

***Amended and Restated***  
**Franchise Agreement**  
**Napa County Agreement No. ~~6431~~ 180215B**  
*Amendment No. 3*

**for**

**COLLECTION SERVICES FOR SOLID WASTE, RECYCLABLE  
MATERIALS, CONSTRUCTION AND DEMOLITION DEBRIS,  
GREEN WASTE AND FOOD WASTE**

**between**

**County of Napa**

**and**

**Napa County Recycling and Waste Services, LLC**

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1  
2 **AGREEMENT**  
3

4 This Amended and Restated Franchise Agreement for Collection Services for Solid  
5 Waste, Recyclable Materials, Construction and Demolition Debris, Green Waste and Food Waste  
6 (“Agreement”) is made and entered into this 19<sup>th</sup> day of December, 2017, effective as of 12:01  
7 a.m. on January 1, 2018 (the “Effective Date”) by and between the County of Napa (hereinafter  
8 “County”), a political subdivision of the State of California, and Napa County Recycling and Waste  
9 Services, LLC, a Limited Liability Company (hereinafter “Contractor”). The County and Contractor  
10 may from time to time hereinafter be referred to individually as “Party” or collectively as “Parties.”  
11  
12

13  
14 **Recitals**  
15

16 This Agreement is entered into with reference to the following facts and circumstances:  
17

- 18 1. The Legislature of the State of California, by enactment of the California Integrated Waste  
19 Management Act of 1989 (AB 939), set forth in Public Resources Code Sections 40000 *et*  
20 *seq.*, declares that it is within the public interest to authorize and require local agencies to  
21 make adequate provision for Solid Waste handling within their jurisdiction.  
22
- 23 2. The Board of Supervisors of the County has determined that the public health, safety and  
24 well-being of its residents require that certain services for Collection, transportation to  
25 designated Processing Facilities, and public education and dissemination of information  
26 relating to Recyclables, Green Waste, Food Waste and Solid Waste, as those services  
27 and terms are defined and/or described in this Agreement, be provided through an  
28 exclusive franchise.  
29
- 30 3. On or about May 3, 2005, the Parties entered into Napa County Agreement No. 6431,  
31 entitled “Franchise Agreement for Solid Waste, Recyclable Materials, and Green Waste  
32 Collection” (the “Prior Contract”), which will expire as of December 31, 2017. This  
33 Amended and Restated Agreement is intended to replace, supersede, and amend the  
34 Prior Contract (including all amendments to the Prior Contract).  
35

36 **Agreement**  
37

38 NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated  
39 herein by this reference, of the covenants, promises and undertakings set forth herein, and for  
40 good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,  
41 the Parties agree as follows:  
42

**ARTICLE 1  
DEFINITIONS**

For purposes of this Agreement, in addition to the defined terms set forth in the Preamble and Recitals above, which are incorporated herein by this reference, the following words or phrases shall have the following meanings unless it is obvious from the context of the usage below that another meaning is necessarily intended. To the extent that these definitions are inconsistent with those found in the County ordinances and codes, the following definitions shall prevail. The capitalized terms within the following definitions shall be read to incorporate and include the definitions of those terms as set forth below even if the definitions appear after the reference(s) to the term. All referenced "Exhibits" in the Definitions or other Articles below are hereby incorporated herein by this reference.

"AB 341" means State of California Assembly Bill No. 341 approved October 5, 2011.

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

"AB 1826" means State of California Assembly Bill No. 1826 approved September 28, 2014.

"Alternative Daily Cover" or "ADC" means cover materials used at a Disposal Facility.

"Applicable Law" means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over the Collection and disposition of Solid Waste, Recyclable Materials, Green Waste and Food Waste that are in force as of the Effective Date of this Agreement or that are enacted, issued, promulgated or amended during the Term of this Agreement.

"Base Term" means the initial ten (10) year term of the Agreement, commencing on January 1, 2018 and ending on December 31, 2027.

"Best Efforts" as used in this Agreement with regard to performance of Contractor's obligations to divert materials shall mean at a minimum the duty to competently undertake each of the programs for which material Diversion is required hereunder and to perform material Diversion activities for the program in a manner which is equal to or exceeds industry standards within California for communities which are in compliance with AB 341, 939 and 1826 Diversion requirements.

"Bin" means a receptacle for Solid Waste, Food Waste, Recyclable Materials, or Green Waste, provided by the Contractor unless owned by the Customer, having a capacity less than ten (10) cubic yards that generally has wheels, a handle for ease of movement and a tight-fitting, attached lid, and is designed to be dumped mechanically into a Collection vehicle.

"Bin Service" means the provision of Collection Services using Bins.

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

90 "Bulk Recyclables" means those Recyclable Materials (as listed on Exhibit K) that are Delivered  
91 to Containers of over six (6) cubic yard capacity or larger.  
92

93 "Bulky Item" means Solid Waste generated by Customers that is too large to be placed in a Cart  
94 or Bin, including large non-recyclable appliances, broken or unusable furniture, tires, carpets,  
95 mattresses, and similar large Solid Waste items that require special handling due to their size  
96 and have an associated fee for Delivery.  
97

98 "Carpet Tip Fee" means the tip fees at the designated processing facility for Source-Separated  
99 materials as agreed to by County, or as later negotiated by the parties.  
100

101 "Carpet Tip Fee Component" means the portion of each Rate that is a pass-through expense  
102 reflecting the actual cost of Source-Separated material processing, at the designated  
103 processing facility. This component is only applicable to the rate for Source Separated Carpet  
104 and the rate is adjusted annually based on the methodology specified in Article 6.2, and is not  
105 subject to CPI adjustment.  
106

107 "Cart" means a wheeled Container of approximately thirty-five (35), sixty-five (65) and ninety-  
108 five (95) gallon capacity provided by Contractor to Customers for Collection of Solid Waste,  
109 Food Waste, Recyclables, and Green Waste.  
110

111 "Cart Service" means provision of Collection Services using Contractor-provided Carts, and  
112 charged at a single Rate based on Solid Waste Cart size.  
113

114 "CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability  
115 Act, 42 U.S.C.A. Section 9601 *et seq.* (West 1983 & Supp. 1989), as amended or superseded,  
116 and the regulations promulgated thereunder.  
117

118 "Change in Law and Regulations" means the following events or conditions which have a  
119 substantial, material and adverse effect on the performance by the Parties of their respective  
120 obligations under this Agreement (except for performance of remittance obligations):  
121

- 122 1. Enactment, adoption, promulgation, issuance, modification, or written change in  
123 administrative or judicial interpretation of any Applicable Law on or after the Effective  
124 Date of this Agreement; or  
125
- 126 2. Any order or judgment of any judicial or governmental officer or body, on or after the  
127 Effective Date, to the extent such order or judgment is not the result of any willful or  
128 negligent action, error, omission, or lack of reasonable diligence on the part of the Party  
129 who is asserting the order or judgment as a Change in Law.  
130

131 "Change in Scope" is a significant change in the type or level of Collection Services for which  
132 Contractor may be compensated as provided in Article 4.7.  
133  
134

135 “Clear and Convincing Evidence” means evidence of such convincing force that demonstrates,  
136 in contrast to the opposing evidence, a high probability of truth of the facts for which it is offered  
137 as proof. Such evidence requires a higher standard of proof than proof by a preponderance of  
138 the evidence.

139  
140 “Collection,” “Collect,” “Collected,” and “Collecting” mean the actions and process by Contractor  
141 in gathering up, loading on to trucks or other vehicles or transportation devices, and/or emptying  
142 of Containers containing Solid Waste, Recyclables, C&D, Green Waste, Food Waste, or other  
143 material specified in this Agreement, and transportation of any and all such materials to the  
144 Designated Disposal or Transfer Facility, Designated Green Waste Processing Facility,  
145 Designated Food Waste Processing Facility, or Designated Recyclables Materials Processing  
146 Facility.

147  
148 “Collection Materials” means all Solid Waste, Food Waste, Recyclables, C&D, Green Waste and  
149 all other materials listed in Exhibit K generated in the Collection Services Area and Delivered by  
150 Customers.

151  
152 “Collection Services” means all of the services for which the County grants rights, duties and  
153 obligations to Contractor as specified in this Agreement, including but not limited to those  
154 described in Article 3.2A.

155  
156 “Collection Services Area” means the territory identified within County unincorporated area, as  
157 described in Exhibit D, and as such territories may change from time to time due to  
158 deannexations or other means (in which case this Agreement and Exhibit D will be amended to  
159 reflect the change in territory or boundary).

160  
161 “Compactor”, “Compactors”, “Compactor Service” means any Bin or other similar Container  
162 incorporating a built-in mechanism to reduce waste volume by crushing action or other  
163 compacting method.

164  
165 “Compost,” “Compostable(s),” and “Compostable Materials” mean a pure load or a mixture, in  
166 any proportions, of Green Waste, Food Waste or other Compostable organic materials (as listed  
167 on Exhibit K) Delivered by a Customer for Collection by Contractor.

168  
169 “Construction and Demolition Debris” and “C&D” mean building materials and solid debris from  
170 construction, deconstruction, remodeling, repair, cleanup, or demolition operations, but not  
171 including any “hazardous” materials as defined in PRC Section 40141. C&D includes, but is not  
172 limited to: asphalt, concrete, Portland cement, brick, lumber, wallboard, roofing material,  
173 ceramic tile, plastic pipe, and associated packaging.

174  
175 “Consumer Price Index” or “CPI” means the Consumer Price Index for San Francisco-Oakland-  
176 San Jose, CA, All Urban Consumers, and Standard Metropolitan Statistical Area as published  
177 bi-monthly by the United States Department of Labor, Bureau of Labor Statistics, or any  
178 successor index.

179

180 “Containers” and “Container” mean Bins, Carts, Compactors and/or Debris Boxes provided by  
181 Contractor to Customers to Deliver Solid Waste, Recyclables, Food Waste or Green Waste to  
182 Contractor for Collection.  
183

184 “Contractor Compensation Fee” means the portion of each Rate that compensates Contractor  
185 for provision of Collection Services, including the applicable portion of each annual adjustment  
186 according to the CPI. The Contractor Compensation Fee includes all bank fees or service  
187 charges related to Contractor’s use of the Lock Box as ~~specified~~ governed by the required terms  
188 of the Lock Box Agreement as described in Exhibit J.  
189

190 “Contractor Compensation Adjustment” means adjustment of the Contractor Compensation Fee  
191 as specified in Article 6.4.  
192

193 “County Representative” means the County Executive Officer, or their designee authorized by  
194 written notice to Contractor to enforce the terms of this Agreement.  
195

196 “Customer” or “Customers” means the person(s) or entity(ies) receiving Collection Services  
197 including but not limited to single family residences, Multi-Family residences, commercial  
198 businesses, industrial operations, institutional entities, and sponsors of special events within the  
199 Collection Services Area.  
200

201 “Debris Box” means an open-top Container with a capacity of over six (6) and up to fifty (50)  
202 cubic yards that is serviced using a roll-off truck.  
203

204 “Delivery,” Deliver, or Delivered” means the discarding and intentional placement of Solid  
205 Waste, C&D, Recyclables, or Compostables by a Customer in a Container or at a location for  
206 Collection as specified in this Agreement or otherwise designated by the County for Collection  
207 pursuant to County’s agreements, codes or ordinances.  
208

209 “Designated Disposal or Transfer Facility” means the Napa-Vallejo Waste Management  
210 Authority’s Devlin Road Transfer Station, or such other transfer facility(ies) or Disposal  
211 facility(ies) designated by the County to which the Contractor will transport all Solid Waste,  
212 C&D, and Residues that remain following Food, Recycling and Green Waste Processing at any  
213 privately owned Recycling and/or Green Waste Processing facility Collected under this  
214 Agreement, as specified – and subject to any exceptions set forth – in Exhibit A, Scope of  
215 Services.  
216

217 “Designated Food Waste Processing Facility” means the facility(ies) selected by the Contractor  
218 and approved by the County for handling, processing, and preparing Food Waste for generation  
219 and marketing of a resulting product as approved by the County. Products generated and  
220 marketed from Food Waste at the Designated Food Waste Processing Facility include, but are  
221 not limited to, clean gases, fuels, fertilizers, Compost, and mulch.  
222  
223

224 “Designated Green Waste Processing Facility” means the facility(ies) selected by the Contractor  
225 and approved by the County for handling, processing, and preparing Green Waste for  
226 generation and marketing of a resulting product as approved by the County. Products generated  
227 and marketed from Green Waste at the Designated Green Waste Processing Facility include,  
228 but are not limited to, clean gases, fuels, fertilizers, Compost, and mulch.  
229

230 “Designated Recyclables Processing Facility” means the facility(ies) selected by the Contractor  
231 and approved by the County for handling, processing, and preparing Recyclable Materials for  
232 marketing.  
233

234 “Disposal,” “Disposing,” “Dispose,” or “Disposed” means the disposition of Solid Waste  
235 Collected by Contractor, at the Designated Disposal or Transfer Facility.  
236

237 “Diversion” means the tonnage or percentage of Collection Materials that are not Disposed.  
238

239 “Divert” means the redirecting of Recyclables Materials from the Collection Materials that can be  
240 Recycled or reused.  
241

242 “Effective Date” means January 1, 2018.  
243

244 “End Date” means December 31, 2027.  
245

246 “Extension” means any of the Extensions that may be provided by the County as defined in  
247 Article 3.1B or 3.1C.  
248

249 “Food Waste” means Compostable or biodegradable organic plant and animal material  
250 (including the materials listed on Exhibit K) produced generally for human or animal  
251 consumption, Delivered by Customers for Collection by Contractor.  
252

253 “Food Waste Tip Fee” means the tip fees at the Designated Food Waste Processing Facility for  
254 Source-Separated materials as agreed to by County, or as later negotiated by the parties.  
255

256 “Food Waste Tip Fee Component” means the portion of each Rate that is a pass-through  
257 expense reflecting the actual cost of Source-Separated Food Waste processing, at the  
258 Designated Food Waste Processing Facility. This component of each Rate is adjusted annually  
259 based on the methodology specified in Article 6.2, and is not subject to CPI adjustment.  
260

261 “Franchise Fee” means the portion of Rate Revenues specified in Article 3.5 and due from the  
262 Contractor to the County from Gross Rate Revenues in return for grant of the exclusive rights to  
263 Contractor provided for in this Agreement.  
264

265 “Green Waste” means Compostable or biodegradable landscape trimmings and other organic  
266 materials Delivered by Customers for Collection by Contractor. Green Waste (including the list  
267 of materials on Exhibit K) may include up to 50% by weight Food Waste when combined in the  
268 same collection Container. Green Waste also includes Christmas trees that residential  
269 Customers place alongside Containers within two weeks after the holiday.  
270

271 "Green Waste Tip Fee" means the tip fees at the Designated Green Waste Processing Facility.  
272  
273 "Green Waste Tip Fee Component" means the portion of each Rate that is a pass-through  
274 expense reflecting the actual cost of Green Waste processing, or of the combined Green Waste  
275 and Food Waste processing at the Designated Green Waste Processing Facility. This  
276 component of each Rate is adjusted annually based on the methodology specified in Article 6.2,  
277 and is not subject to CPI adjustment.  
278  
279 "Gross Rate Revenues" means all Rate Revenues Collected by the Contractor from Customers.  
280  
281 "Hazardous Waste" shall have the meaning set forth in California Code of Regulations, Title 14,  
282 Division 7, Chapter 3, Article 4, Section 17225.32 and Health and Safety Code Section 25117,  
283 or in CERCLA, or in their successor laws and regulations as may be amended from time to time,  
284 whichever definition is in the opinion of the County more inclusive.  
285  
286 "Household Hazardous Waste" shall have the meaning set forth in California Code of  
287 Regulations, Title 14, Division 7, Chapter 7, Article 1.1, Section 18502 or successor laws and  
288 regulations as may be amended from time to time.  
289  
290 "Liquidated Damages" means the damages for specified violations or breaches of the terms,  
291 conditions, provisions and/or obligations of the Agreement as enumerated in Exhibit F, and  
292 levied by County against Contractor.  
293  
294 "Lock Box Account" means the account into which all Gross Rate Revenues Collected by  
295 Contractor are deposited, as specified in Exhibit J. "Lock Box Agreement" refers to the ~~form~~  
296 ~~required terms of the~~ agreement attached hereto and incorporated herein as Exhibit J, which ~~will~~  
297 ~~must be entered into concurrently with this Agreement no later than January 1, 2018 between~~  
298 ~~Contractor and Mechanics Bank.~~  
299  
300 "Medical and Infectious Waste" means biomedical waste generated at hospitals, public or  
301 private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood  
302 banks, mortuaries, veterinary facilities, and other similar establishments.  
303  
304 "Minimum Diversion Rate" means the Diversion rate for Collected materials as defined in Exhibit  
305 A that the Contractor must maintain in order to avoid Liquidated Damages as defined in Exhibit  
306 F.  
307  
308 "Monthly Distribution(s)" means the monthly payments made by the bank from the Lock Box  
309 Account to the County and to other parties, based on Contractor instructions and as specified in  
310 Article 5 and Exhibit J.  
311  
312 "Multi-Family" means dwellings Residential units with five or more units. Multi-Family Premises  
313 could be a Residential or Commercial Customers and may have Cart or Bin Service, which  
314 Service choice is determined by the property manager or property owner. Exhibit A further  
315 defines Multi-Family.  
316

317 “Net Recycling Processing Fee” means the processing fees at the Designated Recycling Facility  
318 net of all Recyclable Material sales revenue, as agreed to by County, or as later negotiated by  
319 the parties.

320  
321 “Net Recycling Processing Fee Component” means the portion of each Rate that is a pass-  
322 through expense reflecting the actual cost of Recycling processing at the Designated Recycling  
323 Facility. For a facility other than the City of Napa Materials Diversion Facility, this component of  
324 each Rate is adjusted annually based on the methodology specified in Article 6.2 and is not  
325 subject to CPI adjustment.

326  
327 “Processing Facilities” or “Processing Facility” means the Designated Disposal or Transfer  
328 Facility, Designated Food Waste Processing Facility, Designated Green Waste Processing  
329 Facility, and Designated Recyclables Processing Facility as defined in this agreement.

330  
331 “Rate Revenue” means the revenue billed to and Collected from Customers by Contractor for  
332 provision of Collection Services, as based on the County’s approved and published Rates.

333  
334 “Rates” or “Rate” means the amount each Customer is billed as specified in the Rate schedules  
335 as approved by the County.

336  
337 “Recyclable Materials” or “Recyclables” means those products or materials Delivered by  
338 Customers for Collection by Contractor for which Contractor has identified feasible sites and  
339 methods of processing and viable markets of which the County has approved. Exhibit K  
340 includes the list of Recyclable Materials that Contractor shall Collect.

341  
342 “Recycle,” “Recycled,” and “Recycling” mean the process of Collecting, sorting, cleansing,  
343 treating and/or reconstituting Recyclable Materials that would otherwise be Disposed at a  
344 landfill, and returning them to use in economy in the form of materials for reuse, repair,  
345 refabrication, remanufacture, or reconstitution. The Collection, transportation, or Disposal of  
346 Solid Waste not intended for, or capable of, reuse is not Recycling.

347  
348 “Recycling Revenues” means revenues derived from the sale of Recycled Materials Collected  
349 under this Agreement, net of processing, transportation to market and third party brokerage fees  
350 that are directly and entirely related to the transaction.

351  
352 “Residue(s)” means those materials which remain after processing of Recyclable Materials and  
353 Compostable Materials which cannot be Recycled, marketed, or otherwise utilized, including,  
354 but not limited to, products made of composite materials, and materials for which Contractor has  
355 determined, and County has agreed to in writing for a designated span of time that no viable  
356 markets exist.

357  
358 “Self-Haul” means the transportation and Disposal of Solid Waste, Compostables, and  
359 Recyclables by owner or occupant of property who generates such materials to a Disposal  
360 Facility in a manner consistent with Federal, State and County ordinances, codes and laws.

361

362 "Single Stream Recyclables" means the use of a single Container to Collect two or more types  
363 of Recyclable Materials under terms of this Agreement. Exhibit K lists those Recyclable  
364 Materials that shall be considered Single Stream Recyclables.  
365

366 "Single Stream Recycling" means the Collection and transportation of Single Stream  
367 Recyclables by Contractor to Designated Recyclables Processing Facility(ies).  
368

369 "Solid Waste" means all putrescible and non-putrescible solid, semi-solid and liquid wastes,  
370 including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, home and industrial  
371 appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded and  
372 other discarded substances or materials, but not including the following: (1) Hazardous Waste,  
373 (2) low-level radioactive waste regulated under California Health and Safety Code Sections  
374 25800, et. seq., (3) untreated medical waste which is regulated pursuant to the Medical Waste  
375 Management Act, California Health and Safety Code Sections 25015, et seq., (4) products  
376 containing electronics, (5) materials classified as universal waste pursuant to CCR Title 14,  
377 Section 66260.22 et. seq., and (6) the following types of materials if segregated and/or  
378 Delivered separately by Customers for Collection by Contractor: (a) Single Stream Recyclables,  
379 Special Recyclables, and/or Bulk Recyclables, (b) Green Waste, (c) Food Waste and (d) C&D.  
380

381 "Solid Waste Tip Fee" means the Solid Waste Disposal tip fee at the Designated Disposal or  
382 Transfer Facility as approved by the County.  
383

384 "Solid Waste Tip Fee Component" means the portion of each Rate that is a pass-through  
385 expense reflecting the actual cost of Disposal and Transfer at the Designated Disposal or  
386 Transfer Facility. This component of each Rate is not subject to CPI adjustment.  
387

388 "Source Separated" or "Source Separated Materials" means materials Collected after having  
389 been separated from Solid Waste by a Customer, consisting primarily of a single material type.  
390

391 "Special Rate Review" means the process defined in Article 6.5 by which Contractor may be  
392 compensated for specified extraordinary costs.  
393

394 "Special Recyclables" means Recyclable Materials Delivered by Customer for Collection  
395 separately from Single Stream Recyclables or Bulk Recyclables as set forth in Exhibit K.  
396

397 "Special Recycling" means the Delivery of Special Recyclables (as listed in Exhibit K) by  
398 Customers for Collection by Contractor to Designated Recyclables Processing Facility.  
399

400 "Special Services Rates" are specific service-related charges that are contained on Exhibit E,  
401 Schedule of Rates and that may be billed by the Contractor upon advance notice to Customers.  
402

403 "Special Waste" includes flammable waste; liquid waste transported in a bulk tanker; sewage  
404 sludge; pollution control process waste; residue and debris from cleanup of a spill or release of  
405 chemical substances, commercial products, or any other Special Wastes; contaminated soil,  
406 waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the  
407 generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special  
408 Wastes; dead animals; manure; waste water; explosive substances; radioactive substances;

409 abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires; and  
410 any other materials that under current or future statute or regulation require the application of  
411 special treatment, handling, or Disposal practices beyond those normally required for Solid  
412 Waste.

413  
414 "Surcharge Fee" means a component of each Rate that is a pass-through to the County, and  
415 that is of an amount and duration determined by the County.

416  
417 "Term" means the Base Term and any Extension, as provided in Article 3.

418  
419 "Uncontrollable Circumstance" means an act of God, including landslides, lighting, fires, storms,  
420 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a  
421 public enemy, wars, blockades, riots, eminent domain, condemnation or other taking, or other  
422 events of a similar nature, not caused or maintained by the County or Contractor, which event is  
423 not reasonably within the control of the Contractor, and only to the extent such event has a  
424 material adverse effect on the ability of the Contractor to perform Collection Services. Events  
425 that could or should have been prevented through reasonable precaution, including compliance  
426 with agreements and Applicable Laws, shall be not be considered Uncontrollable  
427 Circumstances. Labor unrest, including but not limited to strike, work stoppage or slowdown,  
428 sickout, picketing, or other concerted job action conducted by the Contractor's employees or  
429 directed at the Contractor, or a subcontractor, are not considered Uncontrollable  
430 Circumstances.

431  
432 "Working Days," unless otherwise specified, means Monday through Saturday but not including  
433 judicial holidays as defined in California Code of Civil Procedure section 135.

434  
435

[The remainder of this page is left blank intentionally]

436 **ARTICLE 2**  
437 **CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**  
438

439 Contractor hereby represents and warrants as follows:  
440

441 **2.1 CONTRACTOR STATUS AND RESOURCES**

442 Contractor is a Limited Liability Company, validly existing, and in good standing under the laws  
443 of the State of California. Contractor is qualified to transact business in the State of California  
444 and has the power to own its properties and to carry on its business as now owned and  
445 operated and as required by this Agreement. Contractor agrees that this Agreement is not made  
446 in the interest of, or on behalf of, any undisclosed person, partnership, company, association,  
447 organization, or corporation. Contractor has not directly or indirectly colluded, conspired,  
448 connived, or agreed with any person, partnership, company, association, organization, or  
449 corporation to secure any advantage against County.  
450

451 Contractor possesses the business, professional, and technical expertise to Collect and  
452 Dispose of Solid Waste and C&D, and to Collect and Process Recyclable Materials, Green  
453 Waste and Food Waste. Contractor possesses the equipment, facilities, and employee  
454 resources required to perform the services specified in this Agreement.  
455

456 **2.2 CONTRACTOR AUTHORITY**

457 Contractor has the authority to enter into and perform its obligations under this Agreement. The  
458 governing board and/or members and/or shareholders of Contractor have taken any and all  
459 actions required by law and by Contractor's governing documents (e.g., articles of incorporation,  
460 bylaws or their equivalent) and any other documents or agreements governing Contractor's  
461 actions and decisions to authorize entering into this Agreement, and represents that the persons  
462 signing this Agreement on behalf of Contractor have authority to do so. This Agreement  
463 constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with  
464 its terms, except as limited by applicable bankruptcy insolvency, reorganization, moratorium or  
465 other laws of general application relating to or affecting enforcement of creditors' rights.  
466

467 **2.3 NO CONFLICT**

468 Neither the execution nor the delivery by Contractor of this Agreement nor the performance by  
469 Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any  
470 law or governmental regulation applicable to Contractor; (ii) conflicts with, violates, or results in  
471 a breach of any term or condition of any judgment, decree, agreement (including, without  
472 limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a  
473 party or by which Contractor or any of its properties or assets are bound, or constitutes a default  
474 under any such judgment, decree, agreement or instrument; or (iii) will result in the creation or  
475 imposition of any encumbrance of any nature whatsoever upon any of the properties or assets  
476 of Contractor.  
477  
478

479 **2.4 NO LITIGATION, JUDGMENT, DECISION, CLAIM OR INVESTIGATION**

480 As of the Effective Date of the Agreement, there is no judgment, action, claim, suit, proceeding  
481 at law or in equity, or, to the best of Contractor's knowledge, investigation, before or by any  
482 court or governmental authority that exists or is pending or threatened against Contractor that  
483 constitutes or may result in an unfavorable decision, ruling, or finding that would materially and  
484 adversely affect the validity or enforceability of this Agreement or any such agreement or  
485 instrument entered into by Contractor in connection with the transactions contemplated hereby,  
486 that could materially and adversely affect the ability of Contractor to perform its obligations  
487 hereunder, or that could have a material adverse effect on the financial condition of Contractor  
488 or its parent company.

489  
490 **2.5 NO LEGAL PROHIBITION**

491 Contractor has no knowledge of any Applicable Law in effect on the Effective Date that would  
492 prohibit the performance by Contractor of this Agreement and the transactions contemplated  
493 hereby.

494  
495 **2.6 CONTRACTOR'S INVESTIGATION**

496 Contractor has made an independent investigation (satisfactory to it) of the conditions and  
497 circumstances surrounding the Agreement and the work to be performed by it and has taken  
498 these matters into consideration in agreeing to provide these services in exchange for the  
499 compensation provided for under the terms of this Agreement.

