials to Multi-Family premises on as per Section 8.1 and Exhibit E.  Contractor will provide all public education and outreach materials to Commercial customers.  Contractor shall develop a website/webpage specific to its operations for the County with County specified topics to be presented.  Contractor shall designate a staff member to serve as a Public Education and Outreach Coordinator and will provide thorough training for the Coordinator on the requirements of the County's collection programs and all relevant regulations.

	<b>SB 1383 Requirement</b>	<b>County Responsibility</b>	<b>Hauler Responsibility</b>
13.	Translate educational materials required into any non-English language spoken by a substantial number of the public provided organic waste collection services by the jurisdiction. (§18985.1.e)	County to translate County-developed education and outreach materials, and translate such materials as needed.  County to provide translated outreach materials to Contractor for website posting.	Contractor to post County-developed educational material that has been translated by County on its website annually or as requested by County. Contractor shall post material on its website within two weeks of County's initial request.
<b>Record Keeping &amp; Reporting</b>			
14.	By April 1, 2022, a jurisdiction shall file an initial compliance report that includes copies of adopted ordinances, items required for the annual report under Section 18994.2.b, and contact information for the responsible party for compliance-related issues (§18994.1 and §18815.4)  Commencing August 1, 2022, a jurisdiction shall submit an annual report relative to compliance with SB 1383; the first report is due October 1, 2022 for the period of January 1, 2022 to June 30, 2022. (§18994.2)	County to compile and submit relevant documentation for the initial compliance report and the annual report.  The County shall compile documentation that details the County's Hauler oversight.	Contractor shall supply County with reports documenting organic waste collection services; contamination monitoring; education and outreach efforts; and the monitoring and enforcement program as specified in Exhibit D for hauler operations.
15.	Maintain all implementation records in a central location (physical or electronic) that can be made available to or accessed by CalRecycle within ten business days. (§18981.1, §18984.4.a, §18984.6, §18984.14, §18985.3, §18988.4, §18991.2, §18993.2, §18995.2)	County to maintain all implementation records including: ordinances, enforceable mechanisms, contracts, or agreements; waiver and exemption records; hauler program records.	Contractor shall provide data to meet this requirement as per Exhibit D.

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**EXHIBIT G**  
**RESERVED FOR FUTURE USE**

