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## Request for Proposal

A Performance Review and  
Audit of Billings and Audit of Revenue Reporting For Contract Services  
Provided By Napa County Recycling & Waste Services (NCRWS)

RFP Number: PBES101901

Release Date: October 28, 2019

Due Date: November 26, 2019

For Information: Peter Ex

Solid Waste Program Manager

Planning, Building and Environmental Services

1195 Third Street, 2<sup>nd</sup> Floor

Napa, CA 94559

[Peter.Ex@Countyofnapa.org](mailto:Peter.Ex@Countyofnapa.org)

REQUEST FOR PROPOSALS  
Performance Review and Audit of Billings and  
Audit of Revenue Reporting of  
Napa County Recycling & Waste Services

**I. PURPOSE**

The County of Napa is requesting proposals from qualified firms to conduct a performance review and additionally an audit of billings and revenue reporting of the County's franchised waste and recycling service provider, Napa County Recycling & Waste Services (NCRWS).

**II. BACKGROUND**

Napa County has contracted with NCRWS to provide all commercial and residential solid waste, recycling, and green waste collection services in the unincorporated area of Southern Napa County as set forth in Napa County Agreement No. 6431 [renamed 180215B] and all subsequent amendments. The contract term is from January 1, 2018 to December 31, 2027, with a discretionary granting of up to four (4) one-year extensions. The contract is expected to be amended at the end of October 2019 to extend the term until December 31, 2032. NCRWS provides service to approximately 4,150 Residential Customers, 300 Commercial Customers and 100 Roll-off Customers.

**III. TERM OF CONTRACT AND SCOPE OF WORK**

- A. Term.** Term of the contract is anticipated to be for the fiscal year 2019-20 commencing on January 15, 2020 and expiring on June 30, 2020.
- B. Scope.** The consultant will review NCRWS's records for the period of January 1, 2018 to December 31, 2019 to determine compliance with the applicable provisions of the Napa County Agreement No. 6431. (Napa County Agreement No. 6431 is available on the Napa County website at [www.countyofnapa.org/procurement](http://www.countyofnapa.org/procurement) ). See Exhibit A for detail project description and scope of services.

#### IV. SCHEDULE

The schedule of activities related to the submission of the Request for Proposals (RFP), selection of the firm, and implementation of the performance review and financial audit is set to occur as follows:

Issue RFP	October 28, 2019
Questions Due In Writing To County	November 12, 2019
Question & Answers Sent To Interested Firms	November 19, 2019
Proposals Due	November 26, 2019
Interviews (If Needed)	December 4 & 5, 2019
Letter of Intent to Negotiate Issued	
Contract Negotiations	
Intent to Award Recommendation Issued	December 10, 2019
Napa County Board Approval of Contract Anticipated (Board of Supervisors Meeting)	January 14, 2020
Notice To Proceed	January 15, 2020
Project Status Report Due	February 18, 2020
Draft Report Due	March 10, 2020
Final Report of Performance Review & Audit of billings and Audit of revenue reporting	March 24, 2020
Presentation to Board of Supervisors or County Executive Office Anticipated	April 21, 2020

These dates may be changed at the discretion of Napa County. Changes to the due date for questions or due for proposal submittal will be made by written addendum.

#### V. SUBMITTAL PROCESS

- A. Proposal shall be received by the Planning, Building and Environmental Services **no later than 3:30 p.m. on November 26, 2019** in a sealed envelope to the attention of:

Peter Ex  
County of Napa  
Planning, Building and Environmental Services  
1195 Third Street, 2<sup>nd</sup> Floor  
Napa, CA 94559

It is the responsibility of the submitting party to insure timely delivery. No Late Proposals will be considered under any circumstances and will be returned to the sender. Proposals received in Planning, Building and Environmental Services at 3:30 p.m. or later will not be considered under any circumstances and will be returned to the sender.

- B. Proposals may be delivered in person, U.S. Mail, or Common Carrier. Faxed or electronically submitted proposals are not acceptable and will not be considered. It is the responsibility of the submitting party to insure timely delivery.
- C. An original proposal and three (3) copies shall be submitted, printed double-sided (duplex) where practical, in a sealed package and in accordance with Section IX. of this RFP. It is recommended that proposals be printed on paper that is comprised of at least 30% recycled content.
- D. The package should be addressed as shown above, bearing the Proposer's name and address and clearly marked proposal title, "*Napa County – NCRWS Performance Audit and Billings/Revenue Reporting Audit*" and RFP number.
- E. The proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer. The signatures must indicate the title or position that the individual hold in the firm. An unsigned proposal shall be rejected.
- F. Proposals received with insufficient copies cannot be properly disseminated to the RFP reviewers for necessary action and therefore may be deemed non-responsive to the RFP and rejected without further evaluation.
- G. Proposers shall be entirely responsible for any consequences resulting from any inadvertent opening of unsealed or improperly identified packages. It is the Proposer's sole responsibility to see that its proposal is received as required.
- H. **Modification or Withdrawal.**
  - 1. **Modification.** Any modification, amendment, addition or alteration to any submission must be presented, in writing, executed by an authorized person or persons, and submitted prior to the final date for submissions. An individual who is authorized to bind the submitting agency contractually shall sign the modification, amendment, addition, or alteration. The signature must indicate the title or position that the

individual holds in the firm. An unsigned modification amendment, addition, or alteration shall be rejected.

