Kern County
Agt. # 065-2023

RESTATED
EXCLUSIVE SOLID WASTE
FRANCHISE AGREEMENT
BETWEEN
THE COUNTY OF KERN
AND
VALLEY GARBAGE SERVICE, LLC.

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FEBRUARY 2023

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Kern County
Agt. # 065-2023

EXCLUSIVE SOLID WASTE FRANCHISE AGREEMENT

This Restated and now Exclusive Solid Waste Franchise Agreement (the "Agreement") is hereby entered into on the 7th day of February 2023 with the provisions herein becoming effective July 1, 2023, by and between the County of Kern, a political subdivision of the State of California, (hereinafter, the "County"), and Valley Garbage Service, LLC., a California corporation, (hereinafter, the "Contractor") (together, the "Parties").

RECITALS

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

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

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

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

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to be insufficient to meet the recent changes in law and therefore said existing nonexclusive franchise agreement is superseded in its entirety by this Restated Exclusive Franchise Agreement; and,

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

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

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

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

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

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

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

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

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

ARTICLE 1: DEFINITIONS

Section 1.1: DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Compostable Plastic Bags" means plastic bags that are made of Compostable Plastic and are certified "compostable" by the Biodegradable Products Institute (BPI).

"Compostable Plastics" means plastic materials that meet the ASTM D6400 standard for compostability.

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

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

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

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

"Container(s)" mean Bins, Carts and Roll-Off Containers.

"Contractor" means Contractor organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

"County" means the County of Kern, California, a political subdivision of the State, acting through its Board of Supervisors.

"County Code" means the Kern County Codified Ordinances, as it may be amended, supplemented, superseded, or modified from time to time.

"County Contract Manager" means the County Public Works Director or their designated representative who is responsible for the administrative management of this Agreement.

"County Fees" shall mean those fees described in Article 11 of this Agreement.

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

"Customer" means Person who is provided service by the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A food bank as defined in Section 113783 of the Health and Safety Code;

2. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

3. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

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

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

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

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

“Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of Organic Materials.

“Franchise Zone 2-40” means that portion of the unincorporated area of the County as described in Section 5.36.030 of the County Code and as depicted in Exhibit J.

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

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

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

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

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

"Hazardous Waste" means:

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

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

2. The Toxic Substance Control Act (L5 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766.

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

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

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

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

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

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

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

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

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

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

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

“Liquid Waste" means watered or dewatered sewage or sludge.

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

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

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

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

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

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

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

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

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

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

"Municipal Code" means the County’s Codified Ordinances, as the same may be amended, supplemented, or modified from time to time.

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

"Occupant" means the Person who occupies a Premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Routing and Collection System" means the Routing and Collection System for Solid Waste and Recyclable Materials which is in effect as of the effective date of this Agreement.

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

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

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

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

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

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

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

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

"Service Level" refers to the size of a Customer's Containers, number of Containers, frequency of Collection, scheduled Collection day, and any ancillary services, which form the basis for provision of and charges for service.

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

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

"Single-Unit Dwelling" means a dwelling designed for or occupied exclusively for human shelter by one (1) family.

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

"Source Separated" means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, Processing, recovery, or reuse.

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

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

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

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

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

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

A. Supermarket.

B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.

C. Food Service Provider.

D. Food Distributor.

E. Wholesale Food Vendor.

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

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

A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.

B. Hotel with an on-site food facility and 200 or more rooms.

C. Health facility with an on-site food facility and 100 or more beds.

D. Large Venue.

E. Large Event.

F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.

G. A local education agency with an on-site food facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Any strikes, work stoppages, or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Collection Services and which last beyond seven (7) days.

G. Any failure of any Subcontractor to furnish labor, materials, service, or equipment for any reason.

H. Vehicle or equipment failure.

I. Any impact of prevailing wage law, customs, or practices on the Contractor's construction or operating costs; or,

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

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

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

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

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

ARTICLE 2: GRANT AND ACCEPTANCE OF EXCLUSIVE FRANCHISE

Section 2.1: Grant and Limitations of Exclusive Franchise

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 3.1: Representations and Warranties

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

A. **Existence and Powers**. The Parties are duly organized and validly existing as a corporation under the laws of the State of California, with full legal right, power, and authority to enter into and perform their obligations under this Agreement.

B. **Due Authorization and Binding Obligation**. The Parties have duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally.

C. **No Conflict**. Neither the execution, nor the performance by the Parties of their obligations under this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, franchise, agreement (including, without limitation, the certificate of incorporation of the Contractor), or instrument to which the Contractor or any Affiliate is a party or by which the Contractor or any Affiliate or any of their properties or assets are bound, or constitutes a default under any such judgment, decree, agreement, or instrument. The Contractor is aware of Conflicts of Interests laws including, but not limited to, the provisions and regulations of common law and the Political Reform Act. Likewise, the Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code and the associated sections of the California Code of Regulations relating to conflicts of interest for public officers and employees and the Contractor acknowledges that said laws may change from time to time and at all times the Contractor shall abide by said laws and the failure to do so would be a material breach of this Agreement. Contractor represents that it has performed its due diligence in this regard and it is unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement.

D. **No Litigation**. There is no action, suit, or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending, or to the Parties' best knowledge, threatened against either Party which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by either Party in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by that Party of its obligations hereunder or by the Contractor under any such other agreement or instrument.

E. **No Legal Prohibition**. The Parties have no knowledge of any Applicable Law in effect on the Agreement Date which would prohibit the performance by either Party of this Agreement and the transactions contemplated hereby.

F. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters into consideration in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

G. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, handle, Process, Recycle, and Dispose of all Discarded Materials (including Solid Waste, Organic Materials, Recyclable Materials, and Construction & Demolition Debris); and Contractor possesses the equipment, facility, and employee resources required to perform this Agreement. If Contractor does not possess such resources, Contractor must have an agreement in writing (a Subcontract) signed by the parties to be bound for such services necessary to insure Contractors full performance under this Agreement. Any and all Subcontracts shall be included in Exhibit H or later approval shall be requested from County's Contract Manager for a change in Subcontract or Subcontractor. Subcontractors shall be strictly held to the provisions of this Agreement and any breach of said provisions shall be deemed a material breach by the Contractor.

H. **Voluntary Use of Designated Disposal Facilities.** The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Designated Disposal Facility for the purposes of Disposing of all Solid Waste Collected in the County, and the other Designated Facilities for the relevant Transfer, Transport, and Processing of Discarded Materials. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any change in law regarding Flow Control limitations or any definition thereof.

ARTICLE 4: TERM OF AGREEMENT

Section 4.1: Term of Agreement

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

Section 4.2: Reserved

Section 4.3: Termination for Failure to Implement Services

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

ARTICLE 5: SCOPE OF SERVICES

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.

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

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.

<u>Three-Container System</u>

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.

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.

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.

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

Service Location:	Curbside
Acceptable Materials:	Recyclable Materials
Prohibited Materials:	Solid Waste, Organic Materials, Excluded Waste
Additional Service:	Contractor shall provide one (1) additional Recyclable Materials Cart to Residential Customers upon request and may charge the "Additional Recycling Cart" Rate approved by the County for any Carts requested by a Residential Customer. Payment for the additional cart 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.

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

Containers:	Carts
Container Sizes:	96-gallons (or similar size)
Service Frequency:	One (1) time every week
Service Location:	Curbside
Acceptable Materials:	Organic Materials
Prohibited Materials:	Solid Waste, Recyclable Materials, Excluded Waste
Additional Service:	Contractor shall provide additional Organic Materials Carts to Customers, upon request, and may charge the "Additional Organic Materials Cart" Rate approved by the County. Payment for the additional cart 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.
Other Requirements:	Single-Family Customers shall be permitted to place Compostable Plastics and Organic Materials contained in Compostable Plastic Bags in the Organic Materials Container for Collection. Contractor shall Collect these materials and submit the required Compostable Plastic Processing notification and education plan, if applicable, as required under Section 6.2.2.

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

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

<u>Three-Container System</u>

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

Containers:	Carts, Bins, Roll-Off Containers
Container Sizes:	96-gallon Carts (or similar size); 1-, 1.5- 2-, 3-, 4-, and 6- cubic yard Bins; and Roll-Off Containers. Container size to be negotiated between the Customer and the Contractor based on Customer need and Container availability.
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer
Service Location:	Curbside; or other Customer-selected service location at the Commercial or Multi-Family Premises.
Acceptable Materials:	Solid Waste
Prohibited Materials:	Recyclable Materials, Organic Materials, Excluded Waste
Additional Service:	Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum Service Level and Contractor may charge the appropriate rate for the higher Service Level. Contractor shall not schedule County Solid Waste Collection service on Sunday, except as authorized by the County.
Other Requirements:	Contractor shall, at Customer's request and for an additional charge approved by the County, open and close gates, lock or unlock customer enclosures, or perform other services as reasonably necessary to access and empty and Containers. Contractor shall establish a minimum combined Service Level of 150-gallons per dwelling unit per week for Multiple-Unit Dwellings.

B. **Recyclable Materials Collection**. Contractor shall Collect Recyclable Materials not less than one (1) time every other week in Contractor-provided containers from Commercial and Multi-Family Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

Containers:	Carts, Bins, Roll-Off Containers
Container Sizes:	96-gallon Carts (or similar size); 1-, 1.5-,2-, 3-, 4-, and 6- cubic yard Bins; and Roll-Off Containers. Container size to be negotiated between the Customer and the Contractor based on Customer need and Container availability.
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer, unless the Customer has been granted a Collection frequency waiver pursuant to Section 8.6.
Service Location:	Curbside or other Customer-selected service location at the Customer's Premises
Acceptable Materials:	Recyclable Materials
Prohibited Materials:	Solid Waste, Organic Materials, Excluded Waste
Additional Service:	Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide Collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum Service Level and Contractor may charge the appropriate Rate for the higher Service Level.

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

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

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

Containers: Carts, Bins, Roll-Off Containers

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

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

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

Acceptable Materials: Organic Materials

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

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

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

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

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

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

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

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

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

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

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

<u>Voluntary One-Container System</u>

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

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. Contractor may provide Bin service upon Customer request and may charge the "Residential Bin" Rate approved by the County.

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

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

Service Location: Curbside
Acceptable Materials: Recyclable Materials
Prohibited Materials: Solid Waste, Organic Materials, Excluded Waste
Additional Service: Contractor shall provide one (1) Recyclable Materials Cart to Residential Customers upon request and may charge the "Recyclable Materials Cart" Rate approved by the County.

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

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

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

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

Voluntary One-Container System

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

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

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

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

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

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

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

Section 5.5: Collection Service Operating Requirements

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

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

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

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

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

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

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

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

G. **Commingling Prohibition.**

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

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

Section 5.6: Other Discarded Materials Services

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

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

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

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

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

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

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

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

G. **Reserved for Future Use.**

Section 5.7: Standard of Performance

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

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

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

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

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

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

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

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

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

D. **Employees:**

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

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

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

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

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

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

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

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

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

Section 5.8: Collection Locations

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

Section 5.9: Other Wastes

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

Section 5.10: Changes in Scope of Collection Services

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

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

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

Section 5.11: Billing

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

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

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

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

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

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

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

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

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

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

ARTICLE 6: PROCESSING AND TRANSFER

Section 6.1: Processing and Transfer Arrangements

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

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

1. The County determines that such arrangements threaten public health or safety, or

2. The County determines that the County is not adequately protected from liability for the activities of the Processing entities, or

3. The County determines that the diversion levels or other performance metrics of the particular facility cause the County to be out of compliance with AB 939, AB 341, AB 1826, SB 1383, or any other rule or regulation regarding Discarded Materials management, and/or the Contractor is handling Discarded Materials in a manner which does not constitute a reduction in landfill Disposal pursuant to SB 1383 and does not result in significant diversion credit to the County.