**EXHIBIT H**  
**APPROVED SUBCONTRACTORS**

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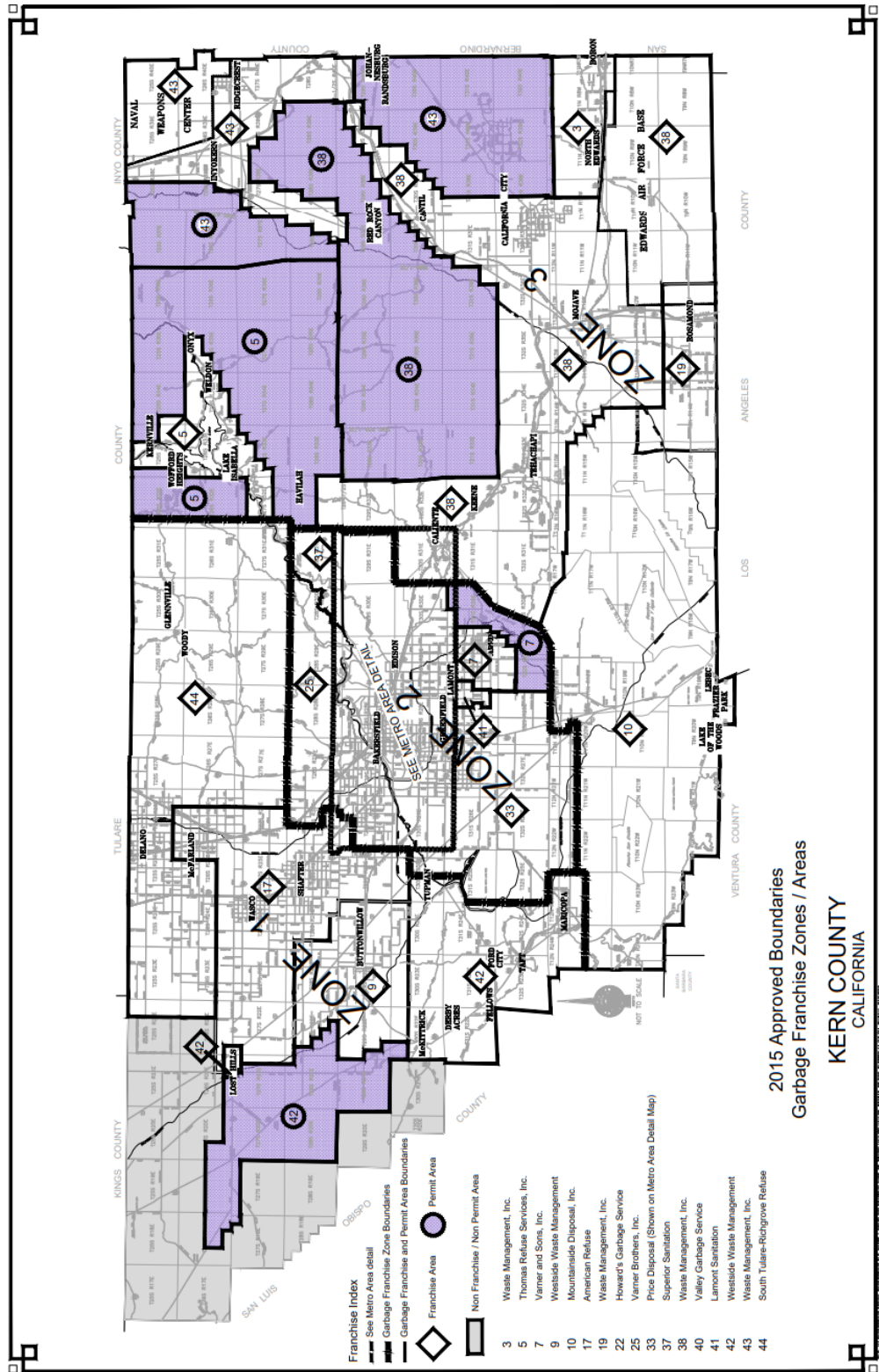