NO AMENDMENTS, ADDITIONS OR ALTERATIONS WILL BE ACCEPTED AFTER 3:30 p.m. ON NOVEMBER 26, 2019 UNLESS REQUESTED BY THE COUNTY.

2. **Withdrawal.** At any time prior to the specified time and date set for the Proposal due date, a designated representative of the responding agency may withdraw the submission provided that such person provides acceptable proof of his or her identity and such person signs a receipt. No submissions may be withdrawn or returned after the date and time set for final submission.

## VI. GENERAL CONDITIONS

By submitting a proposal, the Proposer represents and warrants that:

- A. The information provided is genuine and not a sham, collusive, or made in the interest or in behalf of any party not therein named, and that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a sham proposal, or any other Proposer to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage.
- B. The Proposer has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of Napa County.
- C. The Proposer has thoroughly examined and become familiar with the services required under the RFP and that it is capable of performing the quality of services necessary to achieve the County's objectives and the scope of work herein.
- D. This solicitation and related information can be found at [www.countyofnapa.org/procurement](http://www.countyofnapa.org/procurement). Napa County does not guarantee the accuracy of information posted on or obtained from third party organizations.
- E. **Local Vendor Preference Policy.** Napa County has a local vendor preference that covers the acquisition of requested services. Local vendors will be awarded contracts for services where qualifications are determined by the reviewing panel

to be otherwise equal, unless such preference is not allowable by law. For this matter, a local vendor is a vendor who has a billing address located within Napa County. Where appropriate, out of county vendors are encouraged to subcontract with qualified local vendors.

- F. County Property.** All Proposals become the property of the County.
- G. Public Record.** Proposals will become a public record and available for release to the public upon selection of a successful Respondent and an Intent to Award Notification is distributed. Respondents shall specify in their cover letter if they desire that any portion of their Proposal be treated as proprietary and not releasable as public information. If Respondent chooses to claim any information as proprietary, it must specify those sections in the cover letter and provide any legal justification for treatment as such. However, respondents should be aware that all such requests may be subject to legal review and challenge. In such event, each Respondent shall be responsible for the legal defense against the release of their Proposal as public information.
- H. Security and Privacy.** Any persons entering a Napa County building may be required to complete a privacy declaration form.
- I. Proposal Preparation Expenses.** The County shall not in any event be liable for any expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal. Proposal preparation expenses include the following: costs incurred in preparation of this proposal; submitting the proposal to the County; negotiating with the County on any matter related to the RFP; or, any other expenses incurred by Proposer prior to the date an agreement is executed.

## VII. COUNTY RIGHTS

- A. The County reserves the right to award an agreement without further competition based on the responses received to this RFP.
- B. The County reserves the right to request additional information not included in this RFP from any or all Respondents after proposal due date.
- C. The County reserves the right to contact references not provided in the submittals.
- D. The County reserves the right to investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the Scope of Work described in the RFP.
- E. **Right to Reject.**
  - 1. The County reserves the right to reject any and all proposals or any part of a Proposal if it is determined it is not in the best interest of the County.
  - 2. The County reserves the right to reject the proposal of any Proposer who previously failed to perform properly, or complete on time, contracts of a similar nature, or to reject the proposal of any Proposer who is in default of the payment of taxes, or other monies due to County.
- F. **Nonconforming Terms and Conditions.** Any proposal that includes terms and conditions that do not conform to the terms and conditions in this RFP is subject to rejection as non-responsive. County reserves the right to waive any informalities or minor irregularities in connection with proposals received. County reserves the right to permit a Proposer to withdraw non-conforming terms and conditions from its proposal prior to County taking action to accept the successful proposal.
- G. The County reserves the right to incorporate its standard language into any contract resulting from this solicitation. The County's contract template is attached for reference at Exhibit B. Templates are attached for reference only and do not need to be signed or returned with proposal.
- H. **Addenda.** The County reserves the right to revise the RFP documents. Any changes to the RFP requirements and answers to questions submitted pursuant

to the provisions of this RFP will be made by addendum. All addenda shall include an acknowledgment of receipt that must be returned. The acknowledgement form must be signed and attached to the final response. Failure to attach any acknowledgement form may result in the rejection of the final response. Addenda will be provided to all known interested firms and posted on the County website.

Any written addenda issued pertaining to the RFP may be incorporated into the terms and conditions of any contract resulting from the RFP. The County will not be bound to any modifications to or deviations from the requirements set forth in the RFP as the result of oral instructions. Proposers shall acknowledge all issued addenda in their proposal. Failure to acknowledge all addenda may cause the proposal to be deemed non-responsive to the RFP and rejected without further evaluation.