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

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

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

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

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

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

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

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

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

Section 6.2: Recovered Materials Processing

Section 6.2.1: Recyclable Materials Processing

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

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

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

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

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

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

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

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

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

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

Section 6.2.2: Organic Materials Processing

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

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

Section 6.3: Title to Recovered Materials

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

Section 6.4: Rejection of Excluded Waste

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

Section 6.5: Facility Evaluations

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

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

Collection in the Recyclable Materials Container (e.g., paper products), at the Approved Recyclable Materials Processing Facility in accordance with the applicable protocols specified in 14 CCR Sections 17409.5.1 and 17409.5.4.

2. **Incompatible Material Limits.** Contractor shall conduct evaluations at the Approved Recyclable Materials Processing Facility to measure the amount of Incompatible Materials in accordance with the protocols set forth in 14 CCR Section 17409.5.8.

3. **Evaluation of Organic Waste in Residuals.** Contractor shall conduct evaluations at the relevant Approved Recyclable Materials Processing Facility to measure the amount of Organic Waste in Residual material sent for Disposal in accordance with the requirements and protocols set forth in 14 CCR Sections 17409.5.5.

B. **Record Keeping and Reporting**. For each of the evaluations described above, Contractor shall maintain records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3, as applicable. Contractor shall report this information to the County on a bi-monthly basis in accordance with Exhibit D.

C. **Scheduling and Observance of Studies.** The Contractor shall conduct the facility evaluations in accordance with a County-provided schedule. The Contractor acknowledges that, upon request, a representative of the County and/or CalRecycle may oversee its next scheduled evaluation at the Approved Facility(ies); and the Contractor shall make modifications to evaluation schedule to accommodate such observance.

ARTICLE 7: SOLID WASTE DISPOSAL

Section 7.1: Solid Waste and Residue Disposal

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

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

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

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

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

Section 7.2: Gate and Bin Fees

A. **Gate Fees.**

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

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

B. **Bin Fees.**

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

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

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

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

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

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

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

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

ARTICLE 8: OTHER PROGRAMS AND SERVICES

Section 8.1 Public Education and Outreach

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

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

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

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

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

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

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

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

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

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

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

Section 8.2: Technical Assistance

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

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

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

Section 8.3: Food Recovery Program Support

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

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

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

Section 8.4: Contamination Monitoring in Universal Collection Areas

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

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

1. For weekly Routes with less than 1,500 Generators, the Contractor shall sample a minimum of 25 Containers.

2. For weekly Routes with 1,500-3,999 Generators, the Contractor shall sample a minimum of 30 Containers.

3. For weekly Routes with 4,000-6,999 Generators, the Contractor shall sample a minimum of 35 Containers.

4. For weekly Routes with 7,000 or more Generators, the Contractor shall sample a minimum of 40 Containers.

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

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

C. **Non-Collection Notices**

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

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

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

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

Section 8.5: Studies, Capacity Planning, and Pilot Programs

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

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

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

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

Section 8.6: Waivers and Exemptions

8.6.1: Customer Waivers

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

B. **Potential Generator Waivers.**

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

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

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

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

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

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

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

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

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

8.6.2: Contractor Service Exemptions

A. **Low Population Area Waivers**.

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

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

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

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

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

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

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

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

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

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

Section 8.7: Compliance and Enforcement Program

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

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

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

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

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

Section 8.8: The Contractor's Responsibility for Implementation

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

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

Section 8.9: SB 1383 Implementation Plan

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

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

1. **Transition to new Collection system.** A description of how the Contractor plans to roll out Collection service of Organic Materials, Recyclable Materials, and Solid Waste to all Single-Family, Multi-Family, and Commercial Customers; and to ensure proper Transfer, Transport, and Processing of such materials.

2. **Acquiring or modifying any necessary equipment.**

   a. **Containers.** Contractor shall describe its plan to ensure that Customers receive Organic Materials, Recyclable Materials, and Solid Waste Containers that are compliant with the requirements of SB 1383 and Section 9.3 of this Agreement. The plan shall include information including, but not limited to: proposed method for designing and ordering Containers that meet the color and labeling requirements of Section 9.3; a sample of the proposed colors for the Container lids and bodies; a sample of the proposed label design, labeling method, and location(s) for label placement on each type of container; the timeline for removing non-compliant Containers and delivering new Containers to Customers; and, the process for notifying Customers of the change in Containers both before and after Containers have been delivered, including a copy of the proposed Customer notifications to be distributed.

   b. **Fuel.** Contractor, if planning to use RNG fuel, shall include a plan for how the Contractor plans to transition to this fuel type, including: number of vehicles, vehicle type(s), the estimated amount of RNG that will be necessary, and where such fuel will be procured from.

   c. **Other equipment.** Contractor shall describe any other necessary equipment to be ordered or modified in order to implement the required programs and services.

3. **Hiring and training personnel**. Contractor is responsible for hiring and training all personnel needed in order to perform the duties required by this Agreement and shall describe its plan for hiring and training new personnel as needed for the implementation of expanded programs and services. All personnel that interface with the public shall be trained on the requirements of SB 1383 such that they are able to provide accurate information to the public on these programs and requirements.

4. **Customer education and outreach materials.** Contractor shall describe its plan to educate Customers on the new Collection services and other programs provided under this Agreement. Contractor shall include, at a minimum, its proposal for education material types to be used for each Customer Type, topics to be covered, method of distribution, and schedule of distribution by material type or campaign.