500  
501 **2.7 INFORMATION SUPPLIED BY CONTRACTOR**

502 The information supplied by Contractor in all written submittals made in connection with  
503 procurement of Contractor's services, including Contractor's proposal, and negotiation and  
504 execution of this Agreement, and all verbal or written representations and warranties made by  
505 Contractor throughout this Agreement are true, accurate, correct, and complete in all material  
506 respects on and as of the Effective Date of this Agreement.

507  
508 **2.8 REPRESENTATIVES OF THE PARTIES**

509 Contractor has designated in writing a responsible officer who shall serve as the representative  
510 of Contractor and who shall have authority in all daily operational matters related to the  
511 Agreement. County may rely upon action taken by such designated representative as action of  
512 Contractor except for actions not taken within the course and scope of this Agreement. The  
513 Managing Member/General Manager shall be the initial designated representative of Contractor.  
514 Contractor shall notify County Representative in writing prior to, or at the time of a change in the  
515 designated representative.

516  
517 **2.9 WAIVER OF CERTAIN RIGHTS**

518 Contractor hereby waives any right it may possess to contest the legal right, power, or the  
519 authority of County to enter into and perform this Agreement and agrees to cooperate with and  
520 assist County in supporting the legal validity of, and authorization for, such provisions in the  
521 event of any legal challenge thereto brought or made in any manner by a third party.

522  
523

524 **2.10 WAIVER OF RENEWAL STATUTE**

525 Contractor knowingly and specifically waives any and all rights it may have now or in the future  
526 as a result of California Public Resources Code, Division 30, Part 1, Chapter 2, Section 49520,  
527 or any subsequent statute granting the same or similar rights regarding County's notice to  
528 Contractor of termination of the Agreement. Contractor agrees that its rights to provide any of  
529 the services specified in this Agreement shall be governed solely by the provisions of this  
530 Agreement, and any of its rights to provide such services shall terminate upon termination of  
531 this Agreement. This waiver shall not apply to services specified in Article 3.4 of this Agreement  
532 or otherwise not within the scope of or required to be provided by Contractor in this Agreement.  
533

534

535

536

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537 **ARTICLE 3**  
538 **COLLECTION SERVICES AGREEMENT - BASIC TERMS AND PROVISIONS**  
539

540 **3.1 AGREEMENT TERM AND EXTENSIONS**  
541

542 **A. Base Term**

543 The Base Term of this Agreement shall be for a period of ten (10) years from 12:01 AM on the  
544 Effective Date until Midnight on the End Date, December 31, 2027. Contractor will receive no  
545 compensation under this Agreement prior to the Effective Date.  
546

547 The Parties agree that Contractor shall provide information describing the expansion of the  
548 Collection Services Area to all Residential and Commercial Customers within the expanded  
549 portion of the Collection Services Area within 30 days of the Board of Supervisors' approval of  
550 the expansion.  
551

552 New Residential and Commercial Customers will receive an educational mailer designed to  
553 introduce the Contractor and its services. Included in the mailer will be information about all  
554 Services available to the Customers in accordance with Exhibit A. Customers will receive  
555 information on all the programs available through the hauler in accordance with Exhibit B –  
556 Public Education and Information Program.  
557

558 **B. Extensions**

559 At the End Date of the Base Term, and at the sole discretion of the County with or without  
560 cause, Contractor may be granted up to four (4) one-year Extensions of this Agreement and all  
561 rights and obligations under this Agreement. The County shall give Contractor written notice of  
562 any Extension no less than one hundred twenty (120) days prior to the End Date or the End  
563 Date as extended by any prior Extension(s). Contractor has no express or implied right to any  
564 Extension.  
565

566 **C. Agreement Transition Extension**

567 By giving written notice ninety (90) days prior to the effective date of any termination of the  
568 Agreement pursuant to the provisions below or the expiration of the Base Term or Base Term  
569 as extended, the County, at its sole discretion, may require Contractor to continue to provide  
570 Collection Services under the terms of this Agreement for up to one hundred eighty (180) days  
571 following the effective date of such termination or expiration. The purpose of such an Extension  
572 is to ensure uninterrupted Collection Services in the event of transition to a successor contractor  
573 and/or during renegotiations of this Agreement or of a new Agreement with Contractor that  
574 County anticipates may not be concluded by the effective date of termination or expiration.  
575

576 **3.2 COLLECTION SERVICES – EXCLUSIVE RIGHTS**  
577

578 **A. Exclusive Right to Provide Collection Services**

579 County hereby grants Contractor, for the duration of this Agreement the exclusive right and  
580 obligation to engage in Collection Services in the Collection Services Area (as defined and  
581 described in Exhibit D), including but not limited to Collection to Processing Facilities of the  
582 following:  
583

- 584 1. Solid Waste Delivered by Customers.  
585  
586 2. Single Stream Recyclables Delivered by Customers.  
587  
588 3. Special Recyclables Delivered by Customers.  
589  
590 4. Bulk Recyclables Delivered by Customers.  
591  
592 5. Green Waste Delivered by Customers.  
593  
594 6. Food waste Delivered by Customers.  
595  
596 7. Source Separated and mixed C&D Delivered by Customers, except that the exclusive  
597 rights granted to Contractor under this Agreement for Collection Services related to  
598 mixed C&D will not take effect until five years from the date that Napa County legally  
599 permitted haulers who have consistently provided mixed C&D hauling services in the last  
600 three years are given notice pursuant to Public Resources Code section 49520.  
601  
602 8. Used oil and used oil filters Delivered by Customers.  
603

604 **B. Compensation**

605 Unless otherwise specifically stated in this Agreement, the revenue generated by the Rates  
606 contained in Exhibit E in their initial form as of the Effective Date, and as they are adjusted  
607 during the Term, less the Franchise Fee, the Surcharge Fee and pass-through expenses related  
608 to the use of the Designated Disposal or Transfer Facility and the City of Napa Materials  
609 Diversion Facility and other payments as specified in Exhibit J, shall be the only source of  
610 compensation to Contractor for provision of Collection Services. In addition, Contractor shall  
611 retain one hundred (100) percent of gross Recycling Revenues resulting from the sale or  
612 salvage of Recyclable Materials should the Designated Recycling Facility be a facility other than  
613 the City of Napa Materials Diversion Facility.  
614

615 **C. Designated Disposal or Transfer Facility**

616 By signing this Agreement, Contractor agrees to transport all Solid Waste Materials it Collects  
617 within the Collection Services Area to the Napa-Vallejo Waste Management Authority's Waste  
618 Transfer Station (DRTS), at 889 Devlin Road in southern Napa County. Contractor also agrees,  
619 in signing this Agreement, to Deliver all Single Stream Recyclables and Green Waste it Collects  
620 within the Collection Services Area to the City of Napa Composting and Materials Diversion  
621 Facility at 820 Levitin Way in southern Napa County in accordance with the Memorandum of  
622 Understanding between the City of Napa and the County, as amended by Amendment No. 1  
623 and as it may be amended in the future (collectively the "City-County MOU"). The City-County  
624 MOU and Amendment No. 1 thereto are attached hereto and incorporated herein by this  
625 reference as Exhibit L. All other Processing Facilities must be approved by County as set forth  
626 in Article 4.4. Contractor agrees to keep Solid Waste and Recyclable Materials segregated once  
627 Delivered by Customers.  
628  
629

630 **3.3 SUMMARY OF SERVICES AND OBLIGATIONS**

631  
632 **A. General**

633 The work to be done by Contractor pursuant to this Agreement shall include, but not be limited  
634 to, the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials,  
635 supplies, and all other items necessary to perform all Collection Services, and the payment of all  
636 related expenses including all taxes, utility charges, etc. The Collection Services shall be  
637 performed in a thorough and professional manner that constitutes litter free, reliable, courteous  
638 and high-quality service. Contractor shall make Best Efforts to Recycle or Divert from Disposal  
639 the percentage required by law of all Collection Materials. Contractor shall at all times provide  
640 Collection Services using best industry practice for comparable operations, performed at all  
641 times in full accordance with Exhibit A Scope of Work, Exhibit B – Public Education and  
642 Information, and Exhibit C, Performance Standards , the provisions of which are incorporated  
643 herein by this reference, regardless of whether or not such provisions are specifically referred to  
644 in any other article of this Agreement.

645  
646 **B. Hours of Collection**

647 Contractor shall limit Collection to 6 AM to 7 PM in residential zones. In accordance with Section  
648 8.16.080.4 of the County Code, Contractor shall limit Collection to 5:00 AM to 6 PM in  
649 commercial and industrial zones except that the County reserves the right to require alternative  
650 times of Collection in sensitive areas near residences, schools, special care or medical facilities.

651  
652 **3.4 EXCEPTIONS TO COLLECTION SERVICES AGREEMENT**

653 The following services and materials are expressly excluded from this Agreement. This  
654 Agreement and the granting of certain exclusive rights to Contractor shall not preclude the  
655 services and materials described below from being provided, or delivered to, Collected and/or  
656 transported by others, provided that nothing in this Agreement is intended to or shall be  
657 construed to excuse any person from obtaining any authorization or permission from the County  
658 that is otherwise required by law:

659  
660 **A.** Customers' donating or selling items that may be reused or Recyclable Materials to any party  
661 of their choice.

662  
663 **B.** Collection Services provided by bonded paper and document destruction companies, metal  
664 recyclers, companies that collect used wood pallets for repair or reuse , or haulers of household  
665 Hazardous Waste, medical waste, sharps waste, electronic waste, universal waste, or cooking  
666 oil, grease or fat.

667  
668 **C.** Materials which would otherwise constitute Collection Materials that are removed from a  
669 property by a landscaping, gardening or construction contractor as an incidental part of a  
670 gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service  
671 offered by the contractor rather than as a hauling service only.

672  
673 **D.** Self-Haul materials, which are delivered by an individual directly to a transfer station or  
674 Disposal facility in a manner consistent with County ordinances and codes and all other  
675 Applicable Laws.

677 E. Until such time Contractor's exclusive right to haul takes effect as provided in this Agreement,  
678 that portion of Construction and Demolition Debris that is collected by private companies  
679 operating within the Collection Services Area on a non-exclusive basis.  
680

681 The provisions of this Agreement shall not preclude or prohibit the County or any officer or  
682 employee or its contractor thereof or any employee of the State, or any governmental  
683 subdivision thereof, from Collecting, removing, and Disposing of Solid Waste, Recyclables, or  
684 Compostables from County or other public facilities.  
685

### 686 **3.5 FRANCHISE FEE AND SURCHARGE FEE**

#### 687 **A. Amount**

689 In consideration of the exclusive rights provided to the Contractor through this Agreement,  
690 Contractor agrees that County is due a Franchise Fee and a Surcharge Fee. The Contractor  
691 shall pay to the County a Franchise Fee equal to the percent of Gross Rate Revenues  
692 determined by the County, which currently is ten (10) percent. Contractor shall also pay to the  
693 County a Surcharge Fee based on the percentage of Gross Rate Revenues approved by the  
694 Board of Supervisors at a future date. The County reserves the right to change the amount of  
695 the Franchise Fee and/or Surcharge Fee, or assess new fees, at any time during the Term of  
696 this Agreement, with a corresponding adjustment to the Rates. The County shall give the  
697 Contractor ninety (90) days' written notice prior to the date on which any such charge becomes  
698 effective.  
699

#### 700 **B. Payment by Contractor**

701 Contractor shall compute and pay the Franchise Fee and Surcharge Fee on the basis of the  
702 Contractor's receipt of Gross Rate Revenues for each calendar month from Customers the  
703 Contractor bills. The Contractor shall remit the Franchise Fee and Surcharge Fee specified in  
704 Article 3.5A through the Lock Box arrangement described by Article 5.2. If the Contractor fails to  
705 pay the entire amount of compensation due the County through error or otherwise, the  
706 difference due the County shall be paid by the Contractor within thirty (30) days from discovery  
707 of the error or determination of the correct amount. In addition, the Contractor shall pay interest  
708 on any underpayment at the rate of ten percent (10%) per annum from due date. Any  
709 overpayment to the County through error or otherwise shall be offset against the next payment  
710 due from the Contractor. Acceptance by the County of any payment due under this Article 3.5B  
711 shall not be deemed to be a waiver by the County of any breach of this Agreement, nor shall the  
712 acceptance by the County of any such payments preclude the County from later establishing  
713 that a larger amount was actually due, or from collecting any balance due to the County. In case  
714 of dispute between the County and the Contractor regarding any amounts due, the Contractor  
715 shall pay the amount claimed by the County as due and notify the County in writing at the time  
716 of payment as to any portion that is paid under protest, specifying the basis of its claim of  
717 overpayment.  
718

### 719 **3.6 SERVICE TO ALL ACCOUNTS**

720 Contractor shall provide Collection Services to all Customers, including but not limited to  
721 sponsors of special events, within the Collection Services Area requesting service during the  
722 Term, and shall be compensated on a per-account basis by the then effective Rates.  
723

724 **3.7 TITLE TO COLLECTED MATERIALS**

725 County and Contractor expressly understand and agree that all Solid Waste, Recyclable  
726 Materials, Compostable Materials and Special Recyclables that Contractor is authorized to  
727 Collect under this Agreement shall become the property of Contractor at the point of Collection,  
728 subject to the requirements of Exhibit A and Contractor shall ensure proper Delivery of specified  
729 Collection Materials to the Processing Facilities. Upon Delivery of Collected materials, unless  
730 the Contractor and owner of a Processing Facility agree otherwise, ownership of the materials  
731 shall transfer from Contractor to the owner of the Processing Facility.  
732

733 **3.8 FEDERAL, STATE AND LOCAL GOALS**

734 Contractor acknowledges that it shall provide all Collection Services covered by this Agreement,  
735 with attendant outreach, publicity and advertising, and public information programs, sufficient to  
736 achieve and maintain a level of Diversion for the Collection Services Area that is consistent with  
737 Federal, State, and Local goals for waste reduction and diversion.  
738

739 **3.9 ENFORCEMENT**

740 Contractor shall become familiar with all County ordinances and codes related to the provision  
741 of Collection Services, and shall upon request assist the County in its enforcement  
742 responsibilities by promptly notifying the County Representative of any third party violations of  
743 these ordinances and codes observed by Contractor, and by promptly providing County any  
744 related information it may have.  
745

746 **3.10 EMERGENCY SERVICES**

747 Notwithstanding the provisions of this Agreement giving Contractor certain exclusive rights, in  
748 the event of a declared emergency, County reserves the right to use County staff, agents,  
749 contractors, and/or subcontractors as necessary to clear and transport debris from the  
750 Collection Services Area. Contractor agrees not to contest County's use of other parties to  
751 Collect, transport, and dispose of any debris resulting from such emergency. In the event of a  
752 declared emergency, Contractor shall upon notice from the County make all reasonable effort to  
753 provide vehicles and crews to assist in clearing and/or transporting debris.  
754

755 **3.11 INFORMATION MANAGEMENT SYSTEMS**

756 Contractor shall maintain such information management systems as are needed to collect,  
757 store, and organize operational, financial and quantitative Collection data, and in a format  
758 necessary and sufficient to produce the reports and plans as specified in this Agreement,  
759 including in electronic formats that are compatible with County software. All data shall be  
760 backed up so as to ensure no loss of data due to computer failure.  
761

762 **3.12 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

763 In entering into this Agreement and performing obligations set forth therein, County is relying on  
764 the conditions set forth below. The obligation of County to permit this Agreement to become  
765 effective is subject to the satisfaction of each and all of the conditions set out below, each of  
766 which may be waived in whole or in part in writing by County. Waiver of any of the following as a  
767 condition to the effectiveness of the Agreement does not preclude the County from pursuing any  
768 claim or breach of this Agreement.  
769

770 **A. Accuracy of Representations**

771 The representations and warranties made by Contractor in Article 2 of this Agreement are true  
772 and correct on and as of the Effective Date.

773  
774 **B. Absence of Litigation**

775 There is no litigation pending on the Effective Date in any court challenging the award or  
776 execution of this Agreement or seeking to restrain or enjoin its performance. Contractor shall  
777 notify County in writing within thirty (30) days of Contractor's becoming aware of any litigation  
778 that may in any way affect its performance of the Collection Services.

779  
780 **C. Effectiveness of Board Action**

781 A Board of Supervisors Resolution approving this Agreement shall have become effective  
782 pursuant to Applicable Law on the Effective Date.

783  
784 **D. Verification of Insurance Coverage and Performance Assurances**

785 Contractor shall submit no later than thirty (30) days prior to the Effective Date, and shall  
786 maintain to the satisfaction of County throughout the Term of this Agreement, endorsements of  
787 insurance coverage pursuant to Article 8.5 performance bond, letter of credit or other  
788 performance assurance pursuant to Article 8.6.

789  
790 **E. Guaranty of Contractor's Obligations**

791 On or before January 1, 2018, the Contractor shall provide a guaranty or other assurance  
792 acceptable to County from Contractor's ultimate parent company, owners, immediate parent  
793 company, or financial guarantor, as acceptable to County, guaranteeing or assuring  
794 performance under this Agreement by Contractor. The guaranty shall be in a format acceptable  
795 to the County, and be incorporated into this Agreement as Exhibit I.

796  
797 In addition to guaranteeing performance of the Contractor's obligations under this Agreement,  
798 the guaranty must also identify the persons or entities that own interests in the Contractor and  
799 the percentage of ownership of each member or other owner. The guaranty must also establish  
800 that the day-to-day operations will be the responsibility of the Managing Partner/General  
801 Manager. The guaranty must also establish that operations other than day-to-day will be  
802 approved by the Members or other governing board or body of Contractor. Any changes to the  
803 guaranty will require the written consent of the County, which consent will not be unreasonably  
804 withheld.

805

806 **ARTICLE 4**  
807 **OTHER RESPONSIBILITIES**

809 **4.1 ROLE OF PUBLIC EDUCATION AND INFORMATION PROGRAM IN ACHIEVING**  
810 **WASTE DIVERSION**

811 Exhibit B specifies the minimum standards for Contractor performance of these activities in a  
812 proactive, timely, and professional manner. All materials and messages shall be conveyed,  
813 when deemed appropriate by the County, in English and Spanish and shall be pre-approved by  
814 County.

815  
816 Contractor acknowledges the importance throughout the Term of developing and maintaining a  
817 consistent effort to inform and educate the public about opportunities and methods of waste  
818 diversion and reduction through a variety of activities, including notifications to Customers of  
819 any Federal, State, or local mandatory diversion requirements and programs. In particular the  
820 Contractor shall provide detailed information and education about all services it provides under  
821 this Agreement. Contractor further acknowledges its responsibility and role in informing and  
822 educating the general public of methods to avoid waste and reduce energy use and pollution by  
823 diverting waste. Contractor agrees to assist the County in its efforts to reach and maintain all of  
824 its Federal, State and local waste diversion goals and requirements. Exhibit B, the provisions  
825 of which are incorporated herein by this reference, regardless of whether or not such provisions  
826 are specifically referred to in any other article of this Agreement, contains the detailed public  
827 education and information program that the Contractor is responsible for conducting at no  
828 additional cost to County or Customers.

829  
830 **4.2 CUSTOMER SERVICE AND ACCESSIBILITY**

831  
832 **A. General**

833 Contractor acknowledges that County expects it to provide highly professional and courteous  
834 Customer service. Contractor shall respond to Customer inquiries through email, phone, or  
835 other means of communication that is consistent with the communication methods used initially  
836 by the Customer. For all messages left before 3:00 p.m., all "call backs" shall be returned prior  
837 to 6:00 p.m. on the day of the message. For messages left after 3:00 p.m., all "call backs" shall  
838 be returned prior to noon the next work day.

839  
840  
841 **B. Communication Media**

842 Contractor shall maintain a toll-free telephone number and other means of communication, such  
843 as e-mail for Customer service. Contractor shall provide all specified services in English and  
844 Spanish. Contractor shall install and maintain equipment, and have available service  
845 representatives sufficient to handle the volume of messages typically experienced on the  
846 busiest days.

847  
848 All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of 1.5  
849 minutes shall have the option to remain "on-hold" or to be switched to a message center where  
850 the caller can leave a message. For all messages received before 3:00 p.m., all "call backs"  
851 shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For  
852 messages left after 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to

853 noon the next work day. Contractor shall make a minimum of three (3) “call back” attempts  
854 within twenty-four hours of the receipt of the Customer’s contact with the Contractor.  
855

856 Dedicated Customer service representatives shall be available to answer all inquiries from 8  
857 a.m. to 5 p.m., Monday through Friday. Contractor shall also maintain an after-hours telephone  
858 message system to take calls received other than during normal business hours. Contractor  
859 shall provide the County a means of contacting a representative of the Contractor on a 24-hour  
860 basis. Further specification of these requirements is contained in Exhibit C.  
861

### 862 **4.3 SERVICE COMPLAINTS AND RESOLUTION**

#### 863 **A. General**

864 Contractor agrees to provide Customer service in a professional, timely, and courteous manner.  
865  
866

#### 867 **B. Customer Complaint Log**

868 Contractor shall maintain a written log of all oral and written service complaints (“Complaint  
869 Log”) registered with Contractor from Customers within Collection Services Area. Contractor  
870 shall be responsible for prompt and courteous attention to, and prompt and reasonable  
871 resolution of, all Customer complaints. Contractor shall record in the Complaint Log all written  
872 and oral complaints, noting the name and address of complainant, date and time of complaint,  
873 nature of complaint, identity of supervisor, and nature and date of resolution. Such log shall be  
874 kept so that it may conveniently be inspected by representatives of County upon written request.  
875 Such log shall be retained by Contractor for four (4) years following the end of the year in which  
876 the complaint was made, except that any log incidental to an assessment of Liquidated  
877 Damages, a breach, a default, or a cause of termination shall be retained through the Term of  
878 this Agreement unless the County otherwise in writing permits its disposal.  
879

#### 880 **C. Resolution of Complaints**

881 Contractor shall respond to all Customer complaints within twenty-four (24) hours, Saturdays,  
882 Sundays and holidays (as specified in Exhibit C) excluded. Contractor shall make Best Efforts to  
883 resolve all complaints within ten (10) Working Days, with the exception of missed Customer  
884 pick-ups. If a complaint involves a missed pick-up of any material required to be Collected or  
885 picked up by Contractor in accordance with this Agreement and/or County ordinances,  
886 Contractor shall Collect those materials on the same day if the complaint is received by 12  
887 Noon, or by 12 Noon the following Working Day if the complaint is received after 12 Noon.  
888

#### 889 **D. Reporting Complaints to County**

890 Contractor shall summarize the complaints, in a format approved by the County, and include the  
891 summary in the monthly report prepared by Contractor for the County. Upon County’s request,  
892 Contractor shall provide County Customer service levels and route information.  
893

### 894 **4.4 CHANGE IN COLLECTION OPERATIONS, ADMINISTRATION, OR SCHEDULE**

#### 895 **A. County Notice**

896 Changes to Collection days or routes for Solid Waste, Recyclables, Green Waste, and Food  
897 Waste, or other changes to Collection operations and selected Processing Facilities, are subject  
898 to prior approval of the County Representative, which shall not be unreasonably withheld. The  
899

900 County shall respond to such a request within ten (10) County business days of the request  
901 from the Contractor. A change in Collection route or day is defined as any change that affects  
902 more than five (5) percent of Customers.

903

904 **B. Customer Notice**

905 Contractor shall make the following notifications regarding any changes in service:

906

907 1. Notify all affected Cart Customers at least fourteen (14) calendar days prior to any  
908 change in their scheduled day of Solid Waste, Recyclables, Food Waste and Green  
909 Waste Collection by mailing notice at least seventeen (17) calendar days prior to the  
910 change. Contractor shall not permit any Cart Customer to go more than seven (7)  
911 calendar days without service in connection with a Collection schedule change,  
912 excluding scheduled holidays.

913

914 2. Notify all affected Bin Customers at least five (5) calendar days prior to any change in  
915 service. Except by prior arrangement with the Customer, no change in service shall  
916 temporarily reduce the weekly frequency of Collection.

917

918 **4.5 REPORT ACCUMULATION OF SOLID WASTE: UNAUTHORIZED DUMPING AND**  
919 **CESSATION OF SERVICE**

920 Contractor shall direct its employees to note and report any address and/or location within the  
921 Collection Services Area at which they observe substantial and/or ongoing accumulation of  
922 Solid Waste that is not being Delivered for Collection. Contractor shall also direct its employees  
923 to note and report any address and/or location at which Solid Waste has been apparently  
924 dumped in a manner that does not conform to County ordinances. Contractor shall notify the  
925 County Representative within three (3) Working Days of the address or location of any  
926 accumulation or dumping.

927

928 **4.6 HAZARDOUS WASTE**

929

930 **A. General**

931 If Contractor determines that waste placed in any Container for Collection or delivered to any  
932 Processing Facility is Hazardous, Medical or Infectious Waste, or other waste that may not  
933 legally be accepted at the Processing Facility or presents a hazard to Contractor's employees,  
934 Contractor shall have the right to refuse to accept such waste. In such instances, Contractor  
935 shall contact Customer and provide information on how Customer may arrange for proper  
936 disposal. If the Customer cannot be reached immediately, Contractor staff shall, prior to leaving  
937 the premises, leave a tag indicating the reason for refusing to Collect the waste.

938

939 **B. Ownership of Hazardous and Non-collectible Waste**

940 The Parties agree and intend that upon Collection all Collection Materials (not including  
941 Hazardous Waste or other waste that Contractor is prohibited from Collecting under its  
942 governmental permits) becomes the property of Contractor. All other materials (including  
943 Hazardous and other waste that Contractor is prohibited from Collecting under its governmental  
944 permits) shall remain the property of the Customer that disposed of such materials, which shall  
945 remain solely responsible for such materials, including without limitation for their transportation  
946 and disposal, retrieval of such materials from any location to which Contractor may have

947 transported them and for any and all damages, losses, liabilities, fines, penalties, forfeitures,  
948 claims, demands, actions, proceedings or suits arising out of or relating to the generation,  
949 transportation, handling, cleanup, remediation or disposal of or with respect to such materials.

950

951 **C. Hazardous Waste Disposal Responsibility**

952 If Hazardous Waste is nonetheless Collected by Contractor during Contractor's normal  
953 Collection Service and the Customer cannot be identified or fails to remove the waste after  
954 being requested to do so, Contractor shall arrange for its proper disposal at no cost to County.  
955 Contractor shall make a good faith effort to recover the cost of proper disposal from the  
956 Customer, and the cost of this effort as well as the cost of disposal shall be chargeable to that  
957 individual or entity. If the Customer cannot be identified, Contractor shall absorb the cost of  
958 proper disposal. Contractor shall report any such disposal cost in writing to the County within  
959 forty-eight (48) hours of the date and time incurred.

960

961 **4.7 CHANGE IN SCOPE**

962

963 **A. General**

964 County may require a Change in Scope, consisting of changes in, or modifications to existing  
965 Collection Services, or a request that Contractor provide new services; or may consider a  
966 Contractor request for a Change in Scope.

967

968 1. Should the Change in Scope result in documented increases in Contractor's operating or  
969 capital expenses, the County shall increase Rates as provided in Article 6.5 as  
970 necessary to compensate Contractor for the additional documented expenses, including  
971 an increase in profit equal to ten (10) percent of the portion of increased expenses that  
972 are not pass-through expenses (e.g., not such expenses as facility tipping fees, including  
973 associated regulatory and/or surcharges).

974

975 2. Should the Change in Scope result in documented decreases in Contractor's operating  
976 or capital expenses, the County shall decrease Rates, as provided in Article 6.5, as  
977 necessary to reflect such decrease in costs, including a decrease in profit equal to ten  
978 (10) percent of the portion of reduced expenses that are not pass-through expenses  
979 (e.g., not such expenses as facility tipping fees, including associated regulatory and/or  
980 surcharges).