- I. Issuance of the RFP in no way constitutes a commitment by the County to award a contract. The County reserves the right to accept proposals, award proposals and/or not award proposals on individual items listed, on group items, or on the proposal as a whole; to request clarification of information submitted; to request additional information from any source, which may include competitors; to waive any informality in the proposals; to waive any irregularity in the submission and review process; to reject any and all submittals; and to accept the proposal that appears from all considerations to be in the best interest of the County. The County also reserves the right to modify the scope of work subsequent to the selection process without re-issuing the RFP.
  
- J. The County reserves the right to:
  - 1. For any reasons, withdraw or cancel this RFP, or any part thereof at any time without prior notice and the County makes no representations that any contract will be awarded to any Proposer responding to the RFP;
  - 2. Postpone RFPs openings for its own convenience;
  - 3. Remedy or overlook technical errors in the RFP process; and
  - 4. Appoint an Evaluation Committee to review the proposals.

## VIII. COUNTY CONTACT AND PRE-SUBMITTAL ACTIVITIES

All questions relating to the RFP shall be submitted via email and directed to:

Peter Ex  
Napa County  
Planning, Building, and Environmental Services  
Peter.Ex@countyofnapa.org

Questions will be accepted via mail or email no later than **3:30 p.m. on November 12, 2019**. All questions and answers will be attached to the RFP as an addendum and posted to the County website no later than November 19, 2019.

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. Except for the above named, a potential respondents should not contact Napa County officials or staff regarding any aspect of the RFP. If such contact is made, the County reserves the right to reject the proposal.

No prior, current or post award verbal conversations or agreements with any officer, agent, or employee of the County or any other person or entity shall affect or modify any terms or obligations of the RFP or any agreement resulting from this process.

## IX. PROPOSAL COMPONENTS

Proposals shall contain the following information and shall be organized in the same order as provided herein. Each of these section headers shall be listed in submitted proposal with pertinent information provided under the specific header. Proposals not submitted in the manner prescribed herein will not be considered.

**Interested firms should review Attachment A (Scope of Work) in consideration of response.**

- A. Cover Page. Cover page shall state Title and RFP number; date of submission; and name and signature of the person who is authorized to make decisions and represent the submitting firm with respect to this RFP.
- B. Transmittal Letter. A letter of transmittal will be submitted with the proposal and must contain at a minimum the following:
  - Clearly noted title of the RFP that is being proposed;
  - Identification of the Proposer who will have authorization to commit to the

contractual terms and conditions along with the name, title, address, telephone number, and email address of the contact person during the proposal evaluation phase;

- Acknowledgment of receipt of all RFP addenda, if any;
- A statement to the effect that the proposal shall remain valid for a period of not less than 180 days from the date of submittal;
- Signature of person authorized to bind Proposer to the terms of the proposal; and
- A statement to the effect that by signing the letter of transmittal, Proposer is attesting that all information submitted with the proposal is true and correct.

C. Executive Summary. The Proposer shall provide an executive summary no longer than one page that includes a brief explanation of the Proposer's interest, qualifications, understanding of the project requirements.

D. Company Information.

- Legal name of the company which can enter into a contract with the County and any alternate names for which the company is known (D.B.A.);
- Mailing and physical address;
- Remit-to billing address;
- Telephone number, fax number and website;
- Organization type and if incorporated, the state in which the company is incorporated and the date of incorporation;
- Federal tax identification number;
- List of Owners;
- List of corporate officers with titles (if applicable); and
- Name (first and last), title, mailing address, phone number, fax and email of the person to receive notices and who is authorized to make decisions or represent the company with respect to this RFP.

E. Qualifications.

Company background, history, experience, qualifications, and why Proposer is qualified to provide the services described in this RFP, include but is not limited to:

- A brief description of the length of time Proposer has been providing services described in this RFP;
- Resumes of key staff who will be responsible for performance of any contract resulting from this RFP; and
- Identification of staff responsible for the performance of the field investigation and analysis.

- F. Approach and Methodology. The Proposer must provide a narrative of the approach and methodology that is used to perform the services required. The narrative should include the specific steps the Proposer will take to deliver the services requested, including all tasks and subtasks that will be performed.
- G. Pricing Information/Structure. The Proposer shall submit a project timeline, payment schedule, and total cost for completion for the project described in this Request for Proposal. All hourly rates, fees, and reimbursable costs must be clearly stated. The Proposer is asked to itemize the cost of each section of the scope of work (Performance Review, Audit of Billings and Revenue Reporting, and Report Findings and Presentation) in the total cost for completion. The Proposer may itemize costs further by task and subtask, if desired.
- H. References. The Proposer should provide a minimum of three (3) references from similar projects completed for any local government clients within the last three years. Information provided shall include:
- Client name;
  - Project description;
  - Project dates (starting and ending);
  - Staff assigned to project;
  - Client project manager name and telephone number.
- I. Disclosures. A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or a verification of no responsive incidents. . Failure to comply with the terms of this provision will disqualify any proposal. Napa County reserves the right to reject any proposal based upon the Proposer's prior history with the County of Napa or with any other party, which documents, without limitation, unsatisfactory performance, significant failures to meet contract milestones or other contractual failures.
- If there are no disclosures to report, this section must still be included in submittal with an indication that there are no reportable disclosures.***
- J. Insurance Requirement. A written statement indicating proposer's willingness and ability to meet all the County's insurance requirements as indicated in Exhibit B, section 7.