C. **Termination for Failure to Implement Strategies**. Failure to implement any one of the programs listed in the SB 1383 Implementation Plan (Exhibit F) shall be deemed an Event of Default in accordance with Article 14, unless Contractor can demonstrate to the satisfaction of the County Contract Manager that implementation of such programs is beyond the reasonable scope of their control despite their best efforts. For example, and not by way of limitation, it is beyond the reasonable scope of the Contractor's control to affect ordinances adopted by the County Board of Supervisors.

ARTICLE 9: OPERATING ASSETS

Section 9.1: Operating Assets

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

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

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

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

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

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

Section 9.2: Operation and Maintenance of the Operating Assets

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

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

Section 9.3: Containers

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

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

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

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

E. **Container Colors.** On July 1, 2023, all new Containers provided by the Contractor shall comply with the Container color requirements specified in this Section 9.3, or as otherwise specified in 14 CCR Section 18984; 14 CCR, Division 7, Chapter 12, Article 3. Notwithstanding the requirements of this Section, 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.

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

    a. Blue body with blue lid.

    b. Blue body with gray lid.

    c. Blue lid with any color body.

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

    a. Green body with green lid.

    b. Green body with gray lid.

    c. Green lid with any color body.

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

    a. Gray body with gray lid.

    b. Gray lid with any color body.

For the purposes of this Agreement, “gray” means any shade of gray, including black.

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

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

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

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

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

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

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

Section 9.4: Vehicle Requirements

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

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

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

ARTICLE 10: GENERAL REQUIREMENTS

Section 10.1: Public Access to the Contractor

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

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

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

Section 10.2: Service Complaints

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

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

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

Section 10.3: Accounting and Records

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

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

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

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

Section 10.4: Record Keeping and Reporting

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

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

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

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

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

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

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

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

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

Section 10.5: CalRecycle Regulatory Compliance

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

Section 10.6: Personnel and Subcontractors

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

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

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

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

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

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

Section 10.7: County Contract Manager

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

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

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

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

Section 10.8: Performance and Financial Reviews

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

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

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

ARTICLE 11: COUNTY FEES AND REIMBURSEMENTS

Section 11.1: County Payments

A. **Administration Fee**. The Contractor shall pay an Administration Fee to the County in accordance with Kern County Code, as amended, supplemented, superseded, and replaced from time to time.

B. **Other Payments**. The County shall reserve the right to set other fees or reimbursement payments as it deems necessary.

Section 11.2: Adjustment to County Payments

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

Section 11.3: Payment Schedule and Late Fees

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

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

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

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

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

ARTICLE 12: CONTRACTOR'S COMPENSATION AND RATE SETTING

Section 12.1: General

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

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

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

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

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

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

Section 12.2: Rates and Annual Adjustments

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

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

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

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

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

Section 12.3: Publication of Rates

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

ARTICLE 13: INDEMNITY, INSURANCE, AND PERFORMANCE BOND

Section 13.1: Indemnification

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

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

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

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

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

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

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

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

Section 13.2: Insurance

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

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

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

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

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

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

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

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

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

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

4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County Contract Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. The deductibles or self-insured retentions are for the account of Contractor and shall be the sole responsibility of the Contractor.

6. Each insurance policy shall provide or be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the County Contract Manager ten (10) Business Days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-,VII, unless otherwise approved by the County Contract Manager.

8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees, and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.

10. The Contractor shall waive all rights of subrogation against the County, its officers, employees, agents, and volunteers related to the performance of services under this Agreement.

B. **Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish the County Contract Manager with certificates or original endorsements reflecting coverage required by this Agreement. The certificates or endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and are subject to the approval of, the County Contract Manager before work commences.

C. **Renewals.** During the Term of this Agreement, Contractor shall furnish the County Contract Manager with certificates or original endorsements reflecting renewals, changes in insurance companies, and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf.

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

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

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

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

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

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

Section 13.3: Performance Bond

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

ARTICLE 14: DEFAULT, REMEDIES AND TERMINATION

Section 14.1: Default and Remedies

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:

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.

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.

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.

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.

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.

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.

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,

receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Contractor's property or business.

8. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Contractor nor until the order of the adjudication is no longer appealable.

9. The failure of the Contractor to provide or maintain the Performance Bond required pursuant to Section 13.3 hereof.

10. Failure of the Contractor to submit the Administration Fee in accordance with Section 11.1 or any Gate or Bin Fees due to County, within ninety (90) days of the due date.

11. Failure to provide any records, data, or reports within thirty (30) days of County Contract Manager's written request.

12. The denial of access to any equipment and/or facilities upon County Contract Manager's access request.

13. Any failure by the Contractor to comply with any the Applicable Law, rule or regulation, including, but not limited to, the County Code, and as they may be change from time to time, following the specified notice and opportunity to cure.

14. Failure of the Contractor to timely implement the operational changes and adjusted maximum Rates resulting from any change in law or County-directed change in scope. The Contractor shall have thirty (30) days after notice of breach from the County to implement the operational changes. Should the Contractor thereafter not implement the operational changes, it shall be in material default of the Agreement. In addition to being liable for all damages and penalties to the County resulting from such default, the County may terminate the Agreement in accordance with Section 14.1.B.

15. Failure of the Contractor to maintain insurance coverages in accordance with Section 13.2.

B. **Right to Terminate Upon Default**. Upon a determination by the County Contract Manager that an Event of Default has occurred, the County Board of Supervisors shall conduct a public hearing upon at least ten (10) days' notice to the Contractor to determine if termination of the Agreement is in the best interests of the citizens of the County. If the Board of Supervisors makes such a determination, the Contractor shall be deemed to have waived any right it may have under Applicable Law to notice of termination in excess of those notice provisions explicitly set forth herein.