981

982 **B. Good Faith Negotiation**

983 In the event of a Change in Scope, the Parties agree to negotiate in good faith to determine the  
984 applicable distribution for the reasonable costs of reviewing the proposed Change in Scope, and  
985 for the resulting increase or decrease in Rates. Contractor shall promptly provide any  
986 documentation reasonably requested by County as necessary to identify and quantify any  
987 added or reduced expenses related to the Change in Scope. Either Party may, at its own cost,  
988 seek independent third-party assistance in determining the nature of any costs or savings. All  
989 determinations of added or reduced expenses shall be based on reasonable industry standards  
990 and averages for providing such services. If a Change in Scope results in a reduction or shift in  
991 equipment needs, to minimize capital expenditures, Contractor, including a parent or any  
992 affiliates, shall make its Best Efforts to redeploy or sell vehicles, Containers, equipment, and  
993 materials that are not fully amortized.

994  
995 **C. Adjustment of Rates**  
996 Any Rate adjustment made pursuant to this Article 4.7 shall be calculated to include the  
997 following calculation and components: The appropriate and then-current component(s) of each  
998 Rate (Contractor Compensation Fee, Solid Waste Tip Fee, Food Waste Tip Fee, Green Waste  
999 Tip Fee, and/or Net Recycling Tip Fee and Carpet Tip Fee when applicable) shall be adjusted to  
1000 reflect the percentage change in the relative proportion of Gross Rate Revenues that needs to  
1001 be generated from that component(s) of the Rates as a result of the Special Rate Review. With  
1002 regards to any Change in Scope, County reserves the right to adjust Contractor's compensation  
1003 through an alternative method, such as a one-time or phased lump sum payment from the  
1004 County to the Contractor, or from the Contractor to the County.

1005  
1006  
1007  
1008 [The remainder of this page left blank intentionally]

1009 **ARTICLE 5**  
1010 **BILLING, COLLECTION, AND REMITTANCE**

1011  
1012 **5.1 BILLING RESPONSIBILITIES**  
1013

1014 **A. General**

1015 The Contractor is responsible for billing and Collecting Rates for all Collection Services. The  
1016 Contractor shall not charge any amount in excess of the approved Rates for any services  
1017 required or permitted to be performed by the terms of this Agreement. The Rates are those set  
1018 forth in Exhibit E, "Schedule of Rates," or as they may be adjusted by the County during the  
1019 Term.

1020  
1021 **B. Specific Requirements**

1022 In billing the Rates, Contractor shall comply with the following:

- 1023
- 1024 1. Contractor shall levy, impose and bill Special Services Rates as provided in the Exhibit  
1025 E. Special Services Rates shall not be levied without prior notification to the Customer.  
1026
  - 1027 2. Contractor shall not impose or bill any additional charges for side yard or backyard  
1028 service for eligible Customers as specified in Exhibit A, section 2.0 C.  
1029
  - 1030 3. All Commercial Customers shall be billed monthly, in advance of service, except  
1031 Commercial Customers receiving one-time or On Call Services. The Contractor may bill  
1032 such Commercial Customers in arrears; however the Contractor assumes all risk and  
1033 responsibility for non-payment. Residential Customers may be billed in advance on a  
1034 monthly or every three months basis, at the Contractor's discretion except for On Call  
1035 Services. All Customer invoices are due and payable within 30 days of the invoice date.  
1036 Residential Customers may prepay in advance for one year of Collection service, at a  
1037 discount of five (5) percent from the usual Rate for that level of service.  
1038

1039 **5.2 CONTRACTOR RECEIPT OF GROSS RATE REVENUES**

1040 The Contractor shall enter into a Lock Box Agreement ~~containing the terms described in Exhibit~~  
1041 ~~J with the County and~~ a third party agent or "Lock Box Bank" to provide Lock Box services,  
1042 attached as Exhibit J. In addition to any other requirements specified in Exhibit J, Contractor  
1043 shall deposit all Rate Revenues into the Lock Box Account according to the process specified in  
1044 Exhibit J pursuant to Section 1 and Schedule A.  
1045

1046 **5.3 GENERAL CONTRACTOR REQUIREMENTS FOR DISTRIBUTIONS**

1047 The Contractor, with the County's consent, will issue instructions at a minimum monthly to the  
1048 ~~bank with whom Contractor enters into the Lock Box Agreement Bank~~ as to how the funds are  
1049 to be distributed in accordance with Section 2.b. of the Lock Box Agreement ~~contained in Exhibit~~  
1050 ~~J~~. Article 5.4 of this Agreement details the method of calculating the distributions to the County  
1051

1052 **5.4 CALCULATION OF MONTHLY DISTRIBUTION TO THE COUNTY**

1053 This Article 5.4 addresses the specific steps Contractor shall take to report Gross Rate  
1054 Revenues to the County, and to monies to the County pursuant to Section 2.b.(iv) of the Lock  
1055 Box Agreement ~~contained in Exhibit J~~. For each calendar month the Contractor shall prepare

1056 and provide to the County a monthly statement by the 15<sup>th</sup> day after the end of the month. The  
1057 monthly statement shall include the amount to be disbursed to the Designated Disposal or  
1058 Transfer Facility, the Designated Food Waste Processing Facility, Designated Green Waste  
1059 Processing Facility, the Designated Recyclables Processing Facility, a list of the weekly  
1060 disbursements to Contractor's operating account and the following information and calculations  
1061 for the Monthly Distribution.

1062

1063 **A. Gross Rate Revenues**

1064 All Rate Revenues collected by the Contractor from Customers during that month for current  
1065 and past due accounts are to be reported as Gross Rate Revenues. Documentation should be  
1066 provided to support the Gross Rate Revenues. Documentation should include the number of  
1067 accounts for each Rate and total number of Customers billed for each Special Services Rates.

1068

1069 **B. Franchise Fee and Surcharge Fee.**

1070 The Contractor shall present the Franchise Fee calculations and the amount of the monthly  
1071 Franchise Fee and Surcharge Fee obligation if a Surcharge Fee is then in effect. The Franchise  
1072 Fee shall be calculated as follows:

1073

1074 Franchise Fee = 0.09 x Gross Rate Revenues

1075

1076 The Surcharge shall be calculated as follows:

1077

1078 Surcharge Fee = .045 x Gross Rate Revenues

1079

1080 **C. Liquidated Damages**

1081 Any Liquidated Damages the Contractor is obligated to pay to the County, as provided for in  
1082 Article 9.1 and Exhibit F shall be reported for the month.

1083

1084 **D. Other Payments**

1085 Any other payments due to the County would be payments such as the cost of performance  
1086 reviews or audits. County also reserves the right to during the Term add an AB 939 Fee, or  
1087 other fee to the Rates and require its distribution to the County.

1088

1089 **E. Illustration**

1090 For example, for illustrative purposes only, assume that:

1091

1092 1. Gross Rate Revenues for the month equals \$100,000 which is the sum of \$90,000 from  
1093 current monthly collections and \$10,000 from past due accounts collected.

1094

1095 2. Franchise Fee = 0.09 x Gross Rate Revenues

1096 = 0.09 x \$100,000

1097 = \$9,000

1098

1099 3. Surcharge Fee = 0.045 x Gross Rate Revenues

1100 = 0.045 x \$100,000

1101 = \$4,500

1102

- 1103 4. Liquidated Damages due for the month are \$100.  
1104  
1105 5. Other Payments due for the month are \$6,000.  
1106  
1107 6. Total County Distribution = \$9,000 + \$1,000 + \$4,500 + \$100 + \$6,000 = \$20,600  
1108

1109 **5.5 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS**

1110 Contractor shall solely bear all expenses and losses related to collecting or failing to collect bad  
1111 debt from delinquent Customer accounts. Notwithstanding the foregoing, the Franchise Fee and  
1112 Surcharge Fee shall be based only on Gross Rate Revenues actually collected by Contractor  
1113 and shall not reflect any delinquent accounts, bad debts or other uncollected amounts. Upon  
1114 best reasonable effort (at least three attempts) to collect delinquent payments, Contractor may  
1115 stop service to Customers with delinquent accounts. Contractor shall prepare and provide to the  
1116 County a monthly report containing a list of any Customer for whom service has been stopped  
1117 during the previous month due to delinquent payment. The report will be provided under  
1118 separate cover with the required monthly reports by the 20<sup>th</sup> day after the end of the month.  
1119

1120 **5.6 AUDIT OF BILLINGS AND FINANCIAL REPORTS; REVIEW OF COSTS**

1121  
1122 **A. Scope of Audit**

1123 County may at its sole discretion select a qualified independent firm to perform up to four (4)  
1124 audits during the Term of the Agreement. The cost of such audits as provided for in this Article  
1125 5.6 A. is solely the responsibility of the Contractor. The cost of these audits is limited to \$20,000  
1126 each for a maximum of \$80,000 during the term of the agreement. The frequency and timing of  
1127 the audits shall be determined at County's sole discretion. County shall provide Contractor sixty  
1128 (60) days' written notice of each audit. County shall determine the scope of any audits based on  
1129 the general requirements specified below and may elect to conduct either one or both of the  
1130 following types of audit:  
1131

- 1132 1. **Audit of Billings.** The auditor shall review the billing practices of Contractor with relation  
1133 to Delivery of Collection Services. The intent of this audit is to use sampling to verify that  
1134 Customers are receiving the type and level of service for which they are billed.  
1135  
1136 2. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and  
1137 data submitted by Contractor pursuant to Article 7. The purpose of this audit is to verify  
1138 that Contractor is correctly calculating Gross Rate Revenues, and is properly remitting  
1139 Franchise Fees, AB 939 Fees and Applicable Laws and Liquidated Damages.  
1140

1141 **B. Review of Costs.** In conjunction with or separate from an audit, the County may review any  
1142 costs and revenues related to any Change in Scope or Special Rate Review. Apportionment of  
1143 the cost to each Party of any review of cost or revenues associated with a Change in Scope or  
1144 Special Rate Review is as specified in Articles 4.7 and 6.5, respectively.  
1145

1146 **ARTICLE 6**  
1147 **CONTRACTOR COMPENSATION AND CUSTOMER RATES**

1148  
1149 **6.1 RATES**

1150 The Rates contained in Exhibit E ("Schedule of Initial Rates") are the only source of  
1151 compensation to Contractor for provision of Collection Services. Contractor shall bill Customers  
1152 and collect payment in accordance with the Rates set forth in Exhibit E and pursuant to Article 5  
1153 and the Lock Box Agreement ~~contained in Exhibit E.~~

1154  
1155 **6.2 ADJUSTMENT OF RATES**

1156  
1157 **A. Annual Adjustment**

1158 Notwithstanding the provisions of Articles 6.4 and 6.5 and subject to the terms herein, the  
1159 Contractor is entitled to one Rate adjustment annually beginning October 1, 2018. Contractor's  
1160 request for an adjustment shall be prepared in a format approved by the County Representative,  
1161 and is to be submitted to County by each June 1 beginning with June 2018. Each adjustment is  
1162 to be based on data from a previous twelve (12) month period as specified in this Article 6.2, is  
1163 to be approved by the County with good faith effort by September 1 of each year, and will be  
1164 effective on each subsequent October 1. Each component is adjusted as specified in this Article  
1165 6.2.

1166  
1167 The County shall adjust each Rate up or down to reflect: 1) the product of the change in the  
1168 annual inflation rate measured as the percentage increase in the Consumer Price Index (CPI)  
1169 over the previous twelve (12) months multiplied by the then-current Contractor Compensation  
1170 Fee Component, and; 2) actual changes in any of the applicable pass-through components of  
1171 each Rate.

1172  
1173 The annual change in the CPI shall be calculated using the twelve (12) months that began  
1174 twelve (12) months prior to the effective date of the Rate adjustment, accounting for the fact that  
1175 the CPI is published six times per year for February, April, June, August, October, and  
1176 December, and allowing for lag time in the publishing of the latest CPI. Thus the calculation of  
1177 the change in the CPI for a Rate adjustment taking effect on October 1, 2018 shall be based on  
1178 CPI for February 2017 through February 2018.

1179  
1180 Adjustment of the Solid Waste Tip Fee Component, the Net Recycling Processing Fee  
1181 Component, the Food Waste Tip Fee Component, the Green Waste Tip Fee Component and  
1182 the Carpet Tip Fee when applicable shall be based on the relative proportion of any change in  
1183 the Solid Waste Tip Fee, the Green Waste Tip Fee, the Food Waste Tip Fee or in the Net  
1184 Recycling Processing Fee and the Carpet Tip Fee when applicable, respectively, compared to  
1185 the then-current fees.

1186  
1187 For example, for illustrative purposes only assume that:

1188  
1189 The Solid Waste Tip Fee increases from \$32.00 per ton to \$34.00 per ton, and the then-current  
1190 Solid Waste Tip Fee Component is \$4.00,

1191  
1192 Adjusted Solid Waste Tip Fee Component =  $\$4.00 \times (\$34.00/\$32.00) = \$4.25$

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**B. Calculation of Adjustment**

Each Rate shall be adjusted as follows:

1. Current Contractor Compensation Fee Component x (Current CPI/12-month previous CPI) +
2. Adjusted Solid Waste Tip Fee Component (pass-through) +
3. Adjusted Net Recycling Processing Fee Component (pass-through) +
4. Adjusted Green Waste Tip Fee Component (pass-through) +
5. Adjusted Food Waste Tip Fee Component (pass-through)

Adjusted Rate = [Adjusted Components 1. through 5. above/0.855 where 0.855 represents the addition of the Franchise Fee Component of 10 percent and 4.5 percent Surcharge Fee.

Carpet Tip Fees are not applicable except for the source-separated rate for carpet. Source-Separated Carpet Rates = Contractor Compensation Component + Carpet Tip Fee Component with sum total divided by the total percentage of the County's Franchise Fee and if applicable Surcharge Fee.

For example, assume the following change in CPI and no changes in the four pass-through components:

1. Current CPI Adjustment is 123
2. Previous 12-month CPI = 118
3. Then-current Contractor Compensation Fee Component = \$10.00
4. Then-current Solid Waste Tip Fee Component = \$4.00
5. Then-current Net Recycling Processing Component = \$3.00
6. Then-current Green Waste Tip Fee Component = \$2.00
7. Then-current Food Waste Tip Fee Component = \$1.00

Then the adjusted Rate is calculated as follows:

$$\text{Adjusted Rate} = [\$10 \times (123/118)] + \$4.00 + \$3.00 + \$2.00 + \$1.00 / 0.855 = \$23.86$$

1239 **C. CPI Index Cap**  
1240 In the event that the specified CPI index increases by more than five (5) percent in any one year  
1241 (i.e., Current CPI/12-month previous CPI is greater than 1.05, the Contractor shall receive an  
1242 adjustment of the CPI Component of each Rate greater than five (5) percent only to the extent  
1243 that the Contractor can demonstrate that actual costs increased more than five (5) percent  
1244 during that twelve month period not to exceed an increase of seven (7) percent annually.  
1245 Negative CPI and CPI increases shall not be rolled over or back to any year.  
1246

1247 **D. Change in the CPI Index**  
1248 If the CPI is discontinued or revised during the Term by the United States Department of Labor,  
1249 such other government index or computation with which it is replaced shall be used in order to  
1250 obtain substantially the same result as would be obtained if the CPI had not been discontinued  
1251 or revised.  
1252

### 1253 **6.3 APPROVAL AND NOTICE OF ADJUSTED RATES**

1254 The County shall act in good faith to approve adjusted Rates on each August 1, beginning with  
1255 August 1, 2018, to be effective the following October 1 beginning with October 1, 2018.  
1256 Contractor shall post on website and provide all Customers with advance written notice of  
1257 approved Rate adjustments, in the form of a bill insert or notification on the invoice at least thirty  
1258 (30) days prior to the effective date of each Rate adjustment that at a minimum provides the  
1259 average percentage of change and the effective date of the change.  
1260

### 1261 **6.4 Initial Revenue and Cost Projections**

1262 Exhibit M provides the Contractor's projections of revenues and expenses for calendar years  
1263 2017 through 2020. These projected revenues and expenses account for new programs and  
1264 services, proposed increased rates, and estimated residential account migration. The County  
1265 and the Contractor agree that there may be differences in these projected revenues and  
1266 expenses, and those differences may be material to the Contractor's projected Profit Margin.  
1267 For purposes of accounting for any such differences, the County and the Contractor agree to  
1268 review the projections provided in Exhibit M on an annual basis starting in 2018 for purposes of  
1269 making any adjustments to the rates that are to be effective on the following October 1<sup>st</sup>.

1270 In conducting those reviews in 2018, 2019 and 2020, the Contractor's actual profit (operating  
1271 ratio) for franchised services for years 2017, 2018 and 2019, as calculated based on its audited  
1272 financial statements, will be compared to the Contractor's projected year 2020 operating ratio of  
1273 90.5%. If the Contractor's profit level for 2017, 2018 and/or 2019 does not exceed a 90.5%  
1274 operating ratio no adjustment will be made to the rates that are effective on the following  
1275 October 1<sup>st</sup>. If the Contractor's actual profit exceeds an 90.5% operating ratio, the rates that are  
1276 set the following October 1<sup>st</sup> will be reduced by the corresponding amount of any profit above a  
1277 90.5% operating ratio. In calculating the operating ratio, franchise fees, and disposal and  
1278 processing expenses will be treated as pass-through expenses not subject to profit. In addition,  
1279 non-allowable expenses will be removed from the base expenses upon which the operating  
1280 ratio is calculated. Non-allowable costs which shall be deducted from actual costs include the  
1281 following:

- 1282 1. Any costs that are not reasonable or necessarily incurred in the performance of the  
1283 requirements of the franchise
- 1284 2. Payments to repair damage to property of third parties of the County for which the  
1285 Contractor is legally liable

- 1286 3. Promotional expenses (unrelated to customer education)
- 1287 4. Entertainment and Travel expenses not pertaining to employee training programs or
- 1288 directly related to and necessary for the management of the franchise
- 1289 5. Fines and penalties of any nature
- 1290 6. Liquidated damages assessed under this Agreement
- 1291 7. Federal or State income taxes not including California state minimum tax and LLC fee
- 1292 8. Charitable or political contributions
- 1293 9. Attorney's fees and other expenses incurred by Contractor in any court proceeding in
- 1294 which the County and Contractor are adverse Parties.
- 1295 10. Attorney's fees and other expenses incurred by Contractor arising from any act or
- 1296 omission in violation of this Agreement.
- 1297 11. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in
- 1298 which Contractor's own negligence, violation of law or regulation or wrong doing are in
- 1299 issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and
- 1300 attorneys' fees and expenses incurred by Contractor in a court proceeding in which the
- 1301 legal theory or statute providing a basis of liability against Contractor also provides for
- 1302 separate potential liability for the County derived from the action of its citizens or Rate
- 1303 payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such
- 1304 claims and such claims arise from acts or occurrences within the Term of the
- 1305 Agreement.
- 1306 12. Payments to related party entities for products or services in excess of market rates
- 1307 and/or the cost to the related party entity for those products or services
- 1308 13. Goodwill
- 1309 14. Unreasonable profit sharing distributions
- 1310 15. Director fees and payments to directors and/or owners of Contractor unless paid as
- 1311 reasonable compensation for services actually rendered
- 1312 16. Bad debt write-off in excess of 2% of annual gross rate revenues

1313 In conducting the review in year 2021, the Contractor's profit level for franchised services for  
 1314 year 2020 franchise services, as calculated based on its audited financial statements, will be  
 1315 compared to the Contractor's projected 2020 profit level of a 90.5% operating ratio. The rates  
 1316 that are set on October 1, 2021 will be adjusted up or down by the amount that its 2020 profit  
 1317 level either exceeded, or did not achieve the projected operating ratio of 90.5%. Upon the  
 1318 County's request, the Contractor must provide documentation that supports, to the County's  
 1319 satisfaction, the reasonableness of any decreased revenue or increased costs above those  
 1320 projected in Exhibit M. An example calculated rate adjustment is included in Exhibit M. Any  
 1321 changes as a result of this Article are classified as a Contractor Compensation Adjustment.

1322 For rates effective October 1, 2021, the Contractor will submit an annual adjustment outlined in  
 1323 Section 6.2 A of the agreement, which show any adjustment from the review of the 2020 audited  
 1324 financial statements.

1325  
 1326

1327 **6.5 SPECIAL RATE REVIEW**

1328  
1329 **A. Eligible Items**

1330 Notwithstanding the schedule for annual Rate adjustments described in Article 6.2 and subject  
1331 to the terms herein, the Contractor is entitled to apply to the County for consideration of a  
1332 Special Rate Review, or the County may initiate such a Review should one or more of the  
1333 following occur:

- 1334
- 1335 1. A change in the cost of providing Collection Services due to an increase in State or local  
1336 fees or surcharges at the Disposal or processing site or a Change in Law.
  - 1337
  - 1338 2. A Change in Scope as provided in Article 4.7.
  - 1339
  - 1340 3. Changes to the Franchise Fee, Surcharge Fee or an addition, deletion or change to any  
1341 other County fee in accordance with Article 3.5.
  - 1342
  - 1343 4. A Change in Law or Regulation for which Contractor compliance is mandatory, and that  
1344 results in significant documented increases in the specific cost of providing Collection  
1345 Services.
  - 1346

1347 Special Rate Reviews are intended to be used to make legitimate Rate adjustments to reflect  
1348 changes in eligible expenses. It is the responsibility of the Contractor to identify any such  
1349 eligible items as early as possible, and prior to their taking effect for any eligible item such as a  
1350 change in State law or regulation that the Contractor should reasonably have anticipated.  
1351 Special Rate Reviews are not intended to provide retroactive compensation for past changes in  
1352 the eligible items listed above, or to assist the Contractor should the Contractor have under-  
1353 estimate the cost of providing the services to the expanded Collection Services Area specified in  
1354 the Agreement.

1355  
1356 **B. Ineligible Items**

1357 Items for which Contractor will not be additionally compensated over the Term, except as  
1358 resulting from a Change in Scope, include, but are not limited to:

- 1359
- 1360 1. Changes in fuel cost.
  - 1361
  - 1362 2. Decreases in Construction and Demolition Material Sales revenues, Recyclable Material  
1363 sales revenues or Green Waste material sales revenues due to changes in market  
1364 conditions or in any other factor affecting revenues.
  - 1365
  - 1366 3. Increases in transportation time and/or costs related to provision of Collection Services.
  - 1367
  - 1368 4. Changes in the number of Customers due to changes in population or housing/business  
1369 development, or to annexation or de-annexation.
  - 1370
  - 1371 5. Shifts in the number of accounts between larger and smaller Cart sizes, large and  
1372 smaller Bins, or more or less frequency of Bin pickup.
  - 1373

- 1374 6. Incorrectly estimated number of accounts; tons of Solid Waste, Recyclables, Food  
1375 Waste or Green Waste; or inaccuracies in any other assumptions or data at any time  
1376 during the Term.  
1377
- 1378 7. Changes in local, state or federal clean air regulations not in existence and presented to  
1379 a Federal or State legislative body before the Effective Date, except constituting a  
1380 Change in Law or Regulation and meeting the requirements of Article 6.5.A, including  
1381 but not limited to all alternative fuel or vehicle requirements.  
1382

1383 **C. Review of Costs**

1384 Should either Party request a Special Rate Review, the County shall have the right to review  
1385 any or all costs associated with the Contractor's services under this Agreement. A Special Rate  
1386 Review may, at the County's sole discretion occur in conjunction with a performance review  
1387 pursuant to Article 7.7.  
1388

1389 **D. Submittal of Request**

1390 Contractor must submit any request for a Special Rate Review, and reasonable supporting cost  
1391 and operational data in a form and manner specified by the County at least six (6) months prior  
1392 to the proposed effective date of any Rate adjustment, and shall make every effort to have any  
1393 such increase coincide with a regular Rate adjustment as specified in Article 6.2.  
1394

1395 **E. Burden of Justification**

1396 Contractor shall bear the burden of justifying to County by Clear and Convincing Evidence any  
1397 entitlement to a Rate adjustment under this Article 6.5. If the County determines that the  
1398 Contractor has not met its burden, the Contractor may request another hearing to produce  
1399 additional evidence. Upon request, the County may permit said additional hearing.  
1400

1401 **F. Grant of Request**

1402 Based on evidence the Contractor submits, the Board of Supervisors may grant some, all or  
1403 none of the Rate adjustment requested pursuant to this Article 6.5.  
1404

1405 **G. Calculation of Rate Adjustment**

1406 Any Rate adjustment made pursuant to this Article 6.5 shall be calculated as follows. The  
1407 appropriate and then-current component(s) of each Rate (Contractor Compensation Fee, Solid  
1408 Waste Tip Fee Component, Net Recycling Processing Fee Component, Food Waste Tip Fee  
1409 Component, Green Waste Tip Fee Component and when applicable the Carpet Tip Fee  
1410 Component) shall be adjusted to reflect the percentage change in relative proportions of the  
1411 Gross Rate Revenues that need to be generated from one or more of the five component(s) of  
1412 the Rates as a result of the Special Rate Review.  
1413

1414 **H. Cost of the Review**

1415 The Party initiating or requesting a Special Rate Review shall compensate the other Party for all  
1416 reasonable and documented costs associated with conducting the review.  
1417  
1418

1419 **6.6 RESOLUTION OF DISPUTES REGARDING SPECIAL RATE REVIEWS AND**  
1420 **CONTRACTOR COMPENSATION ADJUSTMENT**

1421  
1422 This Article 6.6 pertains only to Special Rate Reviews and Contractor Compensation  
1423 Adjustment requested by Contractor under the provisions of Article 6.4 and 6.5. If County rejects  
1424 a Contractor Compensation Adjustment or a Special Rate adjustment requested by the  
1425 Contractor, grants a Contractor Compensation Adjustment or Rate adjustment different than  
1426 was requested by the Contractor, or fails to act in a timely manner upon all or any part of the  
1427 Contractor's compensation adjustment or special Rate adjustment application, then Contractor's  
1428 sole remedy against the County is to file a petition for writ of mandate pursuant to CCP Section  
1429 1085. Contractor expressly does not have a cause for action for damages against the County. In  
1430 addition, Contractor expressly does not have a cause for action for damages against the  
1431 County, should the County be unable to implement a planned adjustment in Contractor  
1432 compensation or Rates due to applicable legal requirements including but not limited to  
1433 California State Proposition 218.

1434  
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1436

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1437 **ARTICLE 7**  
1438 **RECORD KEEPING, REPORTING, AND PERFORMANCE REVIEWS**

1439  
1440 **7.1 RECORD KEEPING**

1441  
1442 **A. Accounting Records**

1443 Contractor shall maintain full, complete and separate financial, statistical and accounting  
1444 records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an  
1445 accrual basis in accordance with generally accepted accounting principles. Such records shall  
1446 be subject to audit, copy, and inspection by the County Representative or designee. Gross Rate  
1447 Revenues and Recycling Revenues derived from provision of the Collection Services, whether  
1448 such services are performed by the Contractor or by a subcontractor or subcontractors, shall be  
1449 recorded as revenues in the accounts of the Contractor. Contractor shall maintain and preserve  
1450 all cash, billing and Disposal records for a period of not less than five (5) years following the  
1451 close of each of the Contractor's fiscal years, except that any record incidental to an  
1452 assessment of Liquidated Damages, a breach, a default, or a cause of termination shall be  
1453 retained through the Term unless the County otherwise allows for its disposal in writing.

1454  
1455 **B. Collection Materials Records**

1456 Contractor shall maintain records of the quantities of materials Collected, purchased, sold,  
1457 donated or given for no compensation for (i) Solid Waste Collected and Disposed under the  
1458 terms of this Agreement, (ii) Single-Stream Recyclable Materials (iii) Special Recyclable  
1459 Materials, (iv) Food Waste, (v) Green Waste, (vi) motor oil and oil filters, (vii) Bulk Recyclables,  
1460 (viii) Construction and Demolition and (ix) Residue Disposed.