Respondents who are unable to meet all of Napa County's insurance

requirements may submit with their proposal an alternative plan for obtaining insurance that will adequately mitigate the risks associated with providing the services detailed in this RFP. Any alternative insurance coverage request is subject to review and approval by County Counsel and the County's Risk Management Officer.

Failure to meet the County's insurance requirements (as determined by County Counsel and County's Risk Management Officer) may be sufficient reason for disqualification from the selection process.

- K.** RFP Addenda, if any. Any and all addenda shall include an acknowledgment of receipt that must be returned. The acknowledgement form must be signed and attached to the final response. Failure to attach any acknowledgement form may result in the rejection of the final response (See section L).

*All information provided as a response to this RFP should be in the context of the information requested in the RFP. Please do not submit additional flyers, brochures, marketing material, etc.*

**X. SELECTION PROCESS**

An evaluation team will rank the proposals received in accordance with the terms of this RFP in the following manner:

- Proposal submission - quality and completeness relative to the description given in the RFP. [20 points]
- Proposer's concept and understanding of the County's goals and intent for the design and function of the project. [25 points]
- Proposer's approach to the project, including demonstration of capability to develop innovative or advanced techniques, and proposal schedule. [20 points]
- Proposer's experience - both with similar types of projects, experience with public agencies, and staff experience and qualifications. [15 points]
- Proposed cost of service [20 points]

## X. AWARD

The County intends to award a contract to the firm who distinguish themselves as capable of the type and breadth of services provided for in Attachment A as evident in submitted Proposal. Selection and determination of qualifications is at the sole discretion of the County.

The County may conduct interviews with one or more firms once the written proposals have been received and reviewed.

The County may require the Proposer to submit additional data or information the County deems necessary to substantiate the costs presented by the Proposer. The County may also require the Proposer to provide additional information for purposes of the contract.

At any time during the evaluation process, the County may request “Best and Final” offers based upon the County’s improved understanding of the offers. Based on the initial proposals, further clarification of proposals, and Best and Final offers, if requested, the evaluation committee will recommend the proposal that provides the best value to the County. The County may negotiate final pricing, scope of work and a contract form with the successful Proposer.

Negotiations will attempt to negotiate a contract with the highest ranked Proposal. If no contract can be successfully negotiated with the top ranked respondent, then the County may, at its election enter into negotiations with the next highest ranked respondent; and move down the list of respondents in order of scoring.

Upon selection of a qualified respondent, completion of successful negotiations, and distribution of the “Intent to Award Notification” has taken place, the contract will be presented to the Board of Supervisors for authorization. No award is final until a contract has been signed by the successful Proposer and the Napa County Board of Supervisors.

All proposals and pricing data shall remain confidential until after an award recommendation is made, and there shall be no public opening and reading of proposals.

The County reserves the right to decline awarding a contract to any of the respondents.

## XI. PROTESTS OR OBJECTIONS.

### A. Filing of Protest.

1. Any directly affected party who is aggrieved in connection with the solicitation or award of a contract issued through a formal sealed solicitation may protest the procurement action taken. Such protests must be filed in writing with:

Napa County  
Purchasing Agent  
1195 Third Street, Room 310  
Napa, CA 94559

2. Protests must be filed in writing within five (5) working days from the time of the occurrence generating the protest. Protests received after this time will not be considered. Any protest shall include the following information:
  - a. The date and action taken resulting in a protest, and
  - b. Identification of the material issue, including a detailed explanation of the basis for the protest and the remedy sought.

### B. Resolution Process.

1. Informal Resolution. Upon receipt of a protest, the Purchasing Agent will convene, at the earliest possible convenience, discussions between the protesting party and appropriate County staff to seek informal resolution and/or to clarify the issues.
2. Response to Protest/Appeal. If the protest is not resolved by mutual agreement, the Purchasing Agent shall provide a written response to the protesting party within fifteen (15) working days following the informal meeting. County Counsel shall be consulted before the written response is issued.
3. The response shall state the Purchasing Agent's decision, the facts supporting the decision, and shall inform the protesting party of its right to appeal the decision to the Board of Supervisors.

### C. Appeal to the Board of Supervisors.

1. In the event that the informal resolution procedure is unsuccessful, the protesting party may request an appeal hearing before the Board of Supervisors by filing a written request with the Clerk of the Board no later than five (5) working days after notification of the Purchasing Agent's

decision. Any appeal hearing shall be scheduled within thirty (30) working days from the date the request is received by the Clerk of the Board. The Clerk of the Board shall notify the appellant by personal service of the scheduled hearing date not less than ten (10) working days from the date of hearing.