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**EXHIBIT I**  
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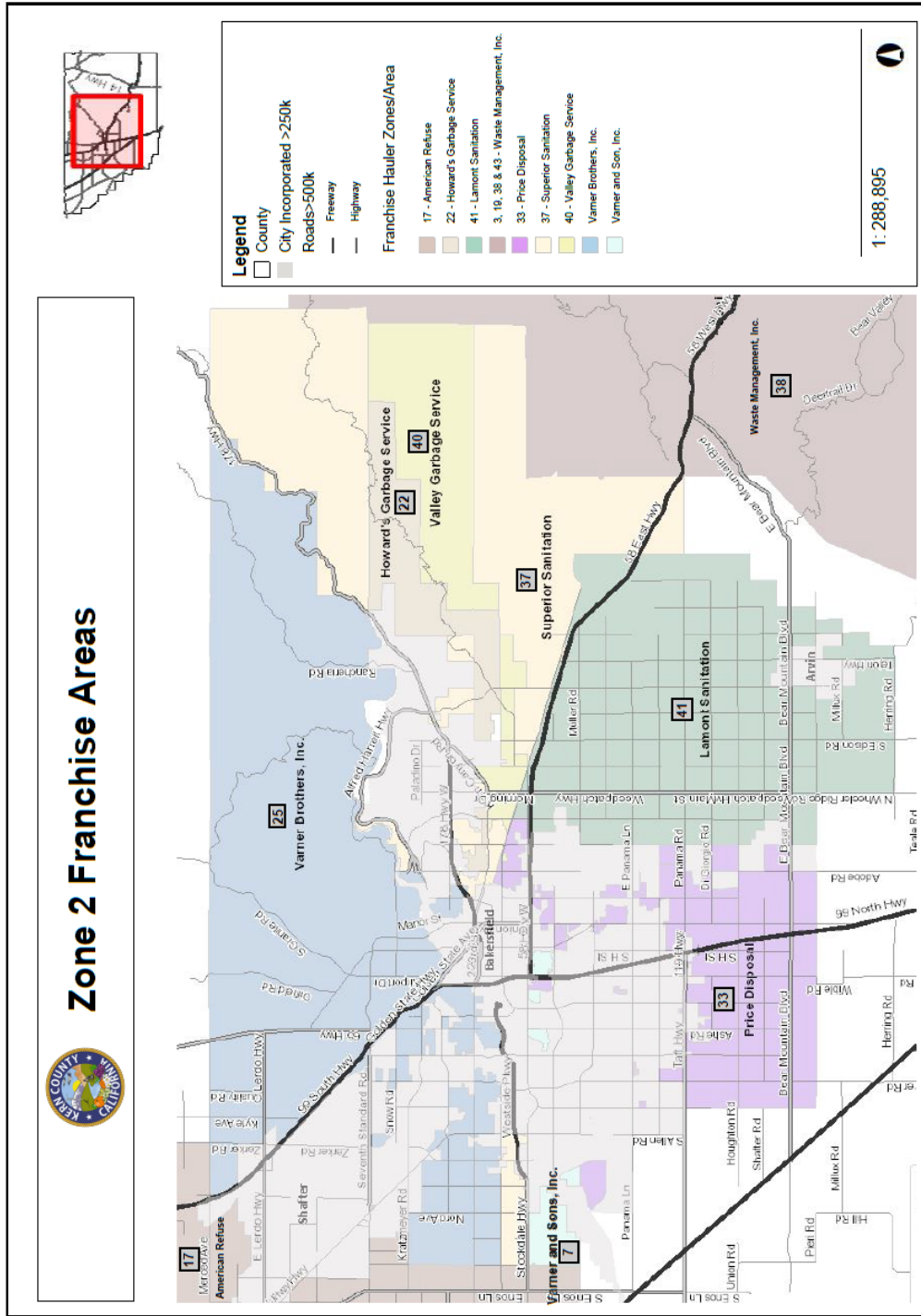
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## EXHIBIT J COUNTY FRANCHISE ZONE AND AREA



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**EXHIBIT K  
 COUNTY SERVICE AREA**



**EXHIBIT L  
SUPPLEMENTAL SCHEDULE**

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4066 **Supplemental Schedule to include the following detail:**

4067 Revenues and Other Income

4068 Commercial/industrial revenue  
4069 Residential – tax roll billed revenue  
4070 Residential – non-tax roll billed revenue  
4071 Recycling revenue  
4072 Other income (list)

4073 **Operating Costs and Other Deductions**

4074 **Operating Costs**

4075 Salaries, wages and employee benefits – direct (Operations)  
4076 Laundry/uniform expense  
4077 Vehicle expense – maintenance and repair  
4078 Fuel expense – gas, oil, diesel, RNG/CNG/LNG  
4079 Insurance expense – Vehicle  
4080 Other operating expenses – (Please describe)

4081 **Overhead Costs**

4082 Salaries, wages, and employee benefits – overhead (Office, shop, and other non-driver  
4083 personnel)  
4084 Materials and supplies expense – (Office and shop)  
4085 Rent expense  
4086 Utility expense – power, water, internet, telephone  
4087 Travel, meals, entertainment expense  
4088 Advertising and promotional expense  
4089 Memberships and subscription expense  
4090 Professional services expense  
4091 Taxes other than income  
4092 Other costs – overhead (Please describe)

4093 **Other Costs**

4094 Recycling processing expense (List recycling revenue above)  
4095 Interest and debt expense  
4096 Depreciation and amortization  
4097 Other expenses (list)

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