1461  
1462 **C. Customer Complaint Log**

1463 Contractor shall maintain the Customer complaint log pursuant to Article 4.3B.

1464  
1465 **D. Other Records**

1466 Contractor shall maintain all other records reasonably related to provision of Collection Services  
1467 and records to assist County in reporting requirements related to waste generation and/or  
1468 diversion, whether or not specified in this Article 7 or elsewhere in the Agreement.

1469  
1470 **7.2 MONTHLY AND ANNUAL REPORTING**

1471  
1472 **A. General**

1473 Annual reports shall be submitted no later than February 1 for the previous calendar year,  
1474 beginning February 1, 2019, with the exception of the audited financial statement/report that  
1475 must be submitted ninety (90) days after close of Contractor's fiscal year. Monthly and annual  
1476 reports shall be submitted as provided below. Monthly and annual reports shall be submitted  
1477 through a method acceptable to the County. County shall in advance approve the format,  
1478 specific content, and software used for each type of report. All costs associated with preparation  
1479 of the required reports are the sole responsibility of the Contractor.

1480  
1481 **B. Annual Reports**

1482 Annual reports shall include:  
1483

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1530
1. A summary of the prior year's monthly Gross Rate Revenues, Franchise Fee, Surcharge Fee, and any other County fee(s), Liquidated Damages, any other payments to County, and Monthly Distributions.
  2. Account data, including the number of accounts, account names and addresses of Collection locations per each service category. List of delinquent accounts for which service was stopped during the year, and indication of whether or not service has resumed.
  3. Public education and information activities undertaken during the year, including distribution of bill inserts, Collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. Discuss the impact of these activities on Recycling, Construction and Demolition, Special Recycling, Food Waste and Green Waste program participation and amounts Collected from Commercial and Residential Customers.
  4. An analysis of any problems related to Recycling, Special Recycling, Food Waste, Green Waste, and Bulk Recyclable Collection, processing and marketing issues or conditions (such as participation, setouts, contamination, available markets, etc.) and possible solutions, discussed separately for each type of Customer.
  5. Detailed review of the number and type of complaints received over the past year, including how they were resolved and the elapsed time between receipt of the first complaint and final resolution of the complaint. Contractor shall propose, and County shall approve in advance the format to be used for this portion of the annual report.
  6. AB 341, 1826 and subsequent compliance data:
    - a. **Covered Generator Component** – Identification of the number of businesses and Multi-Family accounts (generators) that must comply with each of the regulations;
    - b. **Education Component** – Documentation of annual education and outreach provided to businesses and Multi-Family accounts about the regulations and how to comply; and
    - c. **Compliance Monitoring Component** – Identification of all businesses and Multi-Family accounts that are not in compliance and documentation that they have been informed by the Contractor of their requirements and how they can comply.
  7. A listing of commercial accounts in order of their weekly Solid Waste service level (highest to lowest), along with their weekly Recyclable Material and/or Compostable Material weekly service levels.
  8. List of businesses which have been provided commercial technical assistance per the requirements of Exhibit B, along with their weekly Solid Waste, Recyclable Material and/or Compostable Material service levels, and estimated percentage of targeted Recyclable and Compostable materials still in their waste stream.

- 1531 9. The following safety related information:  
1532 a. Current and historical Insurance Modification Factors; and  
1533  
1534 b. Copies of any Biannual Inspection Terminus inspections.  
1535
- 1536 10. Audited annual financial statement/report provided each year beginning in 2019, and  
1537 submitted no later than 90 days following the close of the Contractor's fiscal year. The  
1538 audited financial statement shall be specific to the operations to be provided under this  
1539 contract. In addition, the statements/reports shall address all specific information  
1540 regarding the overall financial situation of the Contractor that could in any reasonably  
1541 foreseeable way affect the ability of the Contractor to fulfill its obligations under this  
1542 Agreement, including but not limited to Contractor's ability to service short-term and  
1543 long-term debt. The financial statements, management letter and footnotes shall be  
1544 prepared in accordance with Generally Accepted Accounting Principles (GAAP) and  
1545 audited in accordance with Generally Accepted Auditing Standards (GAAS) by a certified  
1546 public accountant (CPA) licensed (in good standing) to practice public accounting in the  
1547 State of California as determined by the State of California Department of Consumer  
1548 Affairs Board of Accountancy. The CPA opinion on Contractor's annual financial  
1549 statements and supplemental schedule shall be unqualified, except as to uncertainties  
1550 for which the ultimate outcome cannot be determined by the date of the CPA's opinion.  
1551 Contractor shall, in its agreement with the CPA performing its annual audit referred to  
1552 above, have its CPA make available to the County (or County's designated  
1553 representative) such CPA's all-inclusive working papers related to the audit.  
1554

1555 The information contained in 10.above will be used by the County to confirm the ongoing  
1556 financial solvency with regard to Contractor's ability to fulfill contractual obligations  
1557 throughout the term.  
1558

1559 **C. Monthly Reports**

1560 Monthly reports to the County shall be due 20 days after the end of each month and shall  
1561 include:  
1562

- 1563 1. Total tons Collected and Diverted through Collection Services including Single Stream  
1564 Recycling, Green Waste, Food Waste, Bulk Recycling, Special Recycling, and C&D, and  
1565 tons of Solid Waste Disposed through provision of the Collection Services.  
1566
- 1567 2. Detail of previous month's distributions to all parties as specified in Article 5 and Exhibit  
1568 J.  
1569
- 1570 3. Gross and net Recycling Revenues if the Designated Recyclables Processing Facility is  
1571 not the City of Napa Materials Diversion Facility.  
1572
- 1573 4. Name and address of any Customer for whom service has been suspended or ended  
1574 due to a failure to pay for service.  
1575

- 1576 5. Identification of any commercial Customers that have refused service during the  
1577 previous month, and Delivery of service to any commercial Customers that had  
1578 previously refused service.  
1579
- 1580 6. Identification of any overweight vehicles, vehicle moving violations and damage to public  
1581 or private property.  
1582
- 1583 7. Listing of all vehicle fluid spills with the date, location, estimated amount of material  
1584 spilled and actions taken to address spill.  
1585

1586 **D. Additional Report Information to Be Submitted As Requested**

1587 County may also require that the monthly, quarterly and/or annual reports include some or all of  
1588 the following information and data:  
1589

- 1590 1. **Solid Waste Data.** Include separately for Cart and Bin Service the average number of  
1591 daily setouts, and tons Collected and Delivered to the Designated Disposal or Transfer  
1592 Facility. Indicate number of service accounts by service classification level for Cart and  
1593 Bin Customers. Indicate number of Bins and Carts distributed by size and Customer  
1594 type. Provide total tons Disposed by Disposal site location.  
1595
- 1596 2. **Recycling Data.** Include gross tons Collected daily on average by material type by route  
1597 for Cart and Bin Service. Indicate average number of daily setouts by Cart route. Provide  
1598 total setouts and tonnages, by material type and by route for the month. Indicate  
1599 average participation rates by month relative to the total number of Customers in terms  
1600 of weekly setout counts. Indicate, by material type (and grade where appropriate), year-  
1601 to-date totals of Recyclable Materials processed and sold including facility name and  
1602 location, average price received per ton and total Recycling Revenue received for the  
1603 month. Indicate any quantities, by material type, donated or otherwise disbursed without  
1604 compensation. Indicate number of Bins and Carts distributed by size and Customer type.  
1605 Also provide monthly totals and location for Residue Disposed.  
1606
- 1607 3. **Special Recyclables Data.** Include gross tons Collected by material type by residential  
1608 and commercial Customer. Indicate number of pick-ups per day. Provide total pick-ups  
1609 and tonnages, by material type for the month. Indicate average participation rates by  
1610 month relative to the total number of Customers. Indicate, by material type (and grade  
1611 where appropriate), monthly totals of materials processed and sold including facility  
1612 name and location, average price received per ton, and total Recycling Revenue  
1613 received for the month. Indicate any quantities, by material type, donated or otherwise  
1614 disbursed without compensation. Also provide monthly totals and location for Residue  
1615 Disposed.  
1616
- 1617 4. **Bulk Recyclables Data.** Include gross tons Collected by material type by residential and  
1618 commercial Customer. Indicate number of pick-ups per day. Provide total pick-ups and  
1619 tonnages, by material type for the month. Indicate average participation rates by month  
1620 relative to the total number of Customers. Indicate, by material type (and grade where  
1621 appropriate), monthly totals of materials processed and sold including facility name and  
1622 location, average price received per ton, and total Recycling Revenue received for the

1623 month. Indicate any quantities, by material type, donated or otherwise disbursed without  
1624 compensation. Also provide monthly totals and location for Residue Disposed.

1625  
1626 5. **Green Waste Data.** Include average daily gross tons Collected by route. Indicate  
1627 average daily number of setouts by route. Indicate average participation rates for  
1628 commercial and residential Customers, relative to the total number of commercial and  
1629 residential Customers. Indicate number of Containers distributed by size and Customer  
1630 type. Also provide totals and location for Residue Disposed.

1631  
1632 6. **Food Waste Data.** Include gross tons Collected by route, number of Customers  
1633 serviced, set-outs by route. Indicate average participation rates for Customers, relative  
1634 to the total number of Customers. Indicate number of Containers distributed by size and  
1635 Customer type. Also provide totals and location for Residue Disposed.

1636  
1637 Contractor shall record the cost and operations data including, but not limited to: total  
1638 tons Collected, person hours, number of stops, number of participating Customers,  
1639 number of routes and all other pertinent data, as may be required by County, or  
1640 considered to be reasonable and prudent by the Contractor, in a format approved by  
1641 County and shall submit said data on a monthly basis. County reserves right to require  
1642 submission of any and all additional information from Contractor as necessary or  
1643 desirable in order to evaluate, or have agents of County evaluate, the cost, benefits and  
1644 potential diversion opportunity of the program and to report data to state and federal  
1645 agencies as required by law or regulation.

1646  
1647 7. **Construction and Demolition Data.** Include average gross tons Collected by material  
1648 type by residential and commercial Customer. Indicate number of pick-ups per day.  
1649 Provide total pick-ups and tonnages, by material type for the month. Indicate average  
1650 participation rates by month relative to the total number of Customers. Indicate, by  
1651 material type (and grade where appropriate), monthly totals of materials processed and  
1652 sold including facility name and location, average price received per ton, and total  
1653 Recycling Revenue received for the month. Also provide monthly totals and location for  
1654 Residue Disposed.

1655  
1656 8. **Motor Oil and Oil Filters.** Include gallons of used oil and number of filters Collected by  
1657 route, number of Customers serviced and set-outs by route. Indicate average  
1658 participation rates for Customers, relative to the total number of Customers. Indicate  
1659 number of containers distributed by size and Customer type.

1660  
1661 9. **Source Separated Other Than Food Waste.** Include tonnage and Customer  
1662 information for Source Separated materials it Collects including, but not limited to, name  
1663 of Customer, type of material, Container size and number of times Collected.

1664  
1665 10. **Praises, Complaints, Missed Pickups and Resolutions.** Provide a copy of log of  
1666 praises and complaints and resolutions of complaints, including a summary of the type  
1667 and number of complaints. Provide written record of all calls related to missed pickups  
1668 and responses to such calls.

1669

- 1670 11. **Problems and Actions Taken.** Provide summary narrative of problems encountered  
1671 with Collection and processing activities and actions taken. Indicate type and number of  
1672 notification tags left at Customer locations. Indicate instances of property damage or  
1673 injury, poaching or scavenging, significant changes in operation, market factors, publicity  
1674 conducted, and needs for publicity. Include description of processed material loads  
1675 rejected for sale, reason for rejection and disposition of load after rejection.  
1676
- 1677 12. **Equipment Inventory.** An updated complete inventory of Collection and major  
1678 processing equipment including stationary, rolling stock, and Bins and Carts by type and  
1679 size. Report should indicate the date of purchase and if the item is new or used.  
1680

1681 **7.3 ADDITIONAL REPORTING**

1682 The Contractor shall furnish the County with any additional reports as may reasonably be  
1683 required, to be prepared within a reasonable time following the reporting period. County  
1684 reserves the right to require submittal of any of the annual report information on a more frequent  
1685 basis, whether periodically or on an ongoing basis.  
1686

1687 **7.4 OTHER RELATED REQUIREMENTS**

1688

1689 **A. Waste Characterization and Waste Diversion Studies**

1690 The Contractor shall fully and in a timely manner cooperate with and assist the County in the  
1691 performance, if and as requested by County, of periodic waste audits or assessments, waste  
1692 generation, waste characterization and waste diversion studies.  
1693

1694 **B. Collection Monitoring**

1695 The Contractor shall monitor its Collection Services to identify occurrences of, and to prevent,  
1696 contamination of Recyclable Materials and Compostable Materials. Contractor shall allow a  
1697 person designated by the County to ride with Contractor's Collection vehicles on any Collection  
1698 route or routes. The County will inform Contractor at least one week in advance prior to date of  
1699 route monitoring. The County will comply with all policies and procedures of Contractor when  
1700 riding in such vehicles.  
1701

1702 **7.5 INSPECTION BY THE COUNTY**

1703 County or designated consultants shall have the right, but not the obligation, to enter, observe,  
1704 and inspect the Processing Facility(ies) and any of Contractor's records, operations, and  
1705 equipment used in or connected with the provision of Collection Services or other services  
1706 provided by Contractor under this Agreement during the receiving hours.  
1707

1708 Such inspections shall not unreasonably disrupt Contractor's operation. Contractor shall not be  
1709 required to conduct such inspections more frequently than once per week by appointment.  
1710 County shall not be charged for Contractor's labor, overhead, overtime, or any other costs  
1711 associated with such inspections.  
1712

1713 The County shall provide Contractor with at least 48 hours' notice stating the date, time and  
1714 purpose of any inspection or visit by County or designated consultants to Contractor's business  
1715 offices or facilities and/or a specific description of the records, operations and equipment that  
1716 the County intends to inspect or review. Such visits or inspections shall occur during

1717 Contractor's normal business hours. With or without a physical visit or inspection by County to  
1718 the Contractor's facility(ies), Contractor shall make available to the County the records,  
1719 operations and equipment that are the subject of the County's notification within 48 hours of the  
1720 time of the notice. The County and its designated representative shall have the right, during the  
1721 inspection and tour of the Contractor's facility(ies), to meet with the facility manager or his or her  
1722 representative at any time, and meet with other employees upon request, which request shall  
1723 not be unreasonably denied. Upon County request, Contractor shall make personnel available  
1724 to accompany County employees on such inspections. Contractor shall ensure that its  
1725 employees cooperate with the County and respond to the County's reasonable inquiries.  
1726

## 1727 **7.6 PERIODIC REVIEW**

1728 County will periodically review the performance of the Contractor based on Customer  
1729 complaints, timely payment of sums due, statistical reporting, program progress, AB 939  
1730 compliance, etc. This review will be conveyed to the Board of Supervisors, and the Contractor  
1731 may review the draft report before it is conveyed to the Board of Supervisors and submit its own  
1732 statement.  
1733

## 1734 **7.7 PERFORMANCE REVIEW**

1735 Subject to the appropriate areas of concern listed below, the County may require a  
1736 "Performance Review" of the Contractor up to four (4) times during the Term of the Agreement.  
1737 The Performance Review shall be conducted as set forth below.  
1738

1739 **A. Scope of Performance Review.** The Performance Review shall:

- 1740
- 1741 1. Be performed by the County or a qualified firm under contract to the County. The  
1742 qualified firm shall be selected by the County with input from the Contractor.  
1743
- 1744 2. County cost of the Performance Review shall be reimbursed by Contractor, provided that  
1745 such reimbursement shall not exceed \$50,000 per review, or a combined total of  
1746 \$200,000 during the Term. However, if any Performance Review results in a finding of a  
1747 material breach or default in the Contractor's performance, the Contractor shall in a  
1748 timely manner reimburse the County for the total cost of the Performance Review.  
1749
- 1750 3. Address all appropriate areas of concern to the County, and shall provide specific  
1751 recommendations, as appropriate, for improvement in each area, including but not  
1752 limited to the following:  
1753
  - 1754 a. Compliance with the terms of this Agreement and Applicable Laws.  
1755
  - 1756 b. Staffing practices, including the deployment of management and supervisory  
1757 personnel.  
1758
  - 1759 c. Financial management practices, including the Contractor's billing and collection  
1760 system, its policies with regard to uncollected Customer accounts, and its  
1761 compliance with the Lock Box Agreement ~~contained in Exhibit J.~~  
1762
  - 1763 d. Personnel management practices, including the resolution of employee grievances.

- 1764  
1765 e. Employee job and safety training, and management of Hazardous Waste.  
1766  
1767 f. Procedures for receiving and resolving Customer complaints and concerns.  
1768  
1769 g. Procedures for the acquisition, maintenance, color, labels, signage, safety check,  
1770 and replacement of equipment.  
1771  
1772 h. Utilization and management of facilities, equipment and personnel.  
1773  
1774 i. Comparison with practices of businesses deemed similar to the Contractor.  
1775  
1776 j. Overall organizational structure and management systems and procedures.  
1777  
1778 k. Efficiency of Collection operations, including an analysis of routes, schedules and the  
1779 impact of the requirements of this Agreement.  
1780  
1781 l. Compliance with the Public Education and Information Program contained in Exhibit  
1782 B.  
1783  
1784 m. Staffing practices, including the deployment of management and supervisory  
1785 personnel.  
1786  
1787 n. Financial management practices, including the Contractor's billing and collection  
1788 system, its policies with regard to uncollected Customer accounts, and its  
1789 compliance with the Lock Box Agreement ~~contained in Exhibit I.~~  
1790  
1791 o. Personnel management practices, including the resolution of employee grievances;  
1792 employee job and safety training; and management of Hazardous Waste.  
1793  
1794 p. Procedures for receiving and resolving Customer complaints and concerns.  
1795  
1796 q. Procedures for the acquisition, maintenance, safety check, and replacement of  
1797 equipment.  
1798  
1799 r. Utilization and management of facilities, equipment and personnel.  
1800  
1801 s. Comparison with practices of businesses deemed similar to the Contractor.  
1802

1803 Contractor shall cooperate fully with the Performance Review, and provide within thirty (30)  
1804 days of request, all operational, financial and other information deemed reasonable or  
1805 convenient by County or the firm selected by the County for purposes of conducting the  
1806 Performance Review. The Contractor's failure to cooperate or provide all requested information  
1807 shall be considered to provide Grounds for Termination as provided in Article 9.2.A, which may  
1808 be invoked by County in the exercise of its sole, reasonable discretion.  
1809

1810 Notwithstanding the foregoing provisions of this Article, the County and Contractor agree to use  
1811 good faith efforts to ensure that any Performance Review is conducted in as cost-effective a  
1812 manner as possible, so as to minimize unnecessary costs or administrative oversight. To this  
1813 end, the County and the Contractor shall confer prior to any Performance Review to establish  
1814 the scope and budget of the review, in a manner designed to meet the County's concerns and  
1815 needs.

1816  
1817 **B. Changes to Operations**

1818 As the result of a Performance Review, the County reserves the right to require reasonable  
1819 changes to the Contractor's operations, which the County determines to be necessary or  
1820 appropriate to carrying out the intent of the terms and conditions of this Agreement.

1821  
1822 **C. Determination of Breach/Default**

1823 If, as a result of a Performance Review the County identifies one or more areas of Contractor  
1824 breach of the Agreement, the provisions of Articles 9.1 through 9.9, below, shall apply.

1825 If, after the County has reviewed the results of a particular Performance Review including  
1826 problem areas, frequency of occurrence, recommended improvements and compliance  
1827 therewith, and has considered any evidence presented by the Contractor in connection  
1828 therewith, but determines that Grounds for Termination exist, then this Agreement may be  
1829 terminated by the County at its option pursuant to Article 9.7 of this Agreement.

1830  
1831  
1832 [The remainder of this page left blank intentionally]  
1833

**ARTICLE 8  
INDEMNITY, INSURANCE, BOND**

**8.1 INDEMNIFICATION OF THE COUNTY**

The Contractor agrees to and shall indemnify, defend, with counsel acceptable to the County, and hold harmless County, its officers, Board members, officials, employees, volunteers, agents, contractors other than Contractor, subcontractors, successors and assigns (collectively, "County Indemnitees") from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties, arising or resulting from or in any way connected with: (i) the operation of the Contractor, its agents, employees, contractors, and/or subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the Contractor, its agents, employees, contractors and/or subcontractors to comply in all respects with Applicable Laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law; and (iv) the processing, marketing, and end use of Recyclable Materials listed in Exhibit K except for Solid Waste and those materials listed in Article 3.2 (collectively, "Claims and Liabilities"). The foregoing obligations of Contractor of indemnity, defense and hold harmless shall apply even if such Claims and Liabilities are partially caused by the negligence or other non-willful conduct on the part of any of the County Indemnitees.

The Contractor will not, however, be required to reimburse or indemnify any County Indemnitee to the extent that any Claim or Liability is the result of intentional or willfully wrongful, or reckless conduct by the County Indemnitee.

In instances where Contractor and one or more County Indemnitees are jointly named as defendants, respondents or otherwise as responsible parties on any Claim or Liability, Contractor shall provide a defense for the County Indemnitee(s) through counsel (to be approved by the County, which approval shall not be unreasonably withheld) who will jointly represent the Contractor and the County Indemnitee(s) unless after meeting and conferring with the County Indemnitee(s) on the issue it appears that conflicts exist between the Contractor and the County Indemnitee(s) to the extent that no single counsel can represent all of them; in that case, Contractor shall pay the reasonable attorney's fees for separate counsel, of the County's choice, to represent the County Indemnitee(s) on the Claim or Liability. If a final decision, judgment, or settlement allocates liability to the Contractor and to any County Indemnitee(s), Contractor shall have no obligation to the County Indemnitee(s) for indemnification or otherwise with respect to any percentage of liability allocated to such County Indemnitees for intentional or willfully wrongful or reckless conduct, according to accepted legal principles regarding allocation of fault, contribution and equitable indemnity.

1879 **8.2 FEDERAL, STATE AND LOCAL MANDATED DIVERSION INDEMNIFICATION OF THE**  
1880 **COUNTY**

1881 Without limiting the foregoing indemnity and defense obligations, Contractor shall also defend,  
1882 indemnify and hold harmless County with respect to the County's failure, if any, to meet its  
1883 Federal, State, and local mandated diversion goals; hereafter mandated diversion goals, as a  
1884 result of Contractor's failure, if any, to meet the applicable mandated diversion goals for the  
1885 materials required to be Collected by Contractor pursuant to this Agreement. Such indemnity  
1886 shall be limited to exclude all damages or claims to the extent that they are caused by, (i) any  
1887 intentionally, willfully wrongful or reckless conduct of the County, or its employees, agents,  
1888 appointed and elected officials; (ii) the County's failure to establish and maintain a source  
1889 reduction and recycling element pursuant to Sections 41000, et seq. of the Public Resources  
1890 Code; or (iii) the failure of the County or its employees, agents, appointed and elected officials  
1891 to comply with or enforce applicable solid waste and/or recycling statutes, ordinances,  
1892 regulations, or other requirements other than failure attributable to Contractor's performance  
1893 under this Agreement. The extent of the Contractor's liability under this Article 8.2 shall not  
1894 exceed the Contractor's proportionate share of the fault.  
1895

1896 **8.3 HAZARDOUS SUBSTANCES INDEMNIFICATION**

1897 Without limiting the foregoing indemnity and defense obligations, Contractor shall also  
1898 indemnify, defend with counsel acceptable to County, protect and hold harmless all County  
1899 Indemnitees from and against any and all claims, damages (including but not limited to special  
1900 damages, consequential damages, environmental damages, natural resource damages, and  
1901 punitive damages), governmental prosecution or enforcement actions, injuries, response costs,  
1902 remediation costs, material removal costs, losses, demands, debts, liens, liabilities, causes of  
1903 action, suits, legal or administrative proceedings, interest, fines, charges, penalties, court costs,  
1904 attorney's fees awards, and expenses (including but not limited to attorney's fees and expert  
1905 witness fees and costs incurred in connection with defending against any of the foregoing or in  
1906 enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted  
1907 against, any County Indemnitee(s) , arising from or related to Contractor's handling, transport,  
1908 storage, disposal, processing, delivery, or release of hazardous or toxic materials or substances  
1909 in the course of Contractor's performance or failure to perform this Agreement or in the course  
1910 of Contractor's Collection Services for the County, Customers, or others.  
1911

1912 If a final decision, judgment, or settlement allocates liability to the Contractor and to any County  
1913 Indemnitee(s), Contractor shall have no obligation to the County Indemnitee(s) for  
1914 indemnification or otherwise with respect to any percentage of liability allocated to such County  
1915 Indemnitees for intentional or willfully wrongful or reckless conduct, according to accepted legal  
1916 principles regarding allocation of fault, contribution and equitable indemnity.  
1917

1918 **8.4 PROPOSITION 218 INDEMNIFICATION**

1919 County intends to comply with all Applicable Laws concerning the approving of Rates under this  
1920 Agreement. Nonetheless, Contractor shall indemnify, defend (with counsel acceptable to  
1921 County) and hold harmless all County Indemnitees from and against all claims, damages,  
1922 injuries, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or  
1923 administrative proceedings, interest fines, charges, penalties and expenses (including attorneys'  
1924 and expert witness fees, expenditures for investigation and administration) and costs of any kind  
1925 whatsoever paid, imposed upon, endured or suffered by or assessed against any of the County

1926 Indemnitees resulting from the County's approval of Rates for service under this Agreement or  
1927 in connection with the application of California Constitution, Article XIII C and Article XIII D to the  
1928 imposition, payment or collection of Rates and fees for services provided by Contractor under  
1929 this Agreement.

1930

## 1931 **8.5 INSURANCE SCOPE AND LIMITS**

1932 The Contractor shall procure and maintain for the duration of the Agreement, insurance against  
1933 claims for injuries to persons or damages to property which may arise from or in connection with  
1934 the performance of the work hereunder by the Contractor, his agents, representatives,  
1935 employees or subcontractors. With respect to General Liability, Errors & Omissions and  
1936 Pollution and/or Environmental Impairment Liability coverage should be maintained for a  
1937 minimum of five (5) years after Agreement completion. The maintenance of claims made  
1938 against any insurance required of the Contractor shall not be considered a waiver by County of  
1939 any claim or liabilities it may have against the Contractor.

1940

### 1941 **A. Minimum Scope of Insurance**

1942 Coverage shall be at least as broad as:

1943

- 1944 1. Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive  
1945 General Liability and Insurance Services Office form number GO 0404 covering Broad  
1946 Form Comprehensive General Liability; or Insurance Services Office Commercial  
1947 General Liability coverage ("occurrence" form CG 0001, Ed. 10/01).
- 1948
- 1949 2. Insurance Services Office form number CA 0001 (Ed. 10/01), covering Automobile  
1950 Liability, code 1 (any auto) and endorsement CA 0025 (Ed. 1/86).
- 1951
- 1952 3. Worker's Compensation Insurance as required by the State of California and Employer's  
1953 Liability Insurance.
- 1954

1955

### 1955 **B. Minimum Limits of Insurance**

1956 The Contractor shall maintain limits no less than:

1957

- 1958 1. **Commercial General Liability:** Commercial General Liability Insurance with limits of  
1959 not less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of  
1960 Two Million Dollars (\$2,000,000). This policy shall be issued on a per-occurrence  
1961 basis. The County may require specific coverages including completed operations,  
1962 products liability, contractual liability, Explosion-Collapse-Underground, fire legal  
1963 liability or any other liability insurance deemed necessary because of the nature of the  
1964 contract.
- 1965
- 1966 2. **Automobile Liability:** Comprehensive Automobile Liability Insurance with limits for  
1967 bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage should  
1968 include owned and non-owned vehicles used in connection with the contract.
- 1969
- 1970 3. **Worker's Compensation:** A policy of Worker's Compensation insurance as may be  
1971 required by the California Labor Code.
- 1972

1973 **C. Deductible and Self-Insured Retentions**

1974 Any deductibles or self-insured retentions must be declared to and approved in writing by the  
1975 County. At the option of the County, either the Insurer shall reduce or eliminate such deductibles  
1976 or self-insured retentions in respect to the County, its officers, officials, employees and  
1977 volunteers; or the Contractor shall provide evidence satisfactory to the County guaranteeing  
1978 payment of losses and related investigations, claim administration and defense expenses.  
1979 Notwithstanding the foregoing, the County may elect not to accept any deductibles or self-  
1980 insured retentions offered by the Contractor, and/or may elect to accept a bond held by the  
1981 Contractor with a third party administrator.