2. The appellant shall have the right to testify at the hearing, to be represented by counsel, to present witnesses on his/her behalf, and to present oral and written documents and evidence on the issue(s).
3. After the conclusion of the hearing, the Board of Supervisors shall make findings of fact and a decision concerning the issue(s).

**D. Stay of Procurement Action during a Protest.**

In the event of a timely protest under this section, the County shall not proceed further with the solicitation or the award of the contract or purchase order until the protest is resolved, unless the Purchasing Agent, in consultation with the head of the relevant County department and County Counsel, makes a written determination that the award of the contract without further delay is necessary to protect a substantial interest of the County.

**XII. ATTACHMENTS**

- A. PROJECT DESCRIPTION AND SCOPE OF SERVICES
- B. PROFESSIONAL SERVICES AGREEMENT

**EXHIBIT A**  
**PROJECT DESCRIPTION AND SCOPE OF SERVICES**

**A. Performance Review**

The consultant shall review NCRWS's compliance with the areas of concern outlined below and as further specified in Article 7.7-*Performance Review* of County Agreement No. 6431 and shall provide specific recommendations, as appropriate, for improvement in each area:

1. Compliance with the terms of this Agreement and Applicable Laws.
2. Staffing practices, including the deployment of management and supervisory personnel.
3. Financial management practices, including the Contractor's billing and collection system, its policies with regard to uncollected Customer accounts, and its compliance with the Lock Box Agreement.
4. Personnel management practices, including the resolution of employee grievances.
5. Employee job and safety training, and management of Hazardous Waste.
6. Procedures for receiving and resolving Customer complaints and concerns.
7. Procedures for the acquisition, maintenance, color, labels, signage, safety check, and replacement of equipment.
8. Utilization and management of facilities, equipment and personnel.
9. Comparison with practices of businesses deemed similar to the Contractor.
10. Overall organizational structure and management systems and procedures.
11. Efficiency of Collection operations, including an analysis of routes, schedules, missed pickups (as identified in the NCRWS monthly reports to the County and in NCRWS internal records) and the impact of the requirements of this Agreement.
12. Compliance with the Public Education and Information Program contained in Exhibit B and any subsequent mutually agreed upon public education activities.
13. Staffing practices, including the deployment of management and supervisory personnel.
14. Financial management practices, including the Contractor's billing and collection system, its policies with regard to uncollected Customer accounts, and its compliance with the Lock Box Agreement.
15. Personnel management practices, including the resolution of employee grievances; employee job and safety training; and management of Hazardous Waste.
16. Procedures for receiving and resolving Customer complaints and concerns.

17. Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
18. Utilization and management of facilities, equipment and personnel and NCRWS approved subcontractors' facilities, equipment, and personnel.
19. Comparison with practices of businesses deemed similar to the Contractor.
20. Management of roll-off box service by NCRWS and NCRWS approved subcontractors doing business under Napa County Agreement No. 6431, including:
  - Procedures for NCRWS customer work orders and assignment to NCRWS or approved subcontractors to provide the service.
  - Use of subcontractor vehicles, equipment, personnel for delivery, hauling, and collection of NCRWS customer services.
  - Identification and accuracy of vehicle tracking at all receiving facilities (including Napa Materials Diversion Facility and Devlin Road Transfer Station), including company, personnel, vehicle, material type, work order tracking, and origin reporting.
  - Procedures for billing NCRWS for approved subcontractor services performed under Napa County Agreement No.6431 (including methods for allocating or pro-rating where appropriate).
  - Procedures for and verification of NCRWS' compliance with the Assignment requirements under Article 10.5 of Napa County Agreement No. 6431, including assignment to subcontractors.

**B. Audit of billings and audit of revenue reporting**

The consultant shall review the NCRWS's compliance in the areas of concern outlined below and as further specified in Article 5.6-*Audit of Billings and Financial Reports; Review of Costs* of County Agreement No. 6431. The consultant shall provide specific recommendations for improvement in each area and results of variances between revenue reported versus revenue reportable under the Napa County Agreement No. 6431:

1. **Audit of Billings.** Review the billing practices of NCRWS with relation to delivery of Collection Services. The intent of this audit is to use statistically reliable sampling to verify that Customers are receiving the type and level of service for which they are billed.
2. **Audit of Revenue Reporting.** Review relevant financial reports and data submitted by NCRWS pursuant to Article 7 of the Napa County Agreement No. 6431. The purpose of this audit is to verify that NCRWS is correctly calculating Gross Rate Revenues, and is properly remitting Franchise Fees, AB 939 Fees and Applicable Laws, and Liquidated Damages.