C. **County's Remedies Cumulative: Specific Performance**. The County's right to terminate this Agreement under this Section 14.1 is not exclusive, and the County's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the County may have, including but not limited to specific performance, and fees and expenses incurred by or on behalf of the County in enforcing payment or performance of the Contractor's obligations hereunder if such non-performance results in a judicially determined Event of Default by the Contractor. Moreover, the County's right to

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

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

Section 14.2: Liquidated Damages

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

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

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

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

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

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

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

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

a. County has granted the Customer a waiver pursuant to Section 8.6.1 of this Agreement.

b. Contractor documents that Customer is compliant with Recycling and Organic Waste Self-Hauling requirements pursuant to County Code Section 5.36 and 14 CCR Division 7, Article 12, Article 7.

c. Contractor documents to the County that the Customer is being provided Recyclable Materials and/or Organic Materials Collection services from a County-permitted, Recycler or Discarded Materials service provider.

d. Contractor documents that Customer is sharing Recyclable Materials and/or Organic Materials Collection services with another Customer in a manner approved by the County.

e. The County has failed to adopt a mandatory Recycling and Organic Waste Diversion ordinance.

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3022 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

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
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 uncustomary discourteous behavior of Contractor's employees to a Customer.	Less than five (5) per one thousand (1,000) Service Opportunities	$250/Event

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
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

3025 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

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

3030 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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3032 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

Section 14.3: Uncontrollable Circumstances

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

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

1. The Uncontrollable Circumstance and the cause thereof (to the extent known).

2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, and the estimated time during which the performance of such Party's obligations hereunder will be delayed.

3. Its estimated impact on the other obligations of such Party under this Agreement.

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

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

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

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

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

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

Section 14.4: Right to Demand Assurances of Performance

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

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

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

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

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

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

Section 14.5: Waiver of Defenses

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

ARTICLE 15: RESOLUTION OF DISPUTES

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

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:

Lonnie Eldridge
Valley Garbage Service, LLC.
2800 Citrus Avenue
Bakersfield, CA93307

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.

Section 16.5: Amendments

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

Section 16.6: Further Assurance

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

Section 16.7: Assignment and Transfer of Agreement

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

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

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

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

C. **Transfer of Voting Stock**. The County's prior written consent, which may be withheld or delayed in its sole and absolute discretion, shall be required for the sale or transfer by any means, whether by agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce), of any of the voting stock of the Contractor; provided however, that this Section shall not apply to transfers of voting stock between immediate family members or as part of an unqualified employees stock ownership plan.

D. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of the County for any transaction described in Section 16.7 hereof, the proposed assignee, as a condition of assignment, shall reimburse the County for all costs and expenses incurred by the County in reviewing, examining, and analyzing the request, including all direct and indirect administrative expenses of the County and consultants and attorney's fees and expenses and the County may request a reasonable upfront deposit. Such costs shall be supported with evidence of the expense or cost incurred.

Section 16.8: Interpretation

In this Agreement, unless the context otherwise requires:

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

B. **Persons.** Words importing Persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal entitles, including governmental bodies, as well as individuals.

C. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

D. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement. Furthermore, nothing in this Agreement is intended to confer on any person other than the parties hereto and their respective successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

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

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

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

H. **Applicable Law.** This Agreement shall be governed by and construed in accordance with then Applicable Law. This Agreement is intended to be fully consistent with the requirements of the County Code and any subsequent amendments thereto. In the event there is an inconsistency or

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

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

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

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

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

Section 16.9: Jurisdiction

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

Section 16.10: Entire Agreement

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

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

Dated: 2-7, 2023

County of Kern, California

By: _____
Chairman, Board of Supervisors

APPROVED AND RECOMMENDED:

PUBLIC WORKS DEPARTMENT

By: _____
Samuel D. Lux, Director

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL

By: _____
Phillip W. Hall, Deputy County Counsel

Dated: 1-31, 2023

Valley Garbage Service, LLC.

By: _____
Lonnie Eldridge

By: _____
John Eldridge

Section 17: Exhibits

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

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

Valley Garbage – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
Thomas Refuse – Kern Valley Transfer Station, Ridgecrest Diversion Area, or Bena Diversion Area
Mountainside Disposal – Bena Diversion Area, Shafter Diversion Area, Lebec Transfer Station or Mt. Vernon Composting Facility
USA Waste of California Inc. – Ridgecrest Diversion Area, Mojave Diversion Area, Tehachapi Diversion Area or Bena Diversion Area

Approved Green Waste Processing 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
Valley Garbage – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
Thomas Refuse –Bena Diversion Area or Mt. Vernon Composting Facility
Mountainside Disposal – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility
USA Waste of California, Inc. – Bena Diversion Area, Shafter Diversion Area or Mt. Vernon Composting Facility

EXHIBIT B
RATE ADJUSTMENT METHODOLOGY

A. General

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

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

B. Calculation

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

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

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

For example:

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

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

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

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

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

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%

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

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

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

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

For example, assuming:

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

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

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

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

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

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

COMMERCIAL BIN AND CART RATES - JULY 2023
Zone 2
Uncompacted Waste*

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.

ORGANIC WASTE - JULY 2023

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

ROLL-OFF CONTAINER RATES - JULY 2023
Zone 2

Standard Roll-Off Service Fee	$ 293.23
Rental Per Month*(1,2,3)	$ 250.83
Delivery Charge	$ 135.36
Per Hour Charge	$ 163.37
Roll-Off Compactor Service Fee	$ 358.61

*(1) Monthly rental may be prorated for periods less than one month.