1982  
1983 **D. Other Insurance Provisions**

- 1984  
1985 1. The policies are to contain, or be endorsed to contain, the following provisions:  
1986  
1987 a. The County, its officers, officials, employees and volunteers are to be covered as  
1988 additional insureds with respect to liability arising out of automobiles owned, leased,  
1989 hired or borrowed by or on behalf of the Contractor; and with respect to liability  
1990 arising out of work or operations performed by or on behalf of the Contractor  
1991 including materials, parts or equipment furnished in connection with such work or  
1992 operations; Pollution and/or Asbestos Pollution.  
1993  
1994 b. The Contractor's insurance coverage shall be primary insurance in respect to the  
1995 County, its officers, officials, employees, agents and volunteers. Any insurance or  
1996 self-insurance maintained by the County, its officers, officials, employees, agents or  
1997 volunteers shall be excess of the Contractor's insurance and shall not contribute with  
1998 it.  
1999  
2000 c. Each insurance policy required by this clause shall be occurrence-based (other than  
2001 for pollution legal liability, which may be claims-made), or an alternate form as  
2002 approved by the County and shall be endorsed to state that coverage shall not be  
2003 canceled by the Insurer except after thirty (30) days prior written notice has been  
2004 given to the County.  
2005  
2006 d. The Contractor's insurance shall apply separately to each insured against whom  
2007 claim is made or suit is brought, except with respect to the limits of the insurer's  
2008 liability.  
2009  
2010 e. Coverage shall not extend to any indemnity coverage for the active negligence of the  
2011 additional insured in any case where an agreement to indemnify the additional  
2012 insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.  
2013  
2014 2. **Automobile Liability Coverage.** The Automobile Liability policy shall be endorsed to  
2015 delete paragraph A of the Pollution exclusion and add the Motor Carrier Act  
2016 endorsement (MCS-90) and/or other endorsements required by federal or state  
2017 authorities.  
2018

- 2019 3. **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree  
2020 to waive all rights of subrogation against the County, its officers, officials, employees and  
2021 volunteers for losses arising from work performed by the Contractor for the County.  
2022
- 2023 4. **All Coverages.** Each insurance policy required by this clause shall be occurrence-based  
2024 (other than for pollution legal liability, which may be claims-made) or an alternate form as  
2025 approved by the County and endorsed to state that coverage shall not be suspended,  
2026 voided, canceled by either party, reduced in coverage or in limits except after thirty (30)  
2027 days' prior written notice by certified mail, return receipt requested, has been given to  
2028 the County.

2029

2030 **E. Acceptability of Insurers**

2031 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if  
2032 admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverages  
2033 are not available from an Admitted insurer, the coverage may be written with the County's  
2034 permission, by a Non-admitted insurance company. A Non-admitted company should have an  
2035 A.M. Best's rating of A:X or higher.

2036

2037 **F. Verification of Coverage**

2038 As provided in Article 3.12 D and Exhibit H, the Contractor shall furnish the County with original  
2039 certificates evidencing coverage required by this clause. All insurance coverages referenced in  
2040 this Article 8 shall be evidenced by one or more certificates of coverage which shall be filed by  
2041 Contractor with the County Representative prior to commencement of performance of any of  
2042 Contractor's duties; shall be kept current during the term of this Agreement; shall provide that  
2043 County shall be given no less than thirty (30) days prior written notice of any non-renewal,  
2044 cancellation, other termination, or material change, except that only ten (10) days prior written  
2045 notice shall be required where the cause of non-renewal or cancellation is non-payment of  
2046 premium; and shall provide that the inclusion of more than one insured shall not operate to  
2047 impair the rights of one insured against another insured, the coverage afforded applying as  
2048 though separate policies had been issued to each insured, but the inclusion of more than one  
2049 insured shall not operate to increase the limits of the company's liability. For the insurance  
2050 coverage referenced in Article 8.5 B.1., the certificate of insurance and endorsements attached  
2051 thereto shall also name County, its officers, employees, agents and volunteers as additional  
2052 insureds and provide an endorsement waiving subrogation; shall provide that if the same policy  
2053 applies to activities of Contractor not covered by this Agreement then the limits in the applicable  
2054 certificate relating to the additional insured coverage of County shall pertain only to liability for  
2055 activities of Contractor under this Agreement; and shall provide that the insurance provided is  
2056 primary coverage to County with respect to any insurance or self-insurance programs  
2057 maintained by County. Upon request of County's Risk Manager, Contractor shall provide or  
2058 arrange for the insurer to provide within thirty (30) days of the request, certified copies of the  
2059 actual insurance policies or relevant portions thereof.

2060

2061 **G. Subcontractors**

2062 The Contractor shall utilize subcontractors at the County's discretion. Written permission shall  
2063 be obtained from the County prior to use. The Contractor shall include all subcontractors as  
2064 insureds under its policies or shall furnish separate certificates and endorsements for each

2065 subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated  
2066 herein.

2067

2068 **H. Additional Provisions**

2069 Any failure to comply with reporting or other provisions of the policies including breaches of  
2070 warranties shall not affect coverage provided to the County, its officers, officials, agents,  
2071 employees and volunteers.

2072

2073 **8.6 INSTRUMENT FOR SECURING PERFORMANCE**

2074 No later than the Effective Date, the Contractor shall file with the County an instrument for  
2075 securing performance payable to the County, in a form acceptable to the County, securing the  
2076 Contractor's faithful performance of each and every one of its obligations under this Agreement.  
2077 The instrument shall become Exhibit G to this Agreement. The principal sum of the instrument  
2078 shall be \$750,000. The instrument may be in the form of a letter of credit or performance bond.  
2079 The instrument shall as required be executed as surety by a corporation authorized to issue  
2080 such instrument in the State of California, with a financial condition and record of service  
2081 satisfactory to the County. The instrument shall be in a form specified by the County  
2082 Representative. The instrument shall remain in force for the duration of this Agreement. The  
2083 premium for a letter of credit or any other charge related to maintenance of any of the  
2084 instruments shall be paid by the Contractor.

2085

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2088 **ARTICLE 9**  
2089 **BREACH, DEFAULT, AND TERMINATION**

2090  
2091 **9.1 PROCEDURES IN THE EVENT OF DEFAULT; OPPORTUNITY TO CURE; LIQUIDATED**  
2092 **DAMAGES**

2093  
2094 **A. Premise of Agreement**

2095 The Parties acknowledge and agree that provision of consistent, reliable Collection Services is  
2096 of utmost importance to County and that County has considered and relied on Contractor's  
2097 representations as to its ability and commitment to quality of service in awarding this  
2098 Agreement. In the event that Contractor fails to perform any of its obligations under this  
2099 Agreement, this shall be considered to be a default and breach by Contractor (hereinafter,  
2100 "Default") under this Agreement.

2101  
2102 **B. Opportunity to Cure a Default**

2103 If a Default by Contractor under this Agreement can be cured and does not constitute or fall  
2104 within the Grounds for Termination as defined below in Article 9.2.A (or if the County, in its sole  
2105 discretion, determines that an opportunity to cure should be given notwithstanding the  
2106 applicability of the Grounds for Termination provision), then the County shall give written notice  
2107 to Contractor of such Default and demand that the Default be cured. Any uncured Default shall  
2108 result in the existence of Grounds for Termination as described in more detail below in Article  
2109 9.2.A, subject to the provisions of Article 9.1.B.2, below. Contractor shall begin cure of any  
2110 Default as soon as it becomes aware of the Default, whether discovered by Contractor or  
2111 through Contractor's receipt of notice from County. Upon becoming aware of the Default,  
2112 Contractor shall proceed to cure such Default as follows:

- 2113
- 2114 1. Immediately, if the Default is such that County determines and states in its notice of the  
2115 Default, in the County's sole exercise of judgment and discretion, that the Default poses  
2116 a risk to the health, welfare or safety of the public; or  
2117
  - 2118 2. Within thirty (30) calendar days of the Contractor's discovery of the Default or its receipt  
2119 of written notice from the County (whichever is earlier) -- provided, however, that if the  
2120 nature of the Default is such that it will reasonably require more than thirty (30) days to  
2121 cure, Contractor may be granted a longer period of time to cure the Default (and  
2122 Grounds for Termination shall not arise) so long as Contractor promptly commences to  
2123 cure such Default, contacts County promptly (but no later than ten (10) days after  
2124 receiving the County's notice of the Default) to request written consent of the County to  
2125 an extension for a definitely defined longer period of time to cure, provides County  
2126 weekly written status of progress in curing such Default, and diligently proceeds to  
2127 complete the steps needed to cure the Default. The thirty (30) day cure period may only  
2128 be extended upon Contractor's receipt of written consent from County, which consent  
2129 shall not be unreasonably withheld.

2130  
2131 **C. Liquidated Damages**

2132 The Parties recognize that some quantified standards of performance are necessary and  
2133 appropriate to ensure consistent and reliable service and performance, and to serve as a  
2134 specific measure of successful performance under the Agreement. The Parties further

2135 recognize that if Contractor fails to perform its obligations, County and residents of County will  
2136 suffer damages that are and will be impractical and extremely difficult to ascertain and  
2137 determine. The Parties agree that the Liquidated Damage amounts provided in Exhibit F  
2138 represent a reasonable estimate of the amount of such damages for the specified Defaults or  
2139 breaches, but are a remedy available to the County in addition to, and without prejudice to,  
2140 County's option and right, in its sole discretion, either: (1) to treat an uncured Default or a  
2141 Default that is not susceptible to being cured as triggering Grounds for Termination under Article  
2142 9.2.A.; or (2) to choose to have the Agreement remain in full force and effect and to recover  
2143 Liquidated Damages without terminating the Agreement. Liquidated Damages are paid as  
2144 damages, and not as a penalty. County may determine the occurrence of events giving rise to  
2145 Liquidated Damages through the observation of its own employees or representatives, or by  
2146 investigation of Customer or resident complaints.

2147

#### 2148 **D. Notice of Imposition of Liquidated Damages**

2149 Prior to assessing Liquidated Damages, and in addition to any other available remedies County  
2150 may impose, County shall give Contractor thirty (30) calendar days' written notice of its intention  
2151 to do so. The notice shall include a brief description of the Default. Contractor may review (and  
2152 copy at its own expense) all information in the possession of County relating to the assessment  
2153 of Liquidated Damages. Contractor may, within ten (10) Working Days after receiving the notice  
2154 request a meeting with County Representative. Contractor may present evidence in writing and  
2155 through testimony of its employees and others relevant to the incident or nonperformance.  
2156 County Representative shall provide Contractor with a brief written explanation of his or her  
2157 determination on each Default prior to authorizing the assessment of Liquidated Damages. The  
2158 decision of County Representative shall be final. The assessment of Liquidated Damages  
2159 issued by the County shall appear on the next monthly statement and the Contractor shall, at its  
2160 own expense, remit to the County damages specified in said assessment as part of the Monthly  
2161 Distribution.

2162

### 2163 **9.2 EVENTS OF DEFAULT CONSTITUTING GROUNDS FOR TERMINATION OF THIS** 2164 **AGREEMENT**

2165

#### 2166 **A. Grounds for Termination**

2167 If one or more Defaults, or actions or omissions by Contractor occur, which either individually or  
2168 in combination fall within the examples set forth below or are of a similarly serious character,  
2169 Grounds for Termination will exist and the County, in its sole discretion, may take follow the  
2170 procedure set forth below to terminate this Agreement:

2171

- 2172 1. Any Default or other wrongful conduct or omission by Contractor, committed in the  
2173 course of performing services under this Agreement, even if cured by Contractor, that (i)  
2174 results in a significant hazard to the public health safety or welfare or (ii) results in, or  
2175 creates a significant risk of, liability on the part of the County;
  - 2176 2. Any Default by Contractor that is not cured pursuant to Article 9.1.B, above;
  - 2177 3. A pattern, accumulation or repetition of Defaults over time such that in combination they  
2178 constitute a pattern of Default and/or significant failure by Contractor to perform its  
2179 obligations, even if each individual Default is cured.
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4. Any representation, disclosure, assurance, or warranty made to County by Contractor in connection with, or as an inducement to entering into or performing, this Agreement or any future amendment to this Agreement, or that is a condition to the effectiveness of the Agreement, that proves to be false or misleading in any material respect as of the time the representation, disclosure, assurance, or warranty was/is made.
  5. Failure to adhere to the substantive requirements of the Lock Box Agreement ~~contained in Exhibit J.~~
  6. Failure to provide information required or requested by the County for a performance review, or as a result of a poor performance review, as provided in Article 7.7.
  7. A seizure, attachment of (other than a prejudgment attachment), or levy affecting possession of the operating equipment of Contractor, including without limitation its vehicles, maintenance or office facilities, or any part thereof, which impairs Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and holidays.
  8. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of, or taking of possession by, a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of Contractor for a part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall become insolvent and unable to pay its debts generally as they become due.
  9. A Court in the exercise of proper jurisdiction issues or enters a decree or order giving Contractor relief in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or order the winding up or liquidation of the affairs of Contractor.
  10. Contractor fails to provide reasonable assurances of performance as required under Article 9.11.
  11. Contractor fails to notify County in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, Green Waste Collection, transportation, processing or Disposal activities that might materially affect Contractor's ability to perform the Collection Services.
  12. Lapse of any insurance, letter of credit, bond or other financial instrument required under this Agreement.

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13. Contractor violates in any material respect any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until the later of a final order or judgment has been issued.
  14. Contractor ceases to provide Collection Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor.
  15. Contractor fails to make any payment of any sum owed to County required under this Agreement and/or refuses to provide County with required information, reports, and/or records in a timely manner as provided for in the Agreement.
  16. Any act or omission by Contractor, which violates in any material respect the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
  17. Contractor or any of its officers, directors or contract manager, or others in position to supervise or influence actions under this Agreement be “found guilty” by a judge, jury, or plea agreement of felonious conduct in a matter related to or arising from Contractor’s business operations, price fixing, illegal transport or disposal of hazardous or toxic materials, bribery of public officials, or fraud or tampering. The term “found guilty” shall be deemed to include any judicial determination that Contractor or any of Contractor’s officers, directors or employees is guilty, any admission of guilt by Contractor or any of Contractor’s officers, directors or employees including, but not limited to, the pleas of “guilty,” “nolo contendere,” “no contest,” or “guilty to a lesser felony” entered as part of any plea bargain. Such felonious conduct includes, but is not limited to any If County does not terminate this Agreement, Contractor shall dismiss or remove officers, directors or employees found guilty of felonious behavior and take all action necessary and appropriate remedy any breach of its obligations.
  18. Contractor assigns this Agreement in violation of Article 10.5.
  19. Assessment of cumulative Liquidated Damages against Contractor under this Agreement totaling more than \$15,000 in any twelve (12) month period, or \$25,000 in any twenty-four (24) month period. Liquidated Damages assessed for failure to achieve the Diversion percentages specified in Exhibit F will not be included in calculating “Excessive Liquidated Damages.”

2276 **B. Notice of Default**

2277 A Notice of Default by County to Contractor shall include a brief description of the Default and  
2278 shall state (1) whether the County is terminating the Agreement by reason of the Default, or (2)  
2279 demand that the Default be immediately cured, as provided above, or (3) demand that the  
2280 Default be cured within thirty (30) calendar days of the date of the Notice. Contractor may  
2281 review (and copy at its own expense) all information in the possession of County relating to any  
2282 declared Default. Contractor may, within three (3) Working Days after receiving the notice,  
2283 request a meeting with County Representative. Contractor may present evidence in writing and  
2284 through testimony of its employees and others relevant to the Default. The decision of County  
2285 Representative regarding determination of a Default shall be final.

2286  
2287 **9.3 COUNTY'S RIGHT TO DETERMINE WHETHER A DEFAULT HAS BEEN CURED.**

2288 A Default shall be considered remedied and/or cured only when the both the Contractor and  
2289 County have signed a written acknowledgement describing the Default with specificity and  
2290 stating that the Default has been cured.

2291  
2292 **9.4 COUNTY'S RIGHT TO PERFORM**

2293  
2294 **A. General**

2295 In addition to any and all other legal or equitable remedies, in the event that Contractor, for any  
2296 reason whatsoever, fails, refuses or is unable to provide any Collection Services for a period of  
2297 more than seventy-two (72) hours, and if, as a result thereof, should Solid Waste accumulate in  
2298 County to such an extent, in such a manner, or for such a time that County should find that such  
2299 accumulation creates an emergency that endangers or menaces the public health, safety or  
2300 welfare, then County shall have the right, but not the obligation, and without any obligation for  
2301 payment to Contractor (except in Uncontrollable Circumstances), upon twenty-four (24) hours'  
2302 prior notice to Contractor during the period of such emergency as determined by County: (i) to  
2303 perform, or cause to be performed, such services itself with its own or other personnel without  
2304 liability to Contractor; and/or (ii) to take possession on a temporary basis of any or all of  
2305 Contractor's land, equipment and other property used or useful in providing Collection Services  
2306 and to use such property to provide any Collection Services.

2307  
2308 Notice of Contractor's failure, refusal or neglect to provide Collection Services may be given  
2309 orally by telephone to Contractor and shall be effective immediately. Written confirmation of  
2310 such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral  
2311 notification.

2312  
2313 Contractor further agrees that in such event:

- 2314
- 2315 1. It will fully cooperate with County to affect the transfer of possession of property to  
2316 County for County's use on a temporary basis.
  - 2317
  - 2318 2. It will, if County so requests, and to the extent feasible, keep in good repair and condition  
2319 all of such property, provide all motor vehicles with fuel, oil and other service, and  
2320 provide such other service as may be necessary to maintain said property in operational  
2321 condition.
  - 2322

2323 3. Contractor shall provide all necessary billing information to the County. County shall  
2324 determine how to bill, in what amounts, and the distribution of amounts received. County  
2325 shall provide Contractor reasonable compensation for provision of Contractor's land,  
2326 equipment, or other property if the County's exercise of the right to perform is the result  
2327 of an Uncontrollable Circumstance.  
2328

2329 County's exercise of its rights under this Article 9.4: (i) does not constitute a taking of private  
2330 property for which compensation must be paid; (ii) will not create any contract, tort, or common  
2331 count liability on the part of County to Contractor; and (iii) does not exempt Contractor from the  
2332 indemnity provisions of Article 8.1, subject to its own stated limitations. The provisions of Article  
2333 8.1 are intended to apply to and include, without limitation, Claims and Liabilities that arise from  
2334 the Contractor's Default under this Agreement.  
2335

2336 **B. Duration of County's Possession**

2337 County has no obligation to maintain possession of Contractor's property and/or continue its use  
2338 in providing any Collection Services for any period of time and may, at any time, in its sole  
2339 discretion, relinquish possession to Contractor. County's right to retain temporary possession of  
2340 Contractor's property, and to provide one or more Collection Services, shall continue until  
2341 Contractor can demonstrate to County's satisfaction that it is ready, willing, and able to resume  
2342 such services.  
2343

2344 **9.5 COUNTY REMEDIES FOR CONTRACTOR DEFAULT**

2345 Without limiting the foregoing descriptions of the County's rights, options and remedies upon  
2346 any Default by Contractor under this Agreement, upon Contractor's failure to cure a Default  
2347 pursuant to Article 9.1.B, County shall have the following rights, which County may invoke or  
2348 seek in its sole discretion:  
2349

- 2350 1. To waive the Default by Contractor;
- 2351
- 2352 2. To Terminate the Agreement if Grounds for Termination exist;
- 2353
- 2354 3. To choose to have the Agreement remain in force but to pursue any and all other  
2355 available remedies for the Contractor's Default;
- 2356
- 2357 4. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with  
2358 this Article 9 and any other remedies at law and in equity, to which County shall be  
2359 entitled;
- 2360
- 2361 5. To assess and recover Liquidated Damages; if Contractor owes payment of any  
2362 damages to County upon County's termination of the Agreement, Contractor's liability for  
2363 such damages shall survive termination;
- 2364
- 2365 6. Whether or not County exercises its right to terminate, County shall have the right to: (i)  
2366 seek performance by the surety under the letter of credit or performance bond, and (ii)  
2367 make a claim on any insurance policy or policies.  
2368  
2369

2370 **9.6 COUNTY WAIVER OF BREACH OR DEFAULT**

2371 A waiver by County of any Default by Contractor shall not be deemed to be waiver of any other  
2372 Default by Contractor, including Defaults that relate to the same obligations hereunder, and  
2373 including new incidents of the same Default. The subsequent acceptance by County of any  
2374 damages or other money paid by Contractor hereunder shall not be deemed to be a waiver by  
2375 County of any preexisting or concurrent breach or Default by Contractor.  
2376

2377 **9.7 TERMINATION**

2378

2379 **A. Termination for Cause**

2380 If Grounds for Termination exist, as provided for in Article 9.2.A, above, County shall have the  
2381 right to terminate this Agreement without need for any hearing, suit, or legal action in the  
2382 circumstances specified below. Contractor's liability to provide records shall survive the  
2383 termination of this Agreement. Contractor shall forfeit its instrument for securing performance to  
2384 County to the extent required to compensate County for damages incurred as a result of the  
2385 breach, Default, or other action or omission by Contractor that gives rise to Grounds for  
2386 Termination.  
2387

2388

2389 **B. Notice of Termination**

2390 In addition to any other available remedies County may invoke, seek or impose as a result of  
2391 Contractor's Default, County may give Contractor thirty (30) days' written notice of termination.  
2392 Upon notice of termination, Contractor shall promptly provide County with any or all records kept  
2393 in accordance with Article 7 or any other record keeping provisions of this Agreement or its  
2394 Exhibits.  
2395

2396

2397 **9.8 POSSESSION OF PROPERTY UPON TERMINATION**

2398 In the event of termination for Default, County shall have the right to take possession of any and  
2399 all of Contractor's land, equipment, and other property used or useful in the Collection of Solid  
2400 Waste, Recyclables, Food Waste or Green Waste in the provision of services under this  
2401 Agreement, and the billing and collection of fees for these services and to use such property.  
2402 County shall pay reasonable compensation to Contractor for the temporary use of such land,  
2403 equipment, and other property except that County shall not be required to compensate  
2404 Contractor for the value of business goodwill. County shall have the right to retain the  
2405 possession of such property for up to four (4) months until other suitable arrangements can be  
2406 made for the provision of Solid Waste, Recyclables, Food Waste or Green Waste Collection  
2407 Services which may include the award of an agreement to another contractor(s), Contractor  
2408 shall furnish County with immediate access to all of its business records related to its route  
2409 maps, schedules, and billing of accounts for services. County shall make good faith efforts to  
2410 coordinate use of Contractor's land, equipment and other property with Contractor in order to  
2411 minimize interference with or disruption of other business activities of Contractor.  
2412

2413

2414 **9.9 COUNTY'S REMEDIES CUMULATIVE: SPECIFIC PERFORMANCE**

2415 County's right to terminate the Agreement under Article 9.7 and to take possession of  
2416 Contractor's properties under Article 9.8 are not exclusive, and County's termination of the  
2417 Agreement shall not constitute an election of remedies. Instead, all remedies provided for in this  
2418 Agreement shall be in addition to any and all other legal and equitable rights and remedies  
2419 which County may have under law or as otherwise provided in this Agreement. By virtue of the  
2420

2417 nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead  
2418 time required to effect alternative service, and the rights granted by County to Contractor, the  
2419 remedy of damages for a default hereof by Contractor is inadequate, and County may be  
2420 entitled to injunctive relief.

2421

## 2422 **9.10 EXCUSE FROM PERFORMANCE**

2423

### 2424 **A. Excuse from Performance**

2425 The Parties shall be excused from performing their respective obligations hereunder in the  
2426 event they are prevented from so performing by reason of floods, moderate to severe  
2427 earthquakes, tsunamis, other "acts of God," war, civil insurrection, riots, and other similar  
2428 catastrophic events which are beyond the control of and not the fault of the Party claiming  
2429 excuse from performance hereunder. Labor unrest, including but not limited to strike, work  
2430 stoppage or slowdown, sickout, picketing, or other concerted job action conducted by  
2431 Contractor's employees or directed at Contractor, or a subcontractor, is not an excuse from  
2432 performance, and Contractor shall be obligated to continue to provide service notwithstanding  
2433 the occurrence of any or all of such events. In the case of labor unrest or job action directed at a  
2434 third party over whom Contractor has no control, the inability of Contractor to make Collections  
2435 due to the unwillingness or failure of the third party to provide reasonable assurance of the  
2436 safety of Contractor's employees while making Collections or to make reasonable  
2437 accommodations with respect to Container placement and point of delivery, time of Collection,  
2438 or other operating circumstances to minimize any confrontation with pickets or the number of  
2439 persons necessary to make Collections, shall, to that limited extent, excuse performance. The  
2440 foregoing excuse shall be conditioned on Contractor's cooperation in making Collection at  
2441 different times and in different locations.

2442

### 2443 **B. Non-Excuse from Performance**

2444 In addition, none of the following are to be considered an excuse from performance: (i) general  
2445 economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost or  
2446 availability of fuel, commodities, supplies or equipment; (ii) changes in transport or Disposal  
2447 costs, Disposal facility locations, and/or other related circumstances; (iii) changes in the  
2448 financial condition of Contractor or any of its subcontractors affecting their ability to perform their  
2449 obligations; (iv) the consequences of errors, neglect or omissions by Contractor, or any  
2450 subcontractor; (v) any failure of any subcontractor or supplier to furnish labor, materials, service  
2451 or equipment for any reason; (vi) equipment failure; or (vii) changes in market prices for, or the  
2452 unavailability of markets for, the sale or purchase of Recyclable Materials.

2453

### 2454 **C. Notice**

2455 The Party claiming excuse from performance shall, within two (2) days after such Party has  
2456 notice of such cause, give the other Party notice of the facts constituting such cause and  
2457 asserting its claim to excuse under this Article. Notwithstanding, Contractor, in the event of a  
2458 declared disaster, shall comply with the contingency and emergency plans of the Contractor,  
2459 consistent with the emergency plans of County.