The following specific areas shall be included in the audit of billings and audit of revenue reporting:

- a. Customer billing records
- b. Status of delinquent accounts and collections
- c. Franchise fee payments
- d. Annual rate adjustments
- e. Financial management practices, including the NCRWS's billing and collection system, its policies with regard to uncollected Customer accounts, and its compliance with the Lock Box Agreement contained in Exhibit J of Napa County Agreement No. 6431 and any subsequent amendments.
- f. Examination of material classification between franchise and non-franchise materials on the Monthly Gross Rate Revenue reports.
- g. Examination of the total Gross Rate Revenue reported monthly, including, but not limited to, deposits made through the lock box, deposits not made to lock box, deposits made erroneously to City's lock box, deposits recorded to the Accounts Receivable records and deposits in transit.

**3. Audit of Subcontractor.**

- a. Review sample of relevant work orders and data, if any, from City MDF and Devlin Road Transfer Station reports.
- b. Analyze data to determine if loads are supported by corresponding work order from NCRWS and to ensure that loads do not pertain to subcontractor's other clients.
- c. Determine if the subcontractor reimbursed NCRWS a reasonable amount for loads that were picked up from both NCRWS customer(s) and other customer(s) of the subcontractor within 60 days of the end of each month.

**C. Report Findings & Presentation**

Upon completion of the Performance Review and Audit of Billings and Revenue Reporting, the consultant shall submit a preliminary and a final report of findings to the County. The final report shall include:

1. An Executive Summary
2. Findings of the Performance Review with recommendations for performance enhancements and improvements
3. Findings of the Audit of billings and audit of revenue reporting with recommendations for improvements and summaries of any monetary variances
4. Recommendations of potential liquidated damages in accordance with Article 9.1 and Exhibit F of County Agreement No. 6431

After the report findings have been accepted by the County, the consultant shall make a presentation of the final report to the Board of Supervisors and the County Executive Office, summarizing the findings.

- A status report is due on or before January 6, 2020.
- A final report is due on or before February 10, 2020.
- Presentation to Board of Supervisors and/or County Executive Office – Anticipated February 25, 2020.

#### **IV. OUTCOMES**

Napa County is seeking the following outcomes of the performance review and of the audit of billings and audit of revenue reporting:

##### *Performance Review*

1. To determine the extent to which NCRWS has materially complied with all provisions of the Napa County Agreement No. 6431 as identified in the Scope of the Performance Review as referenced in the Article 7.7 of the Napa County Agreement No. 6431 and as further set forth in the Scope of Services, Section IV of this Request for Proposals.
2. To verify that NCRWS is fulfilling the terms and conditions of the Napa County Agreement No. 6431, including the proper billing of customers and the accurate remittance of payments to the County.
3. To make recommendations, as appropriate, for improvement of services.

##### *Audit of billings and audit of revenue reporting*

1. To verify that customers are receiving the type and level of service for which they are billed.
2. To verify that the Contractor is correctly calculating Gross Rate Revenues, and is properly remitting Franchise Fees and Liquidated Damages.
3. To verify that the receipt, disposal, or recycling of material at the City MDF and the Devlin Road Transfer Station by NCRWS's approved subcontractor(s), if any, are supported by work orders of NCRWS (e.g., that subcontractor(s) is not using the NCRWS account at both facilities for their own business purposes).

**EXHIBIT B**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(template)**

NAPA COUNTY AGREEMENT NO. \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and \_\_\_\_\_ **[TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as \_\_\_\_\_"; IF THE CONTRACTOR IS A CORPORATION, ADD THE STATE OF INCORPORATION BY SAYING, "a \_\_\_\_\_ corporation"]**, whose mailing [or business] address is \_\_\_\_\_, hereinafter referred to as "CONTRACTOR";

**RECITALS**

**WHEREAS**, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to conduct a review and assessment of services and contract requirements provided by Napa County Recycling and Waste Services; and

**WHEREAS**, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

**WHEREAS**, because the aggregate compensation by COUNTY to CONTRACTOR through this and any prior agreements does not exceed \$XX,XXX (as adjusted annually beginning on January 13, 2011 to reflect the annual percentage change of the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations), COUNTY's Purchasing Agent is authorized by Napa County Code section 2.36.040(G) to execute this Agreement on behalf of County.

## TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2021, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto in addition to the RFP and CONTRACTOR's proposal, incorporated by reference herein..

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of \_\_\_\_\_ (\$\_\_\_\_\_) for professional services; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) CONTRACTOR shall submit invoices not more often than monthly to the **Accountant-Auditor Manager of Internal Audits** who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(c) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the **County Executive Office** representative upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim. If the coverage includes an aggregate limit the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of

COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the **County Executive Office** prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) **Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the

deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

**8. Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless the COUNTY and its officers, agents, employees, volunteers or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of, personal injury (including death), including but not limited to COUNTY employees, and the public, or damage to the property of any person or entity, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to

CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

Minh Tran  
County Executive Office  
1195 Third St., Suite 310  
Napa, CA 94559

CONTRACTOR

[Name]  
[Office/Business Name]  
[Address]  
[Address]

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees

and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

## 15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its **County Executive Officer**. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of Napa County Recycling and Waste Services, LLC Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of Napa County Recycling and Waste Services, LLC's Protected Information, including, but not limited to, PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of Napa County Recycling and Waste Services, LLC's Protected Information, or its unauthorized access to or disclosure of Napa County Recycling and Waste Services, LLC's Protected Information, including, but not limited to, mitigation of the breach, cost to the COUNTY of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the Napa County Recycling and Waste Services, LLC's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect Napa County Recycling and Waste Services, LLC data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all Napa County Recycling and Waste Services, LLC data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

#### **16. No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the

remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the County Executive Officer.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification,

religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages.