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

*(3) 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

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

SOURCE SEPARATED RECYCLING
RATE SCHEDULE
ZONE 2

Level of Service	Service Rate $ per Container per month July 2023
96/101 Gallon Commercial Recycling Weekly service*; includes cart rental $4	**$31.61**
96/101 Gallon Commercial Recycling Bi-Weekly service, includes cart rental $4	**$17.84**
300 Gallon Commercial Recycling Weekly service*; includes cart rental $4	**$71.27**
300 Gallon Commercial Recycling Bi-Weekly service, includes cart rental $4	**$38.25**
3 CY Bin Commercial Recycling Weekly service*, includes bin rental $14	**$117.02**
3 CY Bin Commercial Recycling Bi-Weekly service, includes bin rental $14	**$67.68**
6 CY Bin Commercial Recycling Weekly service*, includes bin rental $20	**$168.74**
6 CY Bin Commercial Recycling Bi-Weekly service*, includes bin rental $20	**$97.45**

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

EXHIBIT D
REPORTING REQUIREMENTS

1. General Requirements

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

1. Determine, set, and if needed defend, Rates and evaluate the financial efficacy of operations.

2. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under AB 939, AB 341, AB 1826, SB 1383, or other Applicable Law.

3. Determine needs for adjustment to programs.

4. Evaluate Contractor compliance with the provisions of this Agreement.

5. Evaluate Customer service and complaints.

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

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

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

2. Bi-monthly Report Content

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

A. **Tonnage Report**

1. Tonnage delivered to each Approved or Designated Facility, listed by Customer Type, material type, and Facility name (including facilities owned/operated by the Contractor); subtotaling and clearly identifying those Tons that are Disposed and those that are Recovered and Diverted.

2. Report Residue level and Tonnage for all Discarded Materials processed, listed separately by material type Collected and Approved Facility(ies) used.

3. Tonnage collected at Bulky Waste Collection Events..

4. Recyclable Materials Tonnage marketed (by commodity and including average commodity value for each, if available) and Processing Residue Tonnage Disposed.

B. **Customer Report**

1. Number of Customers by Customer Type; including a list of all Customer account numbers, names, addresses, and Service Levels.

2. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Roll-Off Container service by Customer Type, including the number of times the Containers were serviced. Report should calculate the average volume of service received per Single-Family Customer, Multi-Family Customer, and Commercial Customer.

3. The type(s) of Collection service(s) provided, a list of all Routes serviced, and a record of the addresses served on each Route. If route has commingled loads, the jurisdiction and percentages must be specified.

4. Number of Bulky Item Collection events by Customer Type.

5. Participation percentage by program and Customer Type where the participation percentage is calculated as the number of Customers who have subscribed to or requested service under the program relative to the number of Customers of that Customer Type subscribing to Solid Waste service. Contractor shall not be required to submit participant Customer names and addresses as part of the regular reporting; however, such information shall be provided to the County Contract Manager upon request.

6. Number of Customers subscribing to each County-approved service exemption by Customer Type, including the Customer name and address for each waiver; and the total number of de

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

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

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

C. **Customer Service Report**

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

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

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

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

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

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

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

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

D. **Education and Outreach Report**

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

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

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

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

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

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

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

E. **Pilot and New Programs Report**

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

F. **Revenue Report**

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

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

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

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

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

3. A record of each inspection and contamination incident, which shall include, at a minimum:

   a. Name and address of the Customer.

   b. The date the contaminated Container was observed.

   c. The total number of violations found and a description of what action was taken for each.

   d. Copies of all notices to Customers with Prohibited Container Contaminants.

   e. Photographic documentation (which may include hyperlinks or other digital means of access).

4. Documentation of the total number of Containers with contents Disposed of due to observation of Prohibited Container Contaminants.

5. Summary report of courtesy pick-up notices, non-Collection notices, which for each notice shall include the date of issuance, Customer name, and service address.

6. For Contractor owned or operated facilities, results of the facility evaluations conducted and copies of the required records kept in accordance with Section 6.5.

7. Any other information reasonably requested by the County or specified in contamination monitoring provisions of this Agreement.

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

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

1. A list of Commercial Customers in the service area; the name, address and account number of the Commercial business or property serviced; and the name of the Generator and/or Customer (if different) for Solid Waste, Recyclable Materials, and/or Organic Materials management.

2. The volume per month of Solid Waste Collection service provided to the Commercial business or property.

3. The cumulative volume, calendar year-to-date, of Solid Waste Collection service provided to the Commercial business, or property.

4. The volume per month of Source Separated Recyclable Materials Collection service provided to the Commercial business or property.

5. The cumulative volume, calendar year-to-date, Recyclable Materials Collection service provided to the Commercial business or property.

6. The volume per month of Organic Materials collection service provided to the Commercial business or property.

7. The cumulative volume, calendar year-to-date, of Organic Materials Collection service provided to the Commercial business or property.

8. The total volume per month of combined Solid Waste, Recyclable Materials, and Organic Materials Collection service provided to the Commercial business or property.

9. The cumulative volume, calendar year-to-date, of combined Solid Waste, Recyclable Materials, and Organic Materials Collection service provided to the Commercial business or property.

10. The location of the Recyclable Materials Processing Facility(ies) to which the Recyclable Materials were taken during the previous quarter, including the tonnage of Recyclable Materials delivered to such facility each month.

11. Information about changes in Recyclable Materials service such as new Customers or cancellations, including Customer name and address.

12. The location of the Organic Materials Processing Facility to which the Organic Materials were taken during the previous quarter, including the tonnage of Organic Materials delivered to such facility each month.

13. Information about changes in Organic Materials service such as new Customers or cancellations, including Customer name and address.

3. Annual Report Content

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

A. **Summary Assessment**

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

B. **Collection Report**

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

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

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

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

C. **Processing Report**

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

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

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

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

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

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

D. Recyclables Markets Report

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

E. **Operational Information Report:**

1. Routes by Customer Type:

a. Number of Routes per day.

b. Types of vehicles.

c. Crew size per route.

d. Number of full time equivalent (FTE) routes.

e. Number of accounts and cubic yards scheduled per route.

f. Total Route hours per Customer Type per year.

g. Average cost per Route.