2460

### 2461 **D. Interruption or Discontinuance of Service**

2462 The partial or complete interruption or discontinuance of Contractor's services caused by one or  
2463 more of the events described in this Article and constituting an excuse from performance shall

2464 not constitute an Event of Default by Contractor under this Agreement. Notwithstanding the  
2465 foregoing, however, (i) the existence of an excuse from performance shall not affect County's  
2466 right to perform services under Article 9.4 and (ii) if Contractor is excused from performing its  
2467 obligations hereunder for any of the causes listed in this Article 9 for a period of thirty (30) days  
2468 or more, other than as the results of third-party labor disputes under which Collection Services  
2469 cannot be provided for reasons described earlier in this Article, County shall nevertheless have  
2470 the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in  
2471 which case the provisions of Article 9.5 shall apply.  
2472

2473 **9.11 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

2474 If Contractor is: (i) the subject of any labor unrest including work stoppage or slowdown, sickout,  
2475 picketing or other concerted job action; (ii) appears in the reasonable judgment of County to be  
2476 unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal  
2477 investigation, charge, or judgment or order entered by a federal, state, regional or local agency  
2478 for violation of a law relating to performance under this Agreement, and County believes in good  
2479 faith that Contractor's ability to perform under the Agreement has thereby been placed in  
2480 substantial jeopardy, County may, at its option and in addition to all other remedies it may have,  
2481 demand from Contractor reasonable assurances of timely and proper performance of this  
2482 Agreement, in such form and substance as County believes in good faith is reasonably  
2483 necessary in the circumstances to evidence continued ability to perform under the Agreement. If  
2484 Contractor fails or refuses to provide satisfactory assurances of timely and proper performance  
2485 in the form and by the date required by County, such failure or refusal shall be an Event of  
2486 Default for purposes of Article 9.2.  
2487

2488  
2489

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2490 **ARTICLE 10**  
2491 **OTHER AGREEMENTS OF THE PARTIES**

2492  
2493 **10.1 RELATIONSHIP OF PARTIES**

2494 The Parties intend that Contractor shall perform the Collection Services as an independent  
2495 contractor engaged by County and not as an officer or employee of County nor as a partner of  
2496 or joint venture with County. No employee or agent of Contractor shall be or shall be deemed to  
2497 be an employee or agent of County. Except as expressly provided herein, Contractor shall have  
2498 the exclusive control over the manner and means of conducting Collection Services and all  
2499 persons performing such services. Contractor shall be solely responsible for the acts and  
2500 omissions of its officers, employees, subcontractors, and agents. Neither Contractor nor its  
2501 officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits,  
2502 workers' compensation benefits, or any other benefits which accrue to County employees by  
2503 virtue of their employment with County. Contractor or its employees shall not provide, directly or  
2504 indirectly, any gifts or gratuities to any County employee or representative.

2505  
2506 **10.2 COMPLIANCE WITH LAW**

2507 In providing the services required under this Agreement, Contractor shall at all times, at its sole  
2508 cost, comply with all Applicable Laws of the United States, the State of California, Napa County,  
2509 County, and other states or counties which may have jurisdiction over any service provided in  
2510 this Agreement including all Applicable Laws pertaining to air pollution control, and with all  
2511 applicable regulations promulgated by any federal, state, regional, or local administrative and  
2512 regulatory agencies, now in force and as they may be enacted, issued, or amended during the  
2513 term of this Agreement, including all permit requirements for facilities used to provide Collection  
2514 Services.

2515  
2516 **10.3 GOVERNING LAW**

2517 This Agreement shall be governed by, and construed and enforced in accordance with, the laws  
2518 of the State of California.

2519  
2520 **10.4 VENUE**

2521 This Agreement is made in Napa County, California. The venue for any legal action in the state  
2522 court filed by either party to this Agreement for the purpose of interpreting or enforcing any  
2523 provisions of this Agreement shall be in the Superior Court of California, County of Napa, a  
2524 unified court. The venue for any legal action in federal court filed by either party of this  
2525 Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying  
2526 within the jurisdiction of the federal courts shall be the Northern District of California. The  
2527 appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement  
2528 shall be Napa County, California; however, nothing in this sentence shall obligate either party to  
2529 submit to mediation or arbitration any dispute arising under this Agreement.

2530  
2531 **10.5 ASSIGNMENT**

2532  
2533 **A. Definition**

2534 For purposes of this Article, "assignment" shall include, but not be limited to: (i) a sale,  
2535 exchange, or other transfer of substantially all of Contractor's assets dedicated to service under  
2536 this Agreement to a third party; (ii) a sale, exchange, or other transfer of fifty (50) percent or

2537 more of the outstanding common stock or member interests of Contractor; (iii) any  
2538 reorganization, consolidation, merger recapitalization, stock issuance or reissuance, voting trust,  
2539 pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or  
2540 any of its shareholders is a party which results in a change of ownership or control of fifty (50)  
2541 percent or more of the value or voting rights in the stock of Contractor; and (iv) any combination  
2542 of the foregoing (whether or not in related or contemporaneous transactions) which has the  
2543 effect of any such transfer or change of ownership. If Contractor is not a corporation, an  
2544 assignment shall also include, among other things, any transfer or reorganization that has an  
2545 effect similar to the situations described in foregoing sentence for corporations. For purposes of  
2546 this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other  
2547 successor(s) in interest pursuant to the assignment. If Contractor is a subsidiary of another  
2548 corporation or business entity, any assignment, as defined above, by the parent company or  
2549 corporation shall be considered an assignment by Contractor.  
2550

2551 **B. County Consent**

2552 Contractor acknowledges that this Agreement involves rendering a vital service to County's  
2553 residents and businesses, and that County has relied upon Contractor's representation of its  
2554 experience and financial resources in qualifying Contractor to provide Collection Services under  
2555 this Agreement. Except as provided in this Article, Contractor shall neither assign its rights nor  
2556 delegate, subcontract, nor otherwise transfer its obligations under this Agreement to any other  
2557 person or entity without the prior written consent of County. Any such assignment without the  
2558 consent of County shall be void and the attempted assignment shall constitute a material breach  
2559 of this Agreement. Under no circumstances shall County be required to consider any proposed  
2560 assignment if there is an uncured Event of Default at any time during the period of  
2561 consideration.  
2562

2563 **C. Requirements of Contractor**

2564 If Contractor requests County's consideration of and consent to an assignment, County may  
2565 deny or approve such request in its complete discretion, and with or without a detailed review of  
2566 the proposed assignment. No request by Contractor for consent to an assignment need be  
2567 considered by County unless and until Contractor has met the following requirements:  
2568

- 2569 1. Contractor shall pay County its reasonable expenses for attorney's fees and  
2570 investigation costs to investigate the suitability of any proposed assignee, and to review  
2571 and finalize any documentation required as a condition for approving any such  
2572 assignment.  
2573
- 2574 2. Contractor shall furnish County with audited financial statements of the proposed  
2575 assignee's operations for the immediately preceding five (5) operating years or adequate  
2576 financial documentation to determine the financial strength of the assignee.  
2577
- 2578 3. Contractor shall furnish County with satisfactory proof that the proposed assignee has  
2579 the demonstrated technical capability to perform all Collection Services and to provide  
2580 exceptional service to Customers, including: (i) that the proposed assignee has at least  
2581 ten (10) years of Solid Waste management experience on a scale equal to or exceeding  
2582 the scale of operations conducted by Contractor under this Agreement; (ii) in the last five  
2583 (5) years, the proposed assignee has not suffered any significant citations or other

2584           censure from any state, federal, or local environmental laws and the assignee has  
2585           provided County with a complete list of such citations and censures; (iii) the proposed  
2586           assignee has at all times conducted its operations in a environmentally safe and  
2587           conscientious fashion; (iv) the proposed assignee conducts its Solid Waste management  
2588           practices in substantial compliance with all federal, state, and local laws regulating the  
2589           Collection and Disposal of Solid Waste including hazardous substances; and (v) the  
2590           proposed assignee has in the last five (5) years provided excellent service to existing  
2591           franchised Customers and has not been subject to any administrative or legal actions  
2592           related to failure to provide adequate service under a contract or franchise; or any other  
2593           information required by County to ensure the proposed assignee can fulfill the terms of  
2594           this Agreement in a timely, safe, and effective manner. County reserves the right to  
2595           approve an assignment conditioned on an increase to the instrument for securing  
2596           performance required pursuant to Article 8.6 and contained in Exhibit G and/or use of  
2597           another mechanism in addition to, or as an alternative to, the instrument for securing  
2598           performance required in Article 8.6 and contained in Exhibit G.  
2599

2600           **D. Application and Transfer Fee**

2601           Any application for transfer of this Agreement shall be governed by the following conditions:  
2602

- 2603           1. Any application for transfer of this Agreement shall be made in a manner prescribed by  
2604           County Representative. The application shall include a transfer fee in an amount to be  
2605           set by resolution of the Board of Supervisors to cover the cost of all direct and indirect  
2606           administrative expenses including consultants necessary to adequately analyze the  
2607           application and to reimburse County for all direct and indirect expenses. In addition,  
2608           Contractor shall reimburse County for any and all additional costs related to the  
2609           assignment requested and not covered by the transfer fee. Bills shall be supported with  
2610           evidence of the expense or cost incurred. The applicant shall pay such bills within (30)  
2611           days of receipt.
- 2612           2. The transfer fees are over and above any other fees or charges specified in the  
2613           Agreement.  
2614

2615  
2616           **E. Transition**

2617           If County consents to an assignment, at the point of transition, Contractor shall cooperate with  
2618           County and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which  
2619           shall include, but not be limited to, Contractor providing route lists and billing information listing  
2620           accounts, and Best Efforts to minimize disruption to Customers.  
2621

2622           **10.6 DISPUTE RESOLUTION**

2623  
2624           **A. Continue Performance**

2625           Except for an Event of Termination, in the event of any dispute arising under this Agreement,  
2626           County and Contractor shall continue performance of their respective obligations under this  
2627           Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not  
2628           limited to, negotiating in good faith.  
2629  
2630

2631 **B. Mediation**

2632 Any unresolved dispute arising between the Parties under this Agreement shall first be  
2633 submitted to non-binding mediation before a recognized mediator having experience with  
2634 agreements of this nature and that is mutually acceptable to the Parties, provided that neither  
2635 Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of  
2636 thirty (30) days from commencement of the dispute resolution process, to agree on a mediator,  
2637 either Party shall be entitled to petition a court of competent jurisdiction to appoint such a  
2638 mediator for the Parties. Each Party shall bear its own costs, including attorney's fees, incurred  
2639 in connection with the mediation. If the mediation does not result in a resolution of the dispute  
2640 that is acceptable to both Parties, either Party may pursue its legal remedies.

2641

2642 **10.7 NON-DISCRIMINATION**

2643 Contractor shall not discriminate in the provision of service or the employment of persons  
2644 engaged in performance of this Agreement on account of race, religious creed, color, national  
2645 origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or  
2646 as otherwise prohibited by law.

2647

2648 **10.8 SUBCONTRACTING**

2649 Contractor shall not engage any subcontractors for performance of Collection Services without  
2650 the prior written consent of County.

2651

2652 **10.9 BINDING ON SUCCESSORS**

2653 The provisions of this Agreement shall inure to the benefit to and be binding on the successors  
2654 and permitted assigns of the Parties.

2655

2656 **10.10 TRANSITION TO NEXT CONTRACTOR**

2657 If at any point County desires to grant to a third party Collection Services which are contracted  
2658 to Contractor under this Agreement, Contractor shall be obligated to cooperate with County and  
2659 subsequent contractor(s) to assist in an orderly transition. One (1) year prior to the conclusion of  
2660 the Base Term and any Extension, and in order to assist with the competitive bid process to  
2661 award the Collection Services at the conclusion of the Term, Contractor shall provide County  
2662 with such information as may reasonably be requested, including but not limited to, route maps  
2663 and days of Collection, account names and phone numbers, and level of service provided.  
2664 Contractor shall cooperate with and schedule with County and new contractor its removal of all  
2665 Carts distributed to each Customer. Contractor and the new contractor may choose at their  
2666 discretion to enter into negotiations to sell (in part or all) Collection vehicles, Bins, and  
2667 Containers to the new contractor. Failure to provide full cooperation with a transition may, at  
2668 County's sole discretion, preclude Contractor from participating in future competitive  
2669 procurements.

2670

2671 **10.11 PARTIES IN INTEREST**

2672 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any  
2673 persons other than the Parties to it and their representatives, successors and permitted assigns.

2674

2675 **10.12 WAIVER**

2676 The waiver by either Party of any breach or violation of any provisions of this Agreement shall  
2677 not be deemed to be a waiver of any breach or violation of any other provision not of any

2678 subsequent breach of violation of the same or any other provision. The subsequent acceptance  
2679 by either party of any monies which become due hereunder shall not be deemed to be a waiver  
2680 of any preexisting or concurrent breach of violation by the other party of any provision of this  
2681 Agreement.

2682  
2683 **10.13 CONDEMNATION**

2684 In addition to the rights in Article 9.4 County fully reserves the rights to acquire Contractor's  
2685 property utilized in the performance of this Agreement, by purchase or through the exercise of  
2686 the power of eminent domain if applicable, and the County's Board makes the required  
2687 determination of public use and necessity.

2688  
2689 **10.14 NOTICE**

2690  
2691 **A. Notice Procedures**

2692 All notices, demands, requests, proposals, approvals, consents and other communications with  
2693 this Agreement require, authorize, or contemplate all, except as otherwise specifically provided,  
2694 be in writing and shall be effective when personally delivered to a representative of the Parties  
2695 at the address below or deposited in the United States mail, first class postage prepaid,  
2696 addressed as follows:

2697  
2698       If to County:       Attention:  
2699                               County Executive Officer  
2700                               County of Napa  
2701                               County Executive Office  
2702                               1195 Third Street, Suite 310  
2703                               Napa, CA 94559  
2704                               (707) 253-4421

2705  
2706       If to Contractor: Attention:  
2707                               Managing Member/General Manager  
2708                               Napa County Recycling and Waste Services, LLC  
2709                               3216 Vichy Avenue  
2710                               Napa, CA 94558  
2711                               (707) 255-5200

2712  
2713 The address to which communications may be delivered may be changed from time to time by a  
2714 notice given in accordance with this Article.

2715  
2716 **B. Facsimile or Email Notice Procedures**

- 2717  
2718 1. Facsimile or email notice may be substituted for written notice with the following  
2719 limitations:
- 2720 a. Facsimile or email notice shall be considered valid and delivered at such time as an  
2721 authorized representative of the receiving Party acknowledges receipt in writing or by  
2722 a facsimile or email acknowledgement to the sending Party.
  - 2723 b. Written notice must follow any facsimile or email notice.
- 2724

2725  
2726 2. If above conditions are met, facsimile or email notice will be considered effective from  
2727 date and time of transmission as indicated on receiving Party's original copy of the  
2728 transmission.

2729  
2730 3. Facsimile or email notices must be sent to the following addresses:

2731  
2732 If to County: Attention:  
2733 County Executive Officer  
2734 County of Napa  
2735 Fax number (707) 253-4176  
2736 "First Name"."Last Name"@countyofnapa.org  
2737

2738 If to Contractor: Attention:  
2739 Managing Member/General Manager  
2740 Napa County Recycling and Waste Services, LLC  
2741 Fax number (707) 257-6852  
2742 "First Name of General Manager"@naparecycling.com  
2743

2744 4. The facsimile number or email address to which communications may be transmitted  
2745 may be changed from time to time by a notice given in accordance with this Article.  
2746

2747 **10.15 REPRESENTATIVE OF THE PARTIES**

2748 All actions to be taken by County shall be taken by Board of Supervisors except as otherwise  
2749 provided herein. Board of Supervisors may delegate, in writing, authority to the County  
2750 Representative and/or to other County officials, in turn, to delegate in writing some or all of such  
2751 authority to subordinate officers. Contractor may rely upon actions taken by such delegates if  
2752 they are within the scope of the authority properly delegated to them.  
2753

- 2754 1. County Representative shall be responsible for administration of this Agreement on  
2755 behalf of County.  
2756  
2757 2. County Representative may delegate authority to appropriate County employees or  
2758 other appropriate persons.  
2759  
2760 3. Board of Supervisors reserves to itself all discretionary and administrative authority not  
2761 otherwise expressly delegated pursuant to ordinance. Whenever this Agreement  
2762 requires approval by County, the approval may be given by County Representative or  
2763 his or her designee, subject to appeal to Board of Supervisors by Contractor.  
2764

2765 Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve  
2766 as the representative of Contractor in all matters related to the Agreement and shall inform  
2767 County in writing of such designation and of any limitations upon his/her authority to bind  
2768 Contractor. County may rely upon action taken by such designated representative as action of  
2769 Contractor unless they are outside the scope of the authority delegated to him/her by Contractor  
2770 as communicated to County.  
2771

2772 **10.16 COUNTY FREE TO NEGOTIATE WITH THIRD PARTIES**

2773 County may, at any time, investigate all options for the provision of the exclusive and non-  
2774 exclusive services granted to Contractor by this Agreement. Without limiting the generality of the  
2775 foregoing, County may solicit proposals from Contractor and from third parties for the provision  
2776 of any or all Collection Services and may negotiate and execute agreements for such services  
2777 which will take effect upon the expiration, or earlier termination under Article 9.7, of this  
2778 Agreement and/or any future agreements.  
2779

2780 **10.17 CONTRACTOR TO DEFEND AGREEMENT**

2781 Contractor may at its election, and if it makes that election, at its sole expense defend the  
2782 validity of this Agreement against all challenges to the Agreement by any entity or person not a  
2783 Party to this Agreement. Neither the County nor the Contractor shall have any liability to the  
2784 other resulting from a determination that this Agreement violates any state or Federal law,  
2785 statute, or constitutional provision, except to the extent such determination relates to  
2786 Contractor's willful misconduct or negligence. However, if the Contractor elects to not defend  
2787 the validity of this Agreement, the County may, upon reasonable notice, terminate the  
2788 Agreement at its election, and if it makes that election, it shall have no liability to Contractor  
2789 resulting from that election to terminate. Contractor's sole remedy shall be to retain its share of  
2790 Gross Rate Revenues as specified in Article 5, for services rendered by Contractor up to the  
2791 date of termination, minus any offsets or monies due the County provided for under this  
2792 Agreement.  
2793

2794

2795

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2796

2797 **ARTICLE 11**  
2798 **MISCELLANEOUS AGREEMENTS**  
2799

2800 **11.1 ENTIRE AGREEMENT**

2801 This Agreement, including the Exhibits, represents the full and entire Agreement between the  
2802 Parties with respect to the matters covered herein.  
2803

2804 **11.2 HEADINGS**

2805 The article headings and sections headings in this Agreement are for convenience of reference  
2806 only and are not intended to be used in the construction of this Agreement, nor to alter or affect  
2807 any of its provisions.  
2808

2809 **11.3 REFERENCES TO LAWS**

2810 All references in this Agreement to laws shall be understood to include such laws as they may  
2811 be subsequently amended or recodified, unless otherwise specifically provided.  
2812

2813 **11.4 INTERPRETATION**

2814 This Agreement shall be interpreted and construed reasonably and neither for nor against either  
2815 party, regardless of the degree to which either Party participated in its drafting.  
2816

2817 **11.5 AMENDMENT**

2818 This Agreement may not be modified or amended in any respect except by a written agreement  
2819 duly approved and signed by the Parties.  
2820

2821 **11.6 SEVERABILITY**

2822 If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and  
2823 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the  
2824 remaining provisions of the Agreement which shall be enforced as if such invalid or  
2825 unenforceable provision had not been contained herein.  
2826

2827 **11.7 COUNTERPARTS**

2828 This Agreement may be executed in counterparts each of which shall be considered an original.  
2829

2830 **11.8 MISCELLANEOUS**

2831 **A. Privacy**

2832 Contractor shall strictly observe and protect the rights of privacy of Customers during provision  
2833 of all Collection Services. Information identifying individual Customers or the composition or  
2834 contents of Customer's Solid Waste, Recyclables or Green Waste shall not be revealed by  
2835 Contractor to any person, governmental unit, private agency, or company, unless upon the  
2836 authority of a court of law, by statute, written request from a law enforcement agency, or upon  
2837 valid authorization of the Customer or County. This provision shall not be construed to preclude  
2838 Contractor from providing the report information required by Article 7, complying with the  
2839 requirements of Article 10.10, or preparing, participating in, or assisting in the preparation of  
2840 waste characterizations studies or waste stream analysis which may be required by a regional,  
2841 state, or federal agency.  
2842  
2843

2844 **B. Advice**  
2845 Each of the Parties has received the advice of legal counsel prior to signing this Agreement.  
2846 Each Party acknowledges no other party or agent or attorney has made a promise,  
2847 representation, or warranty whatsoever, express or implied, not contained herein concerning the  
2848 subject matter herein to induce another party to execute this Agreement. The Parties agree no  
2849 provision or provisions may be subject to any rules of construction based upon any party being  
2850 considered the party “drafting” this Agreement.

2851  
2852 **11.9 EXHIBITS**

2853 Each of the Exhibits identified is attached hereto and incorporated herein and made a part  
2854 hereof by this reference.

2855  
2856 [The remainder of this page left blank intentionally]  
2857  
2858  
2859  
2860

2858 **IN WITNESS WHEREOF**, this Agreement was executed by the parties hereto as of the  
2859 date first above written.

2860  
2861 NAPA COUNTY RECYCLING AND WASTE SERVICES, LLC

2862  
2863  
2864  
2865  
2866 By   
2867 GREG KELLEY, MANAGING MEMBER/GENERAL MANAGER

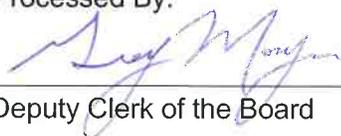
2868  
2869 "CONTRACTOR"

2870  
2871  
2872 NAPA COUNTY, a political subdivision of  
2873 the State of California

2874  
2875  
2876  
2877  
2878 By   
2879 BELIA RAMOS, Chair of the  
2880 Board of Supervisors

2881  
2882 "COUNTY"

2883

APPROVED AS TO FORM Office of County Counsel  By: <u>Jeffrey M. Richard (via e-signature)</u> Chief Deputy County Counsel  Date: <u>December 12, 2017</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS  Date: <u>12/19/2017</u> Processed By:  Deputy Clerk of the Board	ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors  By: 
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2887 **EXHIBIT A**  
2888 **DETAILED SCOPE OF COLLECTION SERVICES**

2889 **1.0 GENERAL REQUIREMENTS**

2891 **A. General**

- 2892
- 2893
- 2894 **1. Collection Services.** Subject to the more detailed description of Contractor's obligations  
2895 and scope of work as set forth in this Exhibit A, Contractor shall (a) Collect Solid Waste  
2896 generated and Delivered by transported to the Designated Disposal or Transfer Facility,  
2897 and (b) Collect Recyclables Materials specified herein and/or in Exhibit K and Delivered  
2898 by Customers within the Collection Services Area and transported to the designated  
2899 Processing Facilities.
- 2900
- 2901 **2. Labor, Supervision, Equipment, Materials and Supplies.** Contractor shall furnish all  
2902 labor, supervision, equipment, materials, supplies and all other items necessary to  
2903 perform the services required in a thorough, professional, timely, and efficient manner,  
2904 so that Customers within the Collection Services Area are provided reliable (as to both  
2905 the regularity, timeliness and effectiveness of the services), courteous and high-quality  
2906 services at all times. The enumeration of, and specification of requirements for,  
2907 particular items of labor or equipment shall not relieve Contractor of the duty to furnish  
2908 all others that may be required, whether enumerated or not.
- 2909
- 2910 **3. Public Education and Information.** Contractor shall comply with the requirements as  
2911 presented in more detail within Exhibit B.
- 2912
- 2913 **4. Additional Performance Standards.** Contractor shall comply with the standards as  
2914 presented in more detail within Exhibit C.

2915

2916 **B. Disposal and Processing Facilities**

- 2917
- 2918 **1. Solid Waste and Construction and Demolition**
- 2919 Contractor shall transport Solid Waste and Construction and Demolition to the  
2920 Designated Disposal or Transfer Facility and is responsible for payment of all transport  
2921 and Disposal charges from the Rates. County may at its sole discretion direct the  
2922 Contractor to use a different Designated Disposal or Transfer Facility. Any County  
2923 initiated designation of a different Disposal or Transfer Facility(ies) shall be considered a  
2924 Change of Scope and shall be subject to the provisions of Article 3.
- 2925

2926 **2. Recyclable and Compostable Materials**

2927 Contractor shall use a Designated Food Waste Processing Facility for Food Waste, a  
2928 Designated Green Waste Processing Facility for Green Waste and Compostable  
2929 Materials, and a Designated Recyclables Processing Facility for all other Recyclable  
2930 Materials listed in Exhibit K. All three facilities shall be hereafter referred to as  
2931 Processing Facilities when referring to all three Facilities. Contractor shall use the  
2932 Designated Recyclables Processing Facility(ies) for Recyclable Materials that have been  
2933 Delivered by Customer for Collection by Contractor as listed in Exhibit K, unless a facility  
2934 is designated in Exhibit L of this Agreement, in which case the provisions of Exhibit L  
2935 shall control.

2936  
2937 The Contractor shall be required to utilize a Designated Recyclables Processing Facility  
2938 with permits, performance records and available capacity and shall obtain County  
2939 approval of designated facility(ies) for such purpose. In meeting the obligation to identify  
2940 acceptable facility(ies), the Contractor may purchase, lease, subcontract, or make other  
2941 arrangements with a new or existing facility for the processing and marketing of the  
2942 Recyclable Materials Collected in the Collection Services Area. Ownership or leasing  
2943 arrangements and costs will be the responsibility of the Contractor. The Contractor will  
2944 ensure any applicable purchase or lease agreements with property owners and obtain  
2945 permits through the local land use authorities. The Contractor will have the responsibility  
2946 to ensure the technical and environmental suitability of any processing site for its  
2947 intended purpose. The Contractor will be compensated for Recyclable Materials  
2948 processed and marketed solely through the Rates.

2949  
2950 The facility(ies) selected by Contractor for Recycling, composting or other processing  
2951 methods must be approved by County and authorized by State law. If it becomes known  
2952 to the County or Contractor that the designated facility is no longer processing materials  
2953 as agreed and understood, is not in compliance with local, State, or Federal operating  
2954 permits, laws or regulations; and/or is not processing and /or using Food Waste in such  
2955 a way that the food materials Collected from within Collection Services Area shall count  
2956 as materials Diverted from Disposal according to applicable local, State or Federal law;  
2957 the Contractor has the duty to report such knowledge to County within four (4) calendar  
2958 days.

2959  
2960 County reserves the right to:

- 2961 • Modify the program.
- 2962 • Direct Contractor to Deliver Recyclable Materials to another Processing Facility, with  
2963 an adjustment in compensation (up or down) to reflect the change in transportation  
2964 cost as provided in Article 6.5.A. and tip fee of the Processing Facility  
2965  
2966

2967 **C. Collection, Processing and Marketing**  
2968

2969 **1. Service Provision for Customers**

2970 Contractor shall provide the following basic service to all Customers:

- 2971 • Service shall commence within seven (7) days of receiving order from Customer.
- 2972 • Collection Containers shall be provided to Customers within five (5) Working Days of  
2973 request for service.

2974  
2975 **2. Solid Waste and Residue**

2976 Contractor shall Collect and transport all Solid Waste and Construction and Demolition  
2977 Debris Collected within the Collection Services Area to the Designated Disposal or  
2978 Transfer Facility.

2979  
2980 Disposal of Residue remaining after the segregation of the Compostable Materials will  
2981 be the Contractor's responsibility. The Contractor will transport the Residue to a  
2982 permitted Disposal or Transfer Facility approved by the County. The costs of Residue  
2983 transportation and Disposal will be borne by the Contractor. As specified in Article 7,  
2984 Contractor's reports to County will include specific information on the use and  
2985 performance of the utilized Designated Recyclables Processing Facility.

2986  
2987 **3. Recyclable Materials.**

2988 The Contractor shall provide for the Collection, processing and marketing to the  
2989 Designated Recyclables Processing Facility all materials listed in Exhibit K under the  
2990 terms of this Agreement.

2991  
2992 The Contractor will be responsible for arranging for the transportation of the Recyclable  
2993 Materials to the Processing Facility. If the Contractor chooses to consolidate the  
2994 Recyclable Materials to reduce transportation costs to a distant processing site, the  
2995 Contractor will be fully responsible for securing and operating a staging area for  
2996 temporary storage, consolidation, and loading of materials into transfer vehicles for long-  
2997 hauling to the Designated Recyclables Processing Facility. In addition, Contractor  
2998 agrees to keep Solid Waste and Recyclable Materials segregated once Delivered by  
2999 Customers.

3000  
3001 Contractor will be required to Divert a minimum of ninety (90) percent of the Recyclable  
3002 Materials Collected under this Agreement. The material types to be accommodated by  
3003 the facility are outlined in Article 3. By mutual written agreement, the Contractor will  
3004 process and market additional types of Recyclables not listed in Exhibit K.