(1) Affected Work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing Wages Rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the County Executive Office, 1195 Third Street, Room 310, Napa, California.

(3) Payroll Records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's County Executive Office. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is \$30,000 or more.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or

other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position

as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

[TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as \_\_\_\_\_" FOLLOWED BY THE FICTITIOUS BUSINESS NAME]

By \_\_\_\_\_  
[NAME], [Title]

[IF CONTRACTOR IS A CORPORATION, TWO SIGNATURES ARE NEEDED FROM EACH OF THESE 2 GROUPS: 1. PRESIDENT, OR ANY VICE PRESIDENT and 2. SECRETARY,

**ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER. IF ONE PERSON CONCURRENTLY HOLDS OFFICES FROM EACH GROUP, ONE SIGNATURE IS ACCEPTABLE BUT LIST BOTH TITLES OF OFFICE; OR OBTAIN EVIDENCE OF AUTHORIZATION FROM THE CORPORATION FOR A SINGLE PERSON OR POSITION TO SIGN THE CORPORATION'S CONTRACTS.]**

By \_\_\_\_\_  
 [NAME], [Title]

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By \_\_\_\_\_  
 RYAN GREGORY, Chair  
 Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ County Counsel</p> <p>Date: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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## EXHIBIT "A"

### SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

#### I. DESCRIPTION OF SERVICES

The consultant will review NCRWS's records for the period of January 1, 2018 to September 30, 2019 to determine compliance with the applicable provisions of the Napa County Agreement No. 6431. (Napa County Agreement No. 6431 is available on the Napa County website at [www.countyofnapa.org](http://www.countyofnapa.org) under "News and Information.")

##### A. Performance Review

The consultant shall review NCRWS's compliance with the areas of concern outlined below and as further specified in Article 7.7-*Performance Review* of County Agreement No. 6431 and shall provide specific recommendations, as appropriate, for improvement in each area:

1. Compliance with the terms of this Agreement and Applicable Laws.
2. Staffing practices, including the deployment of management and supervisory personnel.
3. Financial management practices, including the Contractor's billing and collection system, its policies with regard to uncollected Customer accounts, and its compliance with the Lock Box Agreement.
4. Personnel management practices, including the resolution of employee grievances.
5. Employee job and safety training, and management of Hazardous Waste.
6. Procedures for receiving and resolving Customer complaints and concerns.
7. Procedures for the acquisition, maintenance, color, labels, signage, safety check, and replacement of equipment.
8. Utilization and management of facilities, equipment and personnel.
9. Comparison with practices of businesses deemed similar to the Contractor.
10. Overall organizational structure and management systems and procedures.
11. Efficiency of Collection operations, including an analysis of routes, schedules, missed pickups (as identified in the NCRWS monthly reports to the County and in NCRWS internal records) and the impact of the requirements of this Agreement.
12. Compliance with the Public Education and Information Program contained in Exhibit B and any subsequent mutually agreed upon public education activities.

13. Staffing practices, including the deployment of management and supervisory personnel.
14. Financial management practices, including the Contractor's billing and collection system, its policies with regard to uncollected Customer accounts, and its compliance with the Lock Box Agreement.
15. Personnel management practices, including the resolution of employee grievances; employee job and safety training; and management of Hazardous Waste.
16. Procedures for receiving and resolving Customer complaints and concerns.
17. Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
18. Utilization and management of facilities, equipment and personnel and NCRWS approved subcontractors' facilities, equipment, and personnel.
19. Comparison with practices of businesses deemed similar to the Contractor.
20. Management of roll-off box service by NCRWS and NCRWS approved subcontractors doing business under Napa County Agreement No. 6431, including:
  - Procedures for NCRWS customer work orders and assignment to NCRWS or approved subcontractors to provide the service.
  - Use of subcontractor vehicles, equipment, personnel for delivery, hauling, and collection of NCRWS customer services.
  - Identification and accuracy of vehicle tracking at all receiving facilities (including Napa Materials Diversion Facility and Devlin Road Transfer Station), including company, personnel, vehicle, material type, work order tracking, and origin reporting.
  - Procedures for billing NCRWS for approved subcontractor services performed under Napa County Agreement No.6431 (including methods for allocating or pro-rating where appropriate).
  - Procedures for and verification of NCRWS' compliance with the Assignment requirements under Article 10.5 of Napa County Agreement No. 6431, including assignment to subcontractors.