2. Personnel:

a. Organizational chart.

b. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).

c. Wages by job classification.

d. Number of full-time equivalent positions for each job classification.

e. Number of hours per job classification per year.

3. Productivity Statistics:

a. Average number of accounts per Route per day by Customer Type.

b. Average number of setouts per Route per day by Customer Type.

c. Average Tons per Route per day by vehicle type (i.e., side-loader, front-loader, and roll-off).

d. Average cubic yards of Collection scheduled per Route.

4. Vehicles:

a. List of Collection Vehicles including year purchased and mileage.

b. Average age of mobile equipment with oldest and newest.

5. Operational Changes:

a. Number of Routes.

b. Staffing.

c. Supervision.

d. Collection services.

F. **Commercial Edible Food Generator Report**

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

G. **Compliance Program Report.**

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

1. The account name and service address of the Customer(s) inspected or reviewed.

2. Date of the review.

3. Copies of any written notices or education materials provided to non-compliant Generators, or a description of direct outreach conducted.

4. Other Reports

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

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

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

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.

Program or Topic***	Distribution Frequency*
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

*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.

EXHIBIT F
SB 1383 IMPLEMENTATION PLAN

SB 1383 Implementation Plan – Hauler Operations

	SB 1383 Requirement	County Responsibility	Hauler Responsibility
Hauler Regulation			
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.
Collection			
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.

	SB 1383 Requirement	County Responsibility	Hauler Responsibility
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.

	SB 1383 Requirement	County Responsibility	Hauler Responsibility
Contamination Monitoring			
9.	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). 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) "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) "Hauler route" means the designated itinerary or sequence of stops for each segment of the jurisdictions collection services. (§18982)	County to review, comment on, and approve route review plan and methodology provided by Contractor. County to review, comment on, and approve content and design of notices to be distributed by Contractor to noncompliant generators.	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. The amount of Containers that must be inspected per Route shall be based on guidelines provided below. 1. For routes with less than 1,500 generators the review shall include a minimum of 25 samples. 2. For routes with 1,500-4,000 generators the review shall include a minimum of 30 samples. 3. For routes with 4,001-7,000 generators the review shall include a minimum of 35 samples. 4. For routes with more than 7,000 generators the review shall include a minimum of 40 samples. (Franchise Agreement – Section 8.4) 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. 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.

	SB 1383 Requirement	County Responsibility	Hauler Responsibility
Waivers			
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.
Edible Food Recovery Program Support			
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.
Education & Outreach			
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.

	SB 1383 Requirement	County Responsibility	Hauler Responsibility
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.
Record Keeping & Reporting			
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.