3005  
3006 Disposal of Residue equal to no more than ten (10) percent by weight of the original  
3007 weight of the Collected Recyclable Materials remaining after the segregation of the  
3008 Recyclables Materials will be the Contractor's responsibility. The Contractor will  
3009 transport the Residue to a permitted Disposal or Transfer Facility approved by the  
3010 County. The costs of Residue transportation and Disposal will be borne by the  
3011 Contractor and shall be included in the Rates.  
3012

3013 Contractor shall track, monitor, and report to County the amount of Residue remaining  
3014 after the processing of materials Collected from Customers and Delivered to Designated  
3015 Recyclables Processing Facility.

3016

3017 **4. Compostable Materials.**

3018 Contractor shall provide for the transportation, processing and marketing of all  
3019 Compostable Materials for use as Compost, mulch, or other uses that qualify as waste  
3020 Diversion, and is responsible for payment for these services from the Rates to the  
3021 Designated Green Waste Processing Facility and Designated Food Waste Processing  
3022 Facility of all Compostables it Collects under this Agreement, and shall receive payment  
3023 for these services according to the Rates.

3024

3025 The Contractor shall use the Designated Green Waste Processing Facility and  
3026 Designated Food Waste Processing Facilities, unless a different Designated Green  
3027 Waste Processing Facility or Designated Food Waste Processing Facility is designated  
3028 in Exhibit L of this Agreement, in which case the provisions of Exhibit L shall control.  
3029 Contractor shall ensure any Residue is Delivered to the Designated Disposal or Transfer  
3030 Facility for proper Disposal.

3031

3032 As specified in Article 7, Contractor's reports to County will include specific information  
3033 on the Compostable, Green Waste and Food Waste materials it Collects from  
3034 Customers and transports to the Designated Green Waste Processing Facility and/or  
3035 Designated Food Waste Processing Facility.

3036

3037 **D. Customers and Premises Defined.**

3038

3039 1. "Residential Customer" means any Customer residing in a Residential Premise within  
3040 the Collection Services Area.

3041

3042 2. "Residential Premises" means any residence or dwelling unit within a residential  
3043 development located within the Collection Services Area, not used for a commercial  
3044 business and that is physically accessible by Contractor using standard equipment or  
3045 methods employed in its provision of Collection Services, including single family  
3046 residences and Multi-Family residential developments of four units or less.

3047

3048 3. "Commercial Customer" means any Customer conducting business at a Commercial  
3049 Premise within the Collection Services Area

3050

3051 4. "Commercial Premises" means any premise occupied by stores, offices, and other  
3052 commercial facilities providing goods or services. Solely for the purposes of this  
3053 Agreement, Multi-Family Residential Premises in residential developments wherein such  
3054 premises include dwelling units of five or more are deemed commercial premises. Also  
3055 included, but not limited to, as commercial premises are manufacturing operations,  
3056 shipping, storage, other industrial-type facilities or premises occupied by educational,  
3057 health care, correctional, recreational, research, government, or other similar entities.

3058

3059 5. "Multi-Family Residential Premises" means any residential development, apartment,  
3060 condominium or townhouse complex or building consisting of five or more dwelling units,  
3061 within the Collection Services Area, which are not provided individual Collection Service  
3062 nor individually billed as a Customer, but are instead serviced through central collection  
3063 area by Bin or combination of Carts, Bins, Debris Boxes or compactor-type Containers.  
3064 Services are billed to a Homeowners Association or a property manager. Central  
3065 Collection areas must be physically accessible by Contractor using standard equipment  
3066 or methods employed in its provision of Collection Services.  
3067

3068 **E. Service Type Defined.**  
3069

- 3070 1. "Residential Services" means Collection and Diversion or Disposal services provided by  
3071 Contractor to Residential Customers. Contractor shall provide services to the Residential  
3072 Customers, upon request of Customers. Customers may not share Solid Waste  
3073 Collection Services with other Residential Premises. Sharing of services is permitted for  
3074 Residential Customers residing in Multi-Family developments of four units or less.  
3075 Service is provided at regularly scheduled weekly intervals.  
3076
- 3077 2. "Commercial Services" means Collection and Diversion or Disposal services provided by  
3078 Contractor to Commercial Customers. Contractor shall provide services to the  
3079 Commercial Customers, upon request of Customers. Customers may not share Solid  
3080 Waste Collection Services with other Commercial Premises. Service is provided at  
3081 regularly scheduled intervals.  
3082
- 3083 3. "On Call Services" means Collection Services provided by Contractor to Residential and  
3084 Commercial Customers upon request of Customers. Service is not rendered until a  
3085 request for Container Delivery or pick-up is received by Contractor from Customer.  
3086

3087 **F. Waste Diversion Programs**  
3088

- 3089 **1. Residential Diversion**  
3090 Contractor shall Collect Single Stream Recyclables, Special Recyclables, Bulk  
3091 Recyclables, and Compostable Materials generated by Customers and Delivered for  
3092 Collection by Contractor. Contractor shall Collect at the frequencies and in the manner  
3093 described in this Exhibit.  
3094
- 3095 **2. Commercial Diversion**  
3096 Contractor shall Collect Single Stream Recyclables, Special Recyclables, Bulk  
3097 Recyclables, Green Waste, and Food Waste from commercial, industrial, and  
3098 institutional Customers at the frequencies and in the manner described in this Exhibit.  
3099
- 3100 **3. County Facilities and Events Diversion**  
3101 Contractor shall Collect Single Stream Recyclables, Special Recyclables, Bulk  
3102 Recyclables, Green Waste, and Food Waste, if and as requested by the County, from  
3103 County Facilities within the Collection Services Area and at up to three (3) County-

3104 sponsored or co-sponsored events without charge, and at the frequencies and in the  
3105 manner described in this Exhibit.  
3106

3107 **4. Minimum Diversion Rate**

3108 Commencing on January 1, 2018 the Minimum Diversion Rate (MDR) will be 50%. The  
3109 MDR will be calculated by dividing the total tons of material Diverted under this  
3110 Agreement, less material recovery facility and composting residual, by the total tons of  
3111 material Collected annually under this Agreement. Any non-franchised material  
3112 Collected by the Contractor is not to be considered for purposes of calculating the MDR.  
3113

3114 Contractor may petition the County in writing for a reduction in the MDR as a result of  
3115 market or other factors impacting the Contractor's ability to achieve the MDR, including  
3116 but not limited to the lack of future markets for wood waste. The County shall have sole  
3117 discretion as to whether or not to grant any request by the Contractor for a reduction in  
3118 the MDR.  
3119

3120 **5. New Diversion Programs.** Contractor shall, at no additional cost, within forty five (45)  
3121 days of a request by County, submit a written proposal on providing additional or  
3122 expanded diversion services. The proposal shall contain a complete description of the  
3123 following: (A) Collection methodology to be employed; (B) equipment to be used and  
3124 staffing requirements by number and classification; (C) type of Container(s) to be used;  
3125 (D) informational/promotional campaign; (E) projection of annual operating costs,  
3126 including documentation of key assumptions underlying projections and support for  
3127 assumptions.  
3128

3129 **G. Exceptions to Exclusive Right to Collect.**

3130 Article 3.4 of the Agreement describes four (4) programs or types of materials for which  
3131 Contractor does not have the exclusive right to Collect commercial materials within the  
3132 Collection Services Area. They are for 1) bonded paper and document destruction companies,  
3133 2) metal recyclers 3) pallet recyclers, and 4) landscapers.  
3134

3135 The Contractor can choose to become a bonded document destruction service and compete  
3136 within the Collection Services Area for those services, but may not discriminate, in the provision  
3137 of other services under this Agreement, against any business that chooses to use another  
3138 provider of document destruction and recycling services.  
3139

3140 The Contractor shall offer pallet Collection and Recycling as part of the Commercial Services  
3141 but it will not have the exclusive right to Collect pallets.  
3142

3143 **2.0 SERVICE RATES AND CHARGES.**

3144 **A. Overview.** Contractor shall charge Customers for services according to progressive, volume-  
3145 based, monthly Solid Waste Disposal rates approved by County. County reserves the right to  
3146 change rates or rate structure at any time during the term of the Agreement to respond to  
3147 changes or requirements of federal, state or local laws, to alter price incentives, or to adjust  
3148 revenue it may deem necessary for funding its waste management programs. See Basic  
3149

3150 Service Section under Sections 4.0 and 5.0 of this Exhibit for specific information on Residential  
3151 and Commercial Rate Structures.

3152  
3153 **B. Curbside Collection Service.** Contractor shall provide all Collection Services to Customers  
3154 at the edge of the public roadway (curbside), using automated Collection equipment at no  
3155 additional fee to the Customer, except as otherwise described in this Exhibit, Section 2.0. C.  
3156 and D.2. or approved in writing by County.

3157  
3158 **C. Back Yard Service.** Contractor shall also Collect and transport Recyclable Materials, Special  
3159 Recyclables, Bulk Recyclables, and Compostable Materials Delivered to backyard or side-yard  
3160 locations by Customers for a fee. Customers who are eligible for backyard or side-yard  
3161 Collection Services or accommodations under the Americans with Disabilities Act, or any other  
3162 applicable federal state or local laws, ordinances, regulations or guidelines shall be provided the  
3163 service at no additional charge to the Customer.

3164  
3165 **D. Off-road Collection Service.** Contractor shall provide Collection Services for those Solid  
3166 Waste and Recyclables Materials described under Basic Residential Services and Basic  
3167 Commercial Services at a Collection point away from the public roadway on a Residential or  
3168 Commercial Premises upon request from the Customer if property can be accessed with  
3169 existing equipment.

3170  
3171 **1. With Fee.**

3172 If off-road Collection Services are requested by a Customer who does not qualify for off-  
3173 road Collections Services at no additional charge as an accommodation under the  
3174 Americans with Disabilities Act or similar State law, Contractor may charge an extra  
3175 monthly fee for off-road service according to a rate table approved by the County.

3176  
3177 The extra charges are to be based on distances from the roadway as follows.

- 3178 • Five (5) to one hundred and thirty (130) feet
- 3179 • One hundred thirty one (131) feet to three hundred and thirty (330) feet
- 3180 • Three hundred and thirty one (331) feet to six hundred and sixty (660) feet
- 3181 • Six-hundred sixty one (661) feet to one thousand fifty six (1,056) feet
- 3182 • One thousand fifty seven (1,057) feet to two thousand (2,000) feet
- 3183 • Over two thousand (2,000) feet (chargeable per 1,000 feet)

3184  
3185 **2. Fee Exemption for Disability or Medical Reasons for Residential Customers.**

3186 Contractor shall provide off-road service at no charge to Residential Customers who  
3187 submit a note from their physician stating there is a medical reason that prevents the  
3188 Residential Customer from moving Carts for their Basic Service as defined in this Exhibit  
3189 to the roadway or curbside and who therefore is eligible for an accommodation under the  
3190 Americans with Disabilities Act or similar State law or local laws, ordinances, regulations  
3191 or guidelines.

3192  
3193 To maintain the fee exemption, Contractor must receive a new note from the physician  
3194 of the Residential Customer on at least an annual basis. Contractor shall maintain a

3195 record of the exemptions granted to eligible Customers and provide those records to the  
3196 County upon request.

3197

3198 **E. Gated Premise Service.**

3199 The Contractor shall provide Collection Services to gated Residential and Commercial Premise  
3200 as requested by the Customer. If driver is required to leave vehicle to open or close gate,  
3201 Contractor may charge an extra monthly fee according to a rate table approved by the County.

3202

3203 Commercial Customers may direct, once per twelve-month period, the location(s) or  
3204 arrangements of Containers on the premise(s) and the frequency of Collection as further  
3205 described in Section 5.0 A of this Exhibit for Collection of Basic Service. Contractor shall not  
3206 allow residents of any gated residential developments that are included in the central or meter-  
3207 billing arrangement by a HOA or property manager to suspend service for any period of time.  
3208 This section does not exempt owners or operators of Gated Developments or mobile home  
3209 parks from local, state, or federal laws, regulations, or guidelines pertaining to Container storage  
3210 enclosure design, capacity, or infrastructure.

3211

3212 **3.0 CONTAINERS**

3213

3214 **A. General Requirements.**

3215

3216 **1. Overview.**

3217 Contractor shall provide wheeled Carts, Bins and other Containers for Customers to  
3218 Deliver for Collection at no additional cost to Customers. Contractor shall provide interior  
3219 Carts and Containers for Food Waste at no additional cost to Customers.

3220

3221 Contractor shall provide, upon Customer request and after confirmation by Contractor  
3222 and County, a one-for-one replacement of Containers that may be damaged or worn to  
3223 the point of not functioning adequately, each year at no additional charge to Customer.

3224

3225 Contractor may charge a fee for any replacement Containers requested by Customers  
3226 that exceed the allowable Containers for Collection Services described in this Exhibit.

3227

3228 All Containers will be consistently color-coded, labeled and have graphics as approved  
3229 by County to reduce the risk that materials will be placed in the wrong Container.  
3230 Contractor will utilize existing Containers until such time the Contractor purchases new  
3231 Containers. Any Container that is broken, damaged, substantially discolored or  
3232 misshapen shall be replaced within six (6) months of the Effective Date of the  
3233 Agreement and within seven (7) days thereafter. New Containers purchased will comply  
3234 with the approved color scheme. Containers that are refurbished, repaired, repainted or  
3235 reconditioned shall comply with the color coding scheme described in this Exhibit.  
3236 Containers not consistent with the color scheme will be replaced and comply with the  
3237 color scheme within three (3) years of the Effective Date of the Agreement.

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3239 Contractor shall present the design, size and message of Container labels, signs and  
3240 markings to the County for their approval.

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**2. Commercial Customers.**

Contractor shall provide Carts, Bins, and/or Debris Boxes to Commercial Customers who subscribe for its services. Contractor shall consult with potential Customers prior to providing Containers to identify and recommend the most cost-effective levels of service that would also maximize the diversion of waste generated on the premises. Contractor shall provide Containers free of charge to Customers except where otherwise noted in this Exhibit.

**B. Cart.** Contractor shall provide wheeled Carts, with features that accommodate automated Collection and prevent entry of rainwater and leakage of liquid to Customers at no additional cost to Customers. Contractor shall provide a selection of Cart with same color lids in capacities of 35, 65, and 95 gallons in the following colors: gray for Solid Waste, blue for Single Stream Recyclables, green for Source-Separated Food Waste and brown for Green Waste which consists of 50% or less of Food Waste.

**C. Bin.** Contractor shall provide a Bin for Solid Waste, Food Waste, Recyclable Materials, and Green Waste, unless provided and owned by the Customer, having a capacity of six (6) cubic yards or less that generally has wheels, a handle for ease of movement and a tight-fitting, attached lid with features that allow for locking. Bins shall be designed to be dumped mechanically into a Collection vehicle at no additional cost to Customers. Containers shall have the following lid colors: gray or black for Solid Waste, blue for Single Stream Recyclables, brown for Source-Separated Food Waste and Compostable Materials. The base of the Bins shall be grey for Solid Waste and white for Diverted materials. All Containers shall be marked and labeled identifying the Solid Waste or Recyclable Materials to be Delivered to the Container.

**D. Debris Box.** Contractor shall provide an open-top Container with a capacity up to forty (40) cubic yards a rental fee approved by the County that is Collected using a roll-off truck.

**E. Interior Containers.**

**1. Residential.**

Contractor shall supply to Residential Customers one Food Waste pail of 2-gallon capacity for temporary storage of Food Waste and shall supply to Customer no more than two replacement pails during the Term of Agreement at no additional charge to Customer. Additional replacement pails will be available for purchase for a nominal fee at the Contractor's office.

**2. Commercial.**

Contractor shall reimburse the County annually 50% of County's cost for interior Commercial Food Waste Containers up to \$2,500 annually.

**F. Used Oil and Oil Filter.** Contractor shall provide, upon Residential Customer request, clear or translucent puncture and leak resistant Container(s), such as screw top HDPE plastic jugs, sufficient for holding up to two (2) gallons of used motor oil, and container(s), such as sealable plastic bags, sufficient for holding up to two (2) passenger vehicle motor oil filters.

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Contractor shall service and replace up to eighteen (18) Collections per year for each used motor oil and motor oil filter recycling services at no additional charge to the Customer, regardless of the reason for replacement, including a change in service level.

Contractor may charge a fee for any replacement containers requested by Residential Customers that exceed the allowable Collection services described in this section.

**G. Extra Service - Bags.** Contractor shall instruct Customers who order extra service on use of appropriate types and labeling of extra containers or bags. Bags, provided by Residential Customer shall be black for Solid Waste, clear for Single Stream Recyclables, and certified Compostable bags for Compostable Materials.

#### **4.0 RESIDENTIAL SERVICE.**

**A. Basic Service.** Contractor shall offer to Residential Customers and provide to subscribing owners or inhabitants a basic package of Cart Services that includes: (1) Once per week Collection of Solid Waste; (2) Once per week Collection of Single Stream Recyclables; and (3) Once per week Collection of Compostable Materials.

##### **1. Solid Waste Service.**

Contractor shall Collect Solid Waste in the Customer's choice of 35, 65, or 95-gallon grey Cart. Residential Customers shall also have the option of 20 gallon Cart.

##### **2. Single Stream Recycling Service.**

Contractor shall Collect Single Stream Recyclables in the Customer's choice of 35, 65, or 95-gallon blue Carts once per week in a maximum of two 35, 65 or 95 gallon Carts. Contractor shall provide a second Cart with service to Customer upon Customer request at no additional cost to the Customer. Contractor shall provide fully automated Collection of Single Stream Recyclables wherever feasible.

##### **3. Compostable Materials Service.**

Contractor shall Collect Compostable Materials in Customer choice of 35, 65 or 95-gallon brown Carts once per week. Customers may request up to three (3) additional Carts with service at no additional charge. Contractor shall provide fully automated Collection wherever feasible. When full automation is not feasible, Contractor shall use semi-automated vehicles. Contractor shall provide extra Carts with service upon Customer request. Contractor shall charge (50%) of the approved Solid Waste rate for each extra Cart after the first four (4) Carts ordered by Customer.

Contractor shall provide up to 10 Compostable bags per year of size equal to or greater than 32 gallons in capacity for Compostable Materials upon request of Customer at no additional charge. Compostable bags are available for pickup at Contractor's offices and will not be delivered to Customers. Contractor shall provide, upon Residential Customer request, Collection of Customers Delivered Compostable Materials in these certified Compostable bags on the regular service day.

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**B. Residential Rate Structure.** The basic level of service is recoverable through a single rate for all services provided except for those weekly Compostable Services in excess of four (4) 95 gallon Carts and as otherwise noted in subsequent sections. Compensation for Collection of residential Recyclables and Compostables beyond the basic service level shall not exceed fifty percent (50%) of the equivalent Solid Waste rate for the same size Container size and Collection frequency. The County reserves the right to change this format during the term of the Agreement. Collection shall be accomplished in such a manner that the flow of traffic shall not be impeded or a threat to the public health or safety created.

**C. Extra Recycling and Compost Service.**

Contractor shall Collect unusual sizes or large amounts of cardboard, such as moving boxes, or other large amounts of Single Stream Recyclables or Compostables curbside at no additional charge on regular service day.

Contractor shall provide Collection of Compostable Materials and Single Stream Recyclables in appropriate types of bags on the regular service day.

**D. Vacation Suspension Service.**

Customers may request a suspension of service once per year and may not be liable for payment during the suspension period. Residential Customers may request the Contractor suspend service for a period of no less than two-weeks and no longer than three months. If the Residential Customer requests a stop for a period exceeding three months, Contractor will arrange to pick-up Carts from the Residential Customer and will reinstate service and billing upon Residential Customer's request to Contractor.

**E. Back Yard Service.** Contractor shall also Collect all Solid Waste, Single Stream Recyclables and Green Waste Delivered to side-yard/backyard locations of Residential Customers upon Residential Customer's request. Contractor shall Collect Solid Waste from such premises at the frequencies and in the manner described in this Exhibit.

Residential Customers eligible for such Collection Services or accommodations under the Americans with Disabilities Act, or any other applicable federal state or local laws, ordinances, regulations or guidelines shall receive the service at no cost.

To maintain the fee exemption, Contractor must receive a new note from the physician of the Residential Customer on at least an annual basis. Contractor shall maintain a record of the exemptions granted to eligible Customers and provide those records to the County upon request.

Residential Customers not eligible for free service may request service; however, the service is subject to a fee approved by the Board of Supervisors.

3377 **F. Curbside Used Oil and Oil Filter Service.**

3378 Contractor shall offer weekly curbside used motor oil and oil filter collection to all General  
3379 Residential Customers, to all residents of Multi-Family Residential Premises, and to all Gated  
3380 Developments where it does not conflict with the policy of the facility.

3381  
3382 Contractor shall deliver, upon Customer request, used oil and oil filter Collection containers with  
3383 complete instructions for Customer preparation and set-out to General Residential and Multi-  
3384 Family Residential Customers at no charge. Oil containers and filter bags shall be approved by  
3385 the County prior to purchase and contain highest post-consumer recycled content feasible.  
3386 Contractor shall deliver oil and filter containers to Customer within two weeks of Customer  
3387 request. Contractor shall also make containers available to the County for distribution upon  
3388 request of the County.

3389  
3390 Contractor shall Collect used motor oil and oil filters when set out by Customers on the regular  
3391 Collection day. Customer must call for service at least 1 service day prior to Collection day to  
3392 schedule service. Contractor shall Collect only Contractor-supplied, County-approved used oil  
3393 and filter Collection containers and bags. If residents use other containers or bags, Contractor is  
3394 not obligated to Collect the used oil or oil filter. Contractor shall notify Customers of the reason  
3395 for non-collection on the same day through the use of tags attached to containers. Contractor  
3396 shall note on the resident's Customer account the non-collection and reason for non-collection  
3397 within two (2) business days after the non-collection.

3398  
3399 Contractor shall advertise the used oil and oil filter Collection program to all residential  
3400 Customers once a year. The County shall approve advertisement prior to distribution by  
3401 Contractor.

3402  
3403 Contractor shall obtain and maintain all required registrations, certifications, and training  
3404 required by local, State or Federal laws or regulations for operation of a curbside used motor oil  
3405 recycling Collection program. Contractor will submit claims for any reimbursements available  
3406 from the State of California to operators of curbside used oil Recycling Collection program.

3407  
3408 **5.0 COMMERCIAL SERVICE.**

3409  
3410 **A. Basic Service.** Contractor shall offer to and provide to Commercial Customers within the  
3411 Collection Services Area the basic level of service that includes: (1) regularly scheduled  
3412 automated Collection of Solid Waste with variable rates approved by the County; (2) regularly  
3413 scheduled automated Collection of single-stream recyclables in variable Container sizes, (3)  
3414 regularly scheduled automated Collection of Green Waste, and (4) if elected, regularly  
3415 scheduled automated Collection of Food Waste. Basic service shall be once per week  
3416 Collection; and (4) if elected, regularly scheduled automated Collection of Source-Separated  
3417 Food Waste.

3418  
3419 Contractor shall use fully automated Collection wherever feasible. Semi-automated can be used  
3420 only when automated Collection is not possible. Manual Collection can be used when semi-  
3421 automated is not possible.  
3422

3423 **1. Solid Waste Service.**  
3424 Contractor shall offer Customer the choice of Container sizes, up to six (6) cubic yards,  
3425 sufficient for once per week collection and/or more frequent collection.  
3426

3427 **2. Single Stream Recycling Service.**  
3428 The Contractor shall offer Single-stream Recycling to all Commercial Customers. Single-  
3429 stream Recycling Collection is by Cart or Bin and includes same material types  
3430 Collected in the Residential Single Stream Recycling program listed in Exhibit K. The  
3431 County currently allows Commercial Customers to share recycling Bins with adjoining  
3432 properties. The Contractor shall offer Single Stream Recycling to every Commercial  
3433 Customer.  
3434

3435 **3. Compostable Materials Service.**  
3436 Contractor shall offer Collection service of Compostable Materials Service to all  
3437 Commercial Customers. Contractor shall Collect Compostable Materials Delivered by  
3438 Customer to Carts or Bins. Compostable Materials service may also be considered  
3439 Green Waste services when Food Waste is no more than 50% of materials.  
3440

3441 **4. Source Separated Food Waste Service.**  
3442 Contractor shall offer a Food Waste Collection Service to Commercial Customers for  
3443 materials listed in Exhibit K Delivered by Customers to Carts or Bins.  
3444

3445 Contractor shall provide participating Customers with wheeled Carts up to sixty-five (65)  
3446 gallon for Food Waste that includes mostly putrescible (wet Food Waste). Contract shall  
3447 provide participating Customers with wheeled Carts up to ninety-five (95) gallons for  
3448 Food Waste that includes mainly light weight putrescible and dry paper items.  
3449 Contractor shall provide Carts and/or Bins, Debris Boxes as necessary and appropriate  
3450 for the segregation and storage of food materials to be recycled. Contractor shall  
3451 provide and distribute to participants reporting damaged Carts, Bins, or Debris Boxes a  
3452 replacement thereof within seventy-two (72) hours of notice from participant.  
3453  
3454  
3455

3456 **B. Commercial Rate Structure**

3457 The basic level of service is recoverable through a single rate for all services provided except as  
3458 follows:  
3459

3460 **1. Recycling services in excess of six (6) cubic yards.** Compensation for Collection of  
3461 Commercial Recyclables beyond the basic service level shall not exceed fifty percent  
3462 (50%) of the equivalent Solid Waste rate for the same size Container size and Collection  
3463 frequency. The County reserves the right to change this format during the term of the  
3464 Agreement. Collection shall be accomplished in such a manner that the flow of traffic  
3465 shall not be impeded or a threat to the public health or safety created.  
3466

3467           **2. Compostable Materials in excess of six (6) cubic yards.** Contractor is allowed to  
3468           charge up to fifty percent (50%) of the Solid Waste rate based on the Container size  
3469           utilized and frequency of Collection.  
3470

3471           **C. Commercial Entities Refusing**

3472           Within 90 days following commencement of service under this Agreement, the Contractor shall  
3473           provide the County with a list of Commercial Customers that do not have basic Solid Waste  
3474           service. Contractor shall provide a list of Commercial Customers whose owners or operators  
3475           refuse Solid Waste service in the monthly report outlined in Article 7.2.C of the Agreement. Prior  
3476           to listing a Commercial Customer, the Contractor shall make two (2) attempts to have the  
3477           Commercial Customer's owner or operator use the services of the Contractor. The County will  
3478           perform an investigation to determine if the Commercial Customer's owner or operator will be  
3479           issued a letter explaining the service is required, complaint with current or new legislation, or,  
3480           citing any applicable County code section and requesting a written response or request to start  
3481           service within fourteen days (14) of receipt or provide evidence of complying with County code.  
3482

3483           **D. Additional Recycling Services – No Cost to Commercial Customer**

3484  
3485           **1. Source Separated.** Contractor shall provide Source-Separated Collection of cardboard,  
3486           Green Waste, Food Waste, office paper, metal, glass, and other Recyclable Materials.  
3487           Any source-separated Recyclable Materials or Compostable Materials will be Collected  
3488           by the Contractor at no additional cost to Customers who have the basic waste service  
3489           and who use a Container that is a six (6) cubic yard Bin or smaller. Contractor may  
3490           Collect cardboard separately in instances where Contractor in consultation with the  
3491           Customer deems it convenient to Customer and beneficial for preserving the market  
3492           value of the material. Source Separated Materials shall not exceed five (5) percent  
3493           contamination.  
3494

3495           **2. Compacted Source Separated Recyclables and Compostables.** Recyclables that  
3496           are source-separated, clean, and compacted shall be Collected by the Contractor as  
3497           long as the Container is compatible with the Contractor's equipment. This service shall  
3498           include materials if with a positive market value. Any Source Separated Recyclable or  
3499           Compostable Material will be Collected by the Contractor at no additional cost to  
3500           Customers as long as they take Solid Waste service. Compacted Source Separated  
3501           Materials shall not exceed five (5) percent contamination.  
3502

3503           **E. Multi-Family Residential Premises.**

3504           Contractor shall provide Collection Services at Multi-Family Residential Premises at the  
3505           location(s) of on-site enclosures that conform to local, State, and Federal laws, regulations, and  
3506           guidelines. Napa County Ordinance Number 1123, adopted by Napa County Board of  
3507           Supervisors in 1995 and available on the County website or by request, requires that Multi-  
3508           Family Residential Premises have small, medium, or large enclosure areas with requirements  
3509           based on square feet or number of units. Contractor shall ensure that all Collection Services for  
3510           Recyclables and Compostables are provided in a manner that makes them at least as  
3511           convenient for residents and managers in Multi-Family Residential Premises to use as on-site

3512 Solid Waste Collection Services. Contractor shall bill Multi-Family Residential Customers at the  
3513 commercial rate.

3514  
3515 Contractor shall make every effort to maximize waste Diversion at Multi-Family Residential  
3516 Premises. Contractor shall provide Single-Stream Recycling with Collection frequency and  
3517 location determined by the Contractor with priority of optimizing service availability and  
3518 convenience to residents, and encouraging waste diversion. If contamination exceeds ten (10)  
3519 percent of Recyclables or in Compostables, Contractor shall work with the on-site property  
3520 manager to reduce contamination to below 10 percent. Contractor shall provide services  
3521 appropriate for Diverting Recyclable Materials and Compostable Materials generated on site to  
3522 one hundred (100) percent of the units. If a manager of a Multi-Family Residential Premises  
3523 refuses services, Contractor shall document the name and subject property address of the  
3524 manager or owner who has refused service and shall provide the documentation to County.  
3525 Outreach and public education at Multi-Family units is key to the success of multi-family  
3526 programs and shall be conducted by the Contractor as outlined in Exhibit B.

3527  
3528 Contractor shall not allow residents of any Multi-Family Residential Premises that are included  
3529 in the central or meter-billing arrangement by a HOA or property manager to suspend service  
3530 for any period of time. This section does not exempt owners or operators of Multi-Family  
3531 Residential Premises from local, State, or Federal laws, regulations, or guidelines pertaining to  
3532 Container storage enclosure design, capacity, or infrastructure.

3533  
3534 **F. Customer Rights.**

- 3535  
3536 **1. Changes in Collection Services.** The Customer shall have the unabridged right, at any  
3537 time, to change the level of service, including, but not limited to, the frequency of  
3538 Collections and/or the number of Containers or Compactors for Solid Waste  
3539 commensurate with the amount of Recyclable Materials Diverted by any recycling  
3540 programs, projects or activities undertaken by Customer.
- 3541  
3542 **2. Cooperative Arrangements.** The Customer shall have the unabridged right, at any  
3543 time, to form cooperative arrangements and enter into written agreements with any other  
3544 Customer or Customers to aggregate Recyclable and Compostable Materials or some  
3545 category thereof, and to share, in any manner mutually agreed to by and between such  
3546 Customers, the reduced Collection charges, if any, therefore. Contractor shall honor any  
3547 applicable terms and conditions of any such agreement.
- 3548  
3549 **3. Right to Consultations and Technical Assistance.** The Customer shall have the right,  
3550 but not the obligation to consult with Contractor in establishing or changing Collection  
3551 Services. The Customer may consult with County, County's agents, or representatives  
3552 and /or any other company or expert in the field to plan, in accordance with Federal,  
3553 State and Local laws and regulations, and without conflict with any other stipulation  
3554 within the Agreement the most beneficial program(s) for that Customer's Recyclable or  
3555 Compostable Materials, or for materials that may become recyclable due to  
3556 technological advancements, development of new markets or for other reasons.

3557 Contractor shall provide related assistance to Commercial Customers upon request of  
3558 Customer or County.

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## 3560 **6.0 ON-CALL SERVICE**

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### 3562 **A. No Charge to Customer**

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#### 3564 **1. Special Recyclables.**

3565 Contractor shall provide Collection of Special Recyclables Delivered by Customer for  
3566 Collection separately from Single Stream Recyclables or Bulk Recyclables at no cost to  
3567 Customer as listed in Exhibit K. Contractor shall coordinate with Customer to Collect the  
3568 Special Recyclables from Customer's service address at a location accessible to  
3569 Contractor's vehicle. Services will be provided by Contractor within two service weeks of  
3570 the Customer's request.

3571

#### 3572 **2. Recyclable and Compostable Materials.**

3573 Contractor shall provide Collection of Recyclables and Compostable materials Delivered  
3574 by Customer for Collection separately from Bulk Recyclables and other material groups,  
3575 as listed in Exhibit K, at no cost to Customer. Contractor shall coordinate with Customer  
3576 to Collect the Recyclables and Compostables from Customer's service address at a  
3577 location accessible to Contractor's vehicle. Services will be provided by Contractor within  
3578 two service weeks of the Customer's request.

3579

3580

3581 **B. Fee to Customer.** Contractor shall only charge approved rates for services provided.

3582

#### 3583 **1. Extra Solid Waste**

3584 Customers may request that Contractor provide extra Solid Waste Collection Service.  
3585 Contractor shall provide extra service for a fee approved by the County. Contractor shall  
3586 provide extra services in the same manner and for the same material types as in basic  
3587 Residential Collection Services.

3588

3589 Contractor shall provide, upon Customer request, Collection of Solid Waste that exceeds  
3590 the limits of the Customers current regular or basic service. Contractor shall Collect  
3591 Solid Waste from Customers who order extra Solid Waste Service and placed in  
3592 appropriate type of bag at the curb on the regular service day.

3593

#### 3594 **2. Temporary Bin and Debris Box Services.**

3595 Contractor shall provide within one week of Customer request, temporary Bin or Debris  
3596 Box services for the Collection of Solid Waste, Single Stream Recyclables, Bulk  
3597 Recyclables, Compostable Materials, or C & D.

3598

3599 Contractor shall inform all Customers that wish to order temporary service of the full set  
3600 of Collection Services provided by Contractor of diversion programs and of the  
3601 requirements and benefits of waste diversion and provide related information. Such  
3602 information shall include, but is not limited to, choice of sizes of outdoor Collection

3603 Containers and the color and labeling of Containers approved by the County. Contractor;  
3604 shall also provide, prior to Delivery of Containers, information describing federal, state,  
3605 and local policies and regulations that require or encourage diversion of waste from  
3606 landfill and list the types of materials accepted in the Collection Services and the  
3607 necessary methods Customers must use to prepare or segregate those materials.  
3608

3609 Contractor shall provide temporary services that include all of the materials described in  
3610 Exhibit K to the Agreement and subject to the terms and conditions of the body of the  
3611 Agreement, including without limitation the provisions of Article 4.7 regarding Changes in  
3612 Scope.  
3613

### 3614 **3. Bulky Item Service.**

3615 Contractor shall provide, upon Customer request, Collection of Bulky Items. Contractor  
3616 shall Collect Bulky Items Delivered by Customer to curbside or to on-site locations  
3617 accessible to Contractor's vehicles and agreed to by Contractor. Customer can call the  
3618 Contractor for curbside pick-up for a fee approved by the County for the following  
3619 materials, to include at a minimum:  
3620

- 3621 • Broken or unusable furniture such as sofas, chairs, and mattresses
- 3622 • Non-recyclable appliances, household heating and cooling devices
- 3623 • Mattresses and box springs
- 3624 • Clean and dry carpet and carpet pads
- 3625 • Toilets, sinks, and other porcelain products
- 3626 • Tree Stumps or other large wood items not defined as Green Waste

3627  
3628 Items not accepted as Bulky Items:

- 3629
- 3630 • Solid Waste that fits in a Cart with lid closed
- 3631 • Recyclable Materials
- 3632 • Compostable Materials
- 3633 • Paint
- 3634 • Household Hazardous Waste (HHW)
- 3635 • Pressure treated wood of any kind
- 3636 • Unused medications or sharps
- 3637 • Medical Waste
- 3638 • Electronic Waste
- 3639 • Universal Waste

3640  
3641 County reserves the right to add to the list of unacceptable items for any item that may  
3642 be classified through Federal, State or local regulatory processes as special or  
3643 Hazardous Wastes.  
3644

3645 The Contractor shall, upon Effective Date of this Agreement, inform County of the  
3646 vehicle(s) to be used for Bulky Item Collections. The Contractor, where feasible, shall  
3647 maximize the reuse and recycling Bulky Items Collected.

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**7.0 OTHER DIVERSION PROGRAMS**

**A. No Charge to Customer – Cost of Disposal Reimbursed by County for Coupons**

**1. Tire Recycling Drop-Off Service (Residential Customers Only)**

Contractor shall distribute one coupon once a year in bill and “non-bill” direct mail inserts. Contractor shall make coupon valid for one calendar year only and allow Residential Customers one (1) or more trips, depending on Residential Premise or environmental needs, to deliver tires on multiple occasions if they have coupons but clarify that the per trip limit still applies. Contractor will reimburse the City of Napa Materials Diversion Facility (CNMDF) for up to nine (9) tires in one (1) trip for Customers who Self-Haul and present a coupon and either a driver’s license or phone bill proving residency of Napa County. If County uses State grant funds to pay for this service, Contractor will reimburse the CNMDF for up to nineteen (19) tires in one (1) trip during the allocated amnesty period.

**2. Bulky Item Drop Off-Service.**

Contractor shall distribute one (1) County-approved “Bulky Item Coupon” each year to each of its billed and non-billed Customers. Contractor shall track all Customer Bulky Item deliveries and coupons submitted by Customers to Designated Recyclables Processing Facilities. Contractor shall coordinate with owner/operator of Designated Recyclables Processing Facilities to track, obtain and report to County data on the number of Bulky Items dropped off to facility.

Customers may present coupons to Designated Recyclables Facility for Bulky Items described in Section 6.0B of this Exhibit. Bulky Items will be accepted free of charge at the County Designated Recyclables Processing Facility with presentation of a coupon, valid for one year from date of issuance.

Contractor shall reimburse the Designated Recyclables Processing Facility based on the standard minimal charge to non-coupon holders. Contractor shall produce and distribute coupons as a bill insert as described in Exhibit B.

Contractor shall inform Customers through the public education and information efforts specified in Exhibit B, of the Bulky Item drop off service.

**B. No Charge to Customer – No County Reimbursement**

**1. Christmas Tree Recycling (Residential Customers Only)**

Contractor shall provide Collection of Christmas trees, wreaths, and related Compostable Materials. This program is to be coordinated with a local non-profit agency and held annually on the first Saturday following New Year’s Day. The local non-profit agency will pick-up whole trees at the curb and bring to a centrally located roll-off Container(s) that the Contractor provides at no charge to the local non-profit agency. The residents can give the local non-profit agency a donation for the service.

3694 Additionally, the following week only the Contractor shall Collect whole trees from  
3695 Customers on Customer's regular day of service if it is put out on the street next to the  
3696 Carts. Trees can also be cut-up and placed in Compostable Materials Carts if not treated  
3697 with non-compostable materials such as tinsel and flocking.  
3698

## 3699 **2. E-Waste Event**

3700 The County, in conjunction with the City of Napa, may conduct one free annual e-waste  
3701 drop-off event. The Contractor shall reimburse the franchise holder of the Designated  
3702 Recyclables Processing Facility a portion of the cost of the E-Waste Event, based on  
3703 Customer use as a percent of total delivers as measured by the survey conducted during  
3704 the event and/or by other allocation methodology agreed to by the County.  
3705

3706 E-waste to be Collected includes computers, laptops, cell phones, telephones and fax  
3707 machines, computer peripherals such as keyboards, printers, scanners, cables and  
3708 mouse, consumer electronics such as radios, tape players, VCRs, stereo equipment,  
3709 personal digital assistants, and computer monitors and televisions.  
3710

## 3711 **8.0 COUNTY FACILITIES**

3712 Contractor shall provide Containers for and Collection of all Solid Waste, Recyclable, and  
3713 Compostable Materials generated at premises owned, operated and/or co-operated by the  
3714 County within the Collection Services Area. Collection Services shall be at a time convenient for  
3715 the County at no charge to the County. The County reserves the right to add additional facilities  
3716 or sites, or increase or decrease the amount of Contractor-provided services for designated  
3717 County facilities at any time during the term of this Agreement. Over the Term of the Agreement,  
3718 the County may direct Contractor to change frequency of Collection, number and or type of  
3719 Container(s) provided or method of Collection. The County shall receive all the basic Collection  
3720 Services of a Commercial Customer, including Solid Waste, Single-Stream Recycling, Special  
3721 Recyclables, Green Waste, Compostable Materials; and Food Waste without charge.  
3722

3723 The Contractor shall meet with the County and the managers of those facilities at a minimum  
3724 annually to determine the appropriate level of Collection Services required at each facility. As of  
3725 the Effective Date of this Agreement, Contractor shall provide the following Containers and  
3726 Collection Services:  
3727

### 3728 Sheriff's Facilities located at 1335 Airport Boulevard

- 3729
- 3730 • One six yard front loader Bin for Solid Waste picked up once per week
- 3731 • One six yard front loader Bin for recycling picked up once per week
- 3732 • One 4 yard Compost Bin serviced on an on call basis  
3733

### 3734 Cutting's Wharf Dock Area

- 3735
- 3736 • Two 95 gallon Carts of Solid Waste Collected once a week
- 3737 • One 95 gallon Cart for recycling Collected once a week  
3738

3739 The County reserves the right to add additional County Facilities to this list a level of service  
3740 equivalent to the service provided to the Sheriff's Facility at any time by providing written notice  
3741 to the Contractor. Contractor reserves the right to charge established County approved rates  
3742 above the level of service established for the Sheriff's Facility as stated in this Exhibit.  
3743

3744 **9.0 SPECIAL EVENTS AND SCHOOLS**  
3745

3746 **A. Collection Services at County Sponsored or Co-Sponsored Special Events.**

3747 From time to time, the County may sponsor or co-sponsor, host, or otherwise organize a special  
3748 event, such as a parade, public building dedication, conference, art show, cultural event or  
3749 organized recreational activity at a site within the Collections Services Area. Contractor shall  
3750 provide Containers for Collection Services for no greater than three (3) special events per  
3751 calendar year. The County currently has no sponsored special events. However, the County  
3752 reserves the right to add special events in the future for which Contractor shall provide the  
3753 following services (which would be considered a Change in Scope under Article 4.7): Contractor  
3754 shall provide Solid Waste and Recyclable Materials Collection Services for such events,  
3755 including Containers for the general public to dispose of Solid Waste, Recyclable Materials, and  
3756 Compostable Materials as well as larger size Bins. The Contractor shall also provide Containers  
3757 for Recycling Food Waste and other organics.  
3758

3759 **B. Non-County Sponsored Special Events.** The Contractor shall assist the contact person for  
3760 special events in designing and implementing services to provide for the containment,  
3761 Collection, Recycling, and Disposal of Solid Waste and Recyclables before, during and after the  
3762 special event. The Contractor and County shall work closely together to ensure recycling is  
3763 maximized at non-County special events to the extent feasible. Methods to reduce cross-  
3764 contamination (i.e., incorrect deposit of types of materials in the wrong Containers) can include  
3765 changes to size, shape, and labeling to maximize use of proper Containers. Contractor may  
3766 charge for Collection Services no greater than the established and approved by County rates  
3767 outlined in Exhibit E.  
3768

3769 **C. Schools.** Napa Valley Unified School District will receive services under the City of Napa  
3770 franchise. Private schools, however, are handled as Commercial Customers.  
3771  
3772  
3773

3774 **EXHIBIT B**  
3775 **PUBLIC EDUCATION AND INFORMATION PROGRAM**  
3776

3777 **1.0 GENERAL REQUIREMENTS**

3778 Contractor shall plan, develop, design, and produce activities and informational materials for  
3779 outreach, notifications and technical assistance, and publicity and advertising to promote and  
3780 maintain public participation in, and evaluate the effectiveness of, the Collection Services it  
3781 provides under this Agreement. Contractor shall implement measures to inform, educate, and  
3782 motivate the public of methods of reducing the generation and disposal of Solid Waste,  
3783 Household Hazardous Waste, and other wastes generated within the Collection Services Area  
3784 by conducting the activities described below. Contractor shall bear the cost of the public  
3785 education and information program unless otherwise stipulated in this Exhibit.  
3786

3787 Contractor shall work on behalf of the County to notify and inform all owners and operators of  
3788 commercial sites within the Collection Services Area of all applicable goals and requirements of  
3789 the Federal, State and Local Mandated Diversion goals as stated in Article 3 of this Agreement.  
3790 Contractor shall monitor and assess Customer's conformance with these goals and  
3791 requirements, and report to the County annually on the status of Customer compliance as  
3792 specified in Article 3 of this Agreement. Contractor shall provide Customers all public education  
3793 and outreach, and all commercial site monitoring and follow-up notification necessary to ensure  
3794 that the County is in compliance with all requirements of California Bills AB 341 and AB 1826.  
3795

3796 Contractor shall collaborate with, and shall obtain written approval from, County prior to  
3797 scheduling and planning its public education and information activities and prior to developing,  
3798 designing, producing, posting, and distributing messages and materials for publicity and  
3799 advertising.  
3800

3801 **2.0 OUTREACH ACTIVITIES**  
3802

3803 **A. General.** Contractor shall arrange for and conduct the following outreach to residents,  
3804 businesses, institutions, and sponsors of special events at locations within the Collection  
3805 Services Area. Contractor shall implement outreach measures to inform the public of the  
3806 availability and methods of participating in its Collection Services and other waste diversion and  
3807 disposal measures, describe methods of reducing generation of waste, and solicit feedback  
3808 from Customers.  
3809

3810 **B. Schools.** Contractor shall, upon request of the County, assist the County and City of Napa in  
3811 providing outreach at public and private schools located within the Collection Services Area.  
3812 Contractor's assistance to schools shall include training and advice to administrators, personnel,  
3813 or their contractors on its Collection Services and on steps schools may take to reduce and  
3814 divert waste from landfills and safely dispose of waste. Contractor shall offer and provide to  
3815 school representatives and their contractors, recycling and waste management-related supplies,  
3816 materials, and equipment comparable to what is provided to Commercial Customers.  
3817

3818 Contractor shall meet with interested school groups, parent organizations, and teachers and  
3819 administrators upon request and provide presentations, printed materials, supplies, training, or

3820 advice on waste reduction and diversion and safe methods of waste disposal. Contractor shall  
3821 provide programs and activities in support of student projects, school assemblies, and  
3822 classroom or campus events designed to educate, promote, research, or investigate matters  
3823 related to waste reduction, recycling, composting, or related topics.  
3824

3825 Contractor shall send announcement of its assistance to schools within the Collection Services  
3826 Area by first class postage direct mail letter together with related brochures and printed  
3827 materials each year within the first six (6) weeks of the school year, and again within two (2)  
3828 weeks of the start of school session after mid-term break. Contractor shall announce the  
3829 availability of its assistance to schools through electronic communications and website.  
3830

3831 **C. Presentations.** Contractor shall have its qualified and knowledgeable employees provide in-  
3832 person presentations, upon request of private or public organizations within the Collection  
3833 Services area, on topics related to its Collection Services and other issues related to waste  
3834 reduction and diversion and safe disposal of wastes. Contractor shall provide handouts to the  
3835 participants including but not limited to the brochures describing available Recycling services  
3836 provided by the Contractor and other Recycling facilities within the Collection Services Area.  
3837

3838 Contractor shall provide such presentations to organizations including, but not limited to,  
3839 business associations, youth and school groups, and social service organizations. Contractor  
3840 shall advertise the availability of its presentations through its various outreach and publicity and  
3841 advertising measures described in this section.  
3842

3843 **D. Public Events and Meetings.** Contractor shall arrange and staff informational stations,  
3844 table(s), or booth(s) at up to five (5) events per year, as identified by the County, at which a  
3845 substantial number of Residential or Commercial Customers may attend. Such events and  
3846 meetings may include, but not limited to, those conducted or hosted by business associations,  
3847 youth and school groups, social service organizations, or entertainment or recreational event  
3848 sponsors. Contractor shall provide information on waste reduction and waste diversion to the  
3849 public at such events and meetings. Contractor shall train and oversee the performance of any  
3850 assistants it hires or employs for outreach at events and meetings.  
3851

3852 **E. Recycling Station at Public Events.** Contractor shall educate and provide event  
3853 coordinators information on waste diversion; and provide up to four (4) waste diversion stations  
3854 at Public Events within the Collection Services Area that County staff has determined a  
3855 substantial number of residents or representatives of businesses located within the Collection  
3856 Services Area may attend and that may generate equal to or more than (4) cubic yards of  
3857 waste. Contractor shall design its educational information and handouts to enable and  
3858 encourage participants to divert waste generated at the events and shall emphasize on the  
3859 types of materials accepted for recycling and composting and proper segregation of material  
3860 types. Contractor shall identify and gain pre-approval from the County of the specific events it  
3861 will serve each year and types of signage or informational materials it will use for educating  
3862 event participants. Contractor shall provide informational materials and training on diversion.  
3863

3864 **F. Customer Surveys.** Contractor shall solicit from Customers information that the County may  
3865 view as beneficial for evaluating or improving the effectiveness of recycling and waste

3866 management services, better enabling the County to reach Federal, State and Local Mandated  
3867 Diversion goals for waste diversion, or for understanding how best to inform or motivate  
3868 Customers to reduce or divert waste from landfills. Contractor shall conduct surveys of  
3869 Customers up to two (2) times per year at the request of County. Contractor shall use survey  
3870 techniques to gain significant survey findings, including but not limited to phone calls, internet or  
3871 electronic communications, and written questionnaires or verbal queries made by direct mail,  
3872 through direct door-to-door contacts, or at community group meetings or events. Contractor  
3873 shall complete surveys within four weeks of the County's request and provide to County  
3874 documented results of surveys within three (3) weeks of completion.  
3875

3876 **G. Recycling Awards Event.** Contractor shall plan and manage in cooperation with County and  
3877 other partners, one (1) award event each year to acknowledge outstanding efforts in waste  
3878 diversion by Commercial Customers. Contractor shall supply up to 10 awards and  
3879 accommodate up to 40 event invitees meals. Contractor shall collaborate with and gain pre-  
3880 approval from County staff of an appropriate event location, choice of awardees, type(s) of  
3881 complimentary provisions for invitees, and the design and type of award(s).  
3882

3883 **H. Tours of Processing Facilities and Other Waste Diversion Sites.** Contractor shall arrange  
3884 for, publicize, and provide public tours of Designated Recyclables Processing Facilities to which  
3885 it Delivers Collection Materials. Contractor shall work with owner/operator (i.e. City of Napa) of  
3886 the Designated Recyclables Processing Facility to coordinate tours for all interested school,  
3887 business, or public interest groups and organizations. Contractor shall promote the availability of  
3888 the tours through its various outreach, publicity and advertising measures described in this  
3889 Exhibit.  
3890

3891 As part of such tours, Contractor shall prepare (subject to County's approval of text and format)  
3892 and shall distribute an educational brochure, printed on recycled paper, on conservation,  
3893 recycling, composting, and general Solid Waste management programs. All persons on such  
3894 tours will comply with all policies and procedures of Contractor or the owner/operator when on  
3895 premises.  
3896

### 3897 **3.0 NOTIFICATIONS AND TECHNICAL ASSISTANCE**

3898

3899 **A. Notifications of Commercial Waste Diversion Actions and Mandates.** By January 31 of  
3900 each year, Contractor shall notify all of its Commercial Customers, including Commercial non-  
3901 bill Customers as described in this Exhibit, business organizations and all entities that have held  
3902 a special event at least once within the previous two (2) years at a location within the Collection  
3903 Services Area, of all relevant, Federal, State, and local laws, regulations, or requirements  
3904 related to waste reduction, diversion, or waste management improvements. Contractor, in  
3905 consultation with County, shall meet the State's notification requirements imposed by California  
3906 Bills AB 341 and AB 1826 for the Collection Services Area.  
3907

3908 Contractor shall submit to County for review and approval a draft of the notice by December 1.  
3909 Upon approval of County, Contractor shall distribute the notification in the form of a mailer; or  
3910 targeted web or electronic transmissions to Customers operating within the Collection Services  
3911 Area listed in this section of the Exhibit. Contractor shall include with the notification a

3912 “commercial recycling brochure,” as described in this Exhibit and, at the request of County,  
3913 other informational materials relating to waste reduction, diversion and management by  
3914 Commercial Customers.

3915  
3916 **B. Commercial Site Inspections.** Contractor shall conduct a physical, on-site assessment, at  
3917 least one (1) time per year at each Commercial Premise to confirm the following:

- 3918
- 3919 1. Types and sizes of Contractor provided Collection Containers;
  - 3920
  - 3921 2. Condition and accessibility of Containers;
  - 3922
  - 3923 3. Condition and accuracy of Container colors, labels, signs, and markings; and
  - 3924
  - 3925 4. Appropriate use of Containers by Customer, especially with regard to appropriate  
3926 segregation of materials and compliance with laws and regulations pertaining to  
3927 diversion of waste from landfill and safe disposal of Solid Waste, Household Hazardous  
3928 Wastes and other waste materials.
  - 3929

3930 Contractor shall notify, by direct mail or in-person meeting, all Commercial Customers or their  
3931 designee, (i.e. manager, or operator) the results of Contractor’s most recent site inspection and  
3932 the Customer’s level of non-compliance with applicable requirements set forth in California Bills  
3933 AB 341 and AB 1826.

3934  
3935 Contractor shall use the results of site inspections to confirm its site contact and service level  
3936 information, and add to its data on those Commercial Customers that are subject to, and not in  
3937 compliance with the requirements of Federal, State or local laws pertaining to waste reduction,  
3938 diversion, or disposal, particularly the applicable requirements set forth in California Bills AB 341  
3939 and AB 1826.

3940  
3941 **C. Meetings with Property Managers, Operators, or Home Owners Associations (HOA’s).**  
3942 Contractor shall, at least one (1) time per year, make direct contact, either by phone, electronic  
3943 communication, or personal contact, with the owner, manager, or operator of each Multi-Family  
3944 Residential Premise within the Collection Services Area, including but not limited to HOA’s,  
3945 Gated Developments, and mobile home parks, in order to schedule a site visit. During the site  
3946 visit, Contractor shall review with the manager, operator, or HOA representative results of  
3947 Contractor’s most recent Commercial Premise inspection and the Customer’s level of  
3948 compliance with requirements set forth in relevant Federal, State or Local laws, regulations, or  
3949 requirements related to waste reduction, diversion, or waste management, particularly California  
3950 Bills AB 341 and AB 1826. Contractor shall provide a copy of the Commercial Recycling  
3951 Brochure and other applicable information, sufficient to supply to each residence and shall alert  
3952 managers, operators, and HOA representatives of any problems of insufficient service levels or  
3953 Container storage capacity, inaccessibility to Containers by residents or Contractor, or  
3954 contamination issues.

3955  
3956 Contractor shall offer to and attend gatherings or meetings of interested resident groups,  
3957 HOA’s, or management to present and explain, verbally and through printed materials, details of

3958 its Collection Services and appropriate ways of participating in those services. Contractor shall  
3959 inform attendees at such gatherings and meetings of locations and methods that residents or  
3960 management may use to reduce waste, recycle, compost, or safely dispose of materials they  
3961 may wish to discard but that Contractor does not accept in its Collection Services. Contractor  
3962 shall provide the Commercial Recycling Brochure and applicable reference information,  
3963 including printed materials sufficient to supply to each attendee.  
3964

3965 **D. Waste Surveys and Analysis.** Contractor shall offer and meet on-site with all interested  
3966 operators or managers of Commercial Premises to inform them of details of Collection Services,  
3967 and supplies and equipment for indoor recycling and composting that the County and Contractor  
3968 provide. Contractor shall make the offer through the notifications and technical assistance  
3969 described in this Section 3