**B. Audit of billings and audit of revenue reporting**

The consultant shall review the NCRWS's compliance in the areas of concern outlined below and as further specified in Article 5.6-*Audit of Billings and Financial Reports; Review of Costs* of County Agreement No. 6431. The consultant shall provide specific recommendations for improvement in each area and results of variances between revenue reported versus revenue reportable under the Napa County Agreement No. 6431:

1. **Audit of Billings.** Review the billing practices of NCRWS with relation to delivery of Collection Services. The intent of this audit is to use statistically reliable sampling to verify that Customers are receiving the type and level of service for which they are billed.
  
2. **Audit of Revenue Reporting.** Review relevant financial reports and data submitted by NCRWS pursuant to Article 7 of the Napa County Agreement No. 6431. The purpose of this audit is to verify that NCRWS is correctly calculating Gross Rate Revenues, and is properly remitting Franchise Fees, AB 939 Fees and Applicable Laws, and Liquidated Damages. The following specific areas shall be included in the audit of billings and audit of revenue reporting:
  - a. Customer billing records
  - b. Status of delinquent accounts and collections
  - c. Franchise fee payments
  - d. Annual rate adjustments
  - e. Financial management practices, including the NCRWS's billing and collection system, its policies with regard to uncollected Customer accounts, and its compliance with the Lock Box Agreement contained in Exhibit J of Napa County Agreement No. 6431 and any subsequent amendments.
  - f. Examination of material classification between franchise and non-franchise materials on the Monthly Gross Rate Revenue reports.
  - g. Examination of the total Gross Rate Revenue reported monthly, including, but not limited to, deposits made through the lock box, deposits not made to lock box, deposits made erroneously to City's lock box, deposits recorded to the Accounts Receivable records and deposits in transit.
  
3. **Audit of Subcontractor.**
  - a. Review sample of relevant work orders and data, if any, from City MDF and Devlin Road Transfer Station reports.
  - b. Analyze data to determine if loads are supported by corresponding work order from NCRWS and to ensure that loads do not pertain to subcontractor's other clients.
  - c. Determine if the subcontractor reimbursed NCRWS a reasonable amount for loads that were picked up from both NCRWS customer(s) and other customer(s) of the subcontractor within 60 days of the end of each month.

### **C. Report Findings & Presentation**

Upon completion of the Performance Review and Audit of Billings and Revenue Reporting, the consultant shall submit a preliminary and a final report of findings to the County. The final report shall include:

- a. An Executive Summary
- b. Findings of the Performance Review with recommendations for performance enhancements and improvements
- c. Findings of the Audit of billings and audit of revenue reporting with recommendations for improvements and summaries of any monetary variances
- d. Recommendations of potential liquidated damages in accordance with Article 9.1 and Exhibit F of County Agreement No. 6431

After the report findings have been accepted by the County, the consultant shall make a presentation of the final report to the Board of Supervisors and the County Executive Office, summarizing the findings.

- A status report is due on or before January 6, 2020.
- A final report is due on or before February 10, 2020.
- Presentation to Board of Supervisors and/or County Executive Office – Anticipated February 25, 2020.

**II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

**EXHIBIT "B"**

**COMPENSATION REIMBURSEMENT**

<b>1. Employee Title</b>	<b>Employee Name</b>	<b>Hourly Rate</b>
<b>2. Employee Title</b>	<b>Employee Name</b>	<b>Hourly Rate</b>
<b>3. Employee Title</b>	<b>Employee Name</b>	<b>Hourly Rate</b>
<b>4. Employee Title</b>	<b>Employee Name</b>	<b>Hourly Rate</b>
<b>5. ....</b>		

**EXHIBIT "C"**

**[Company Name]**  
 [Street Address]  
 [City, ST ZIP Code]  
 Phone [phone] Fax [fax]  
 Taxpayer ID #

**SAMPLE  
 INVOICE**

INVOICE # \_\_\_\_\_  
 DATE: \_\_\_\_\_

**To:**  
 [Customer Name]  
 [Street Address]  
 [City, ST ZIP Code]

**For:**  
 [Project or service description]  
 Contract No.

<b>Date</b>	<b>DESCRIPTION</b>	<b>Employee &amp; Title</b>	<b>HOURS</b>	<b>RATE</b>	<b>AMOUNT</b>
11/1/19	Task 1 - Description of work performed	Last Name, Title	Hours (1.4)	Rate per contract (\$175)	Extended Amount (\$245.00)
x/x/xx	Task # - Description of work performed	Last Name, Title	Hours	Rate per contract	Extended Amount
x/x/xx	Task # - Description of work performed	Last Name, Title	Hours	Rate per contract	Extended Amount
x/x/xx	Task # - Description of work performed	Last Name, Title	Hours	Rate per contract	Extended Amount
x/x/xx	Task # - Description of work performed	Last Name, Title	Hours	Rate per contract	Extended Amount
x/x/xx	Task # - Description of work performed	Last Name, Title	Hours	Rate per contract	Extended Amount
<b>TOTAL</b>					<b>\$\$\$\$</b>