EXHIBIT G
RESERVED FOR FUTURE USE

EXHIBIT H
APPROVED SUBCONTRACTORS

EXHIBIT I
RESERVED FOR FUTURE USE

EXHIBIT J
COUNTY FRANCHISE ZONE AND AREA

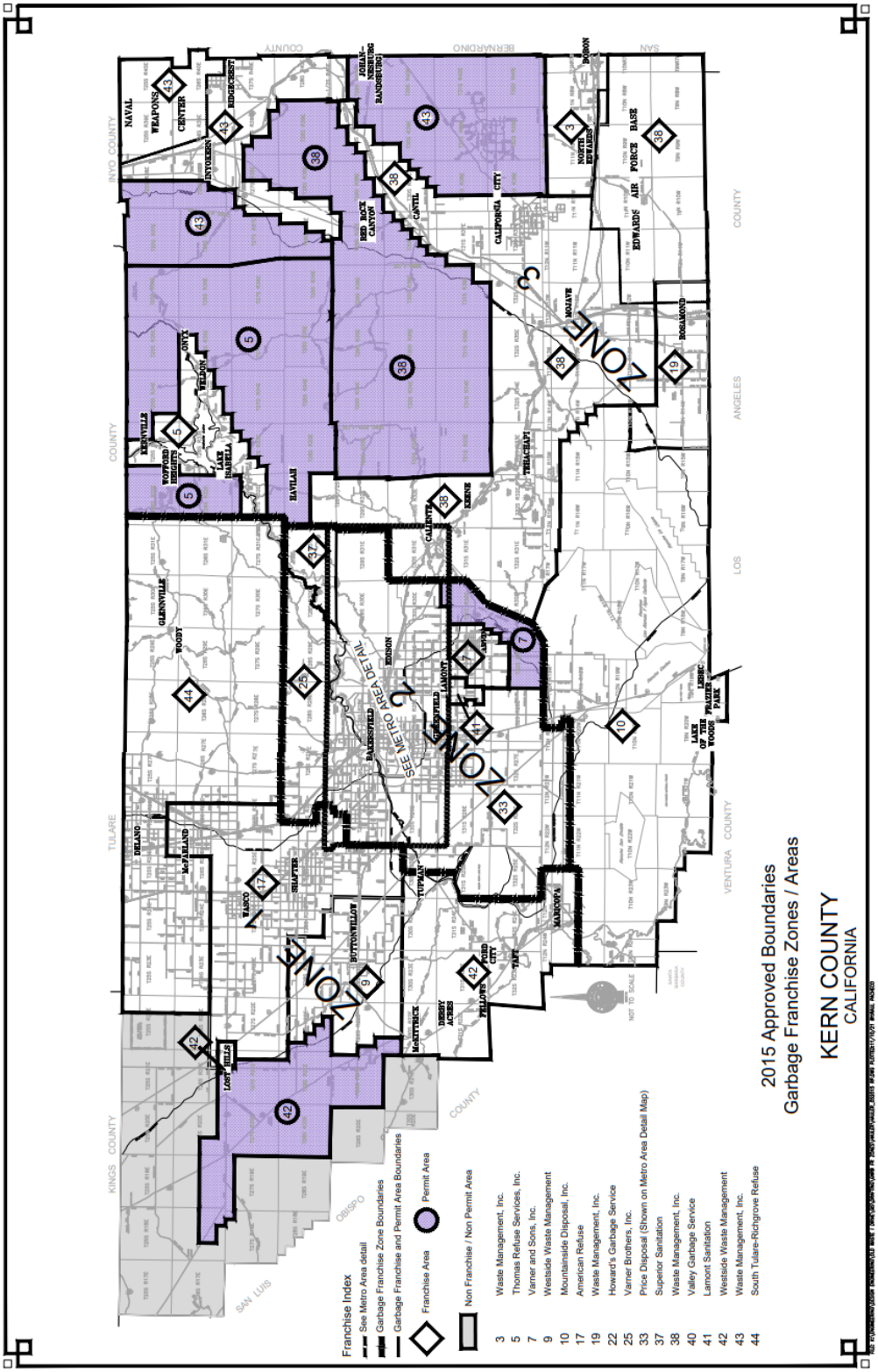

EXHIBIT K
COUNTY SERVICE AREA

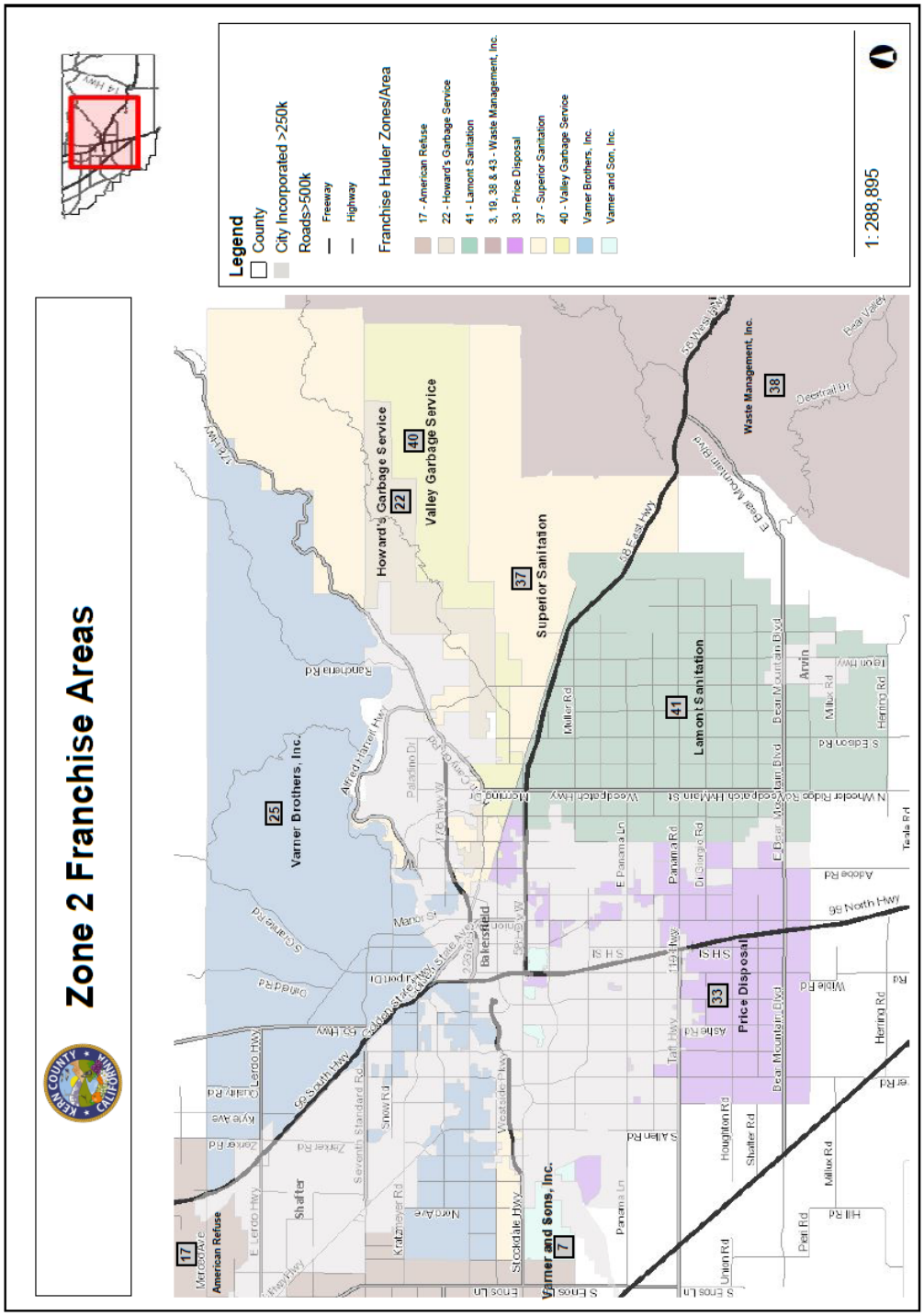

EXHIBIT L
SUPPLEMENTAL SCHEDULE

Supplemental Schedule to include the following detail:

Revenues and Other Income

- Commercial/industrial revenue
- Residential – tax roll billed revenue
- Residential – non-tax roll billed revenue
- Recycling revenue
- Other income (list)

Operating Costs and Other Deductions

Operating Costs

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

Overhead Costs

- Salaries, wages, and employee benefits – overhead (Office, shop, and other non-driver personnel)
- Materials and supplies expense – (Office and shop)
- Rent expense
- Utility expense – power, water, internet, telephone
- Travel, meals, entertainment expense
- Advertising and promotional expense
- Memberships and subscription expense
- Professional services expense
- Taxes other than income
- Other costs – overhead (Please describe)

Other Costs

- Recycling processing expense (List recycling revenue above)
- Interest and debt expense
- Depreciation and amortization
- Other expenses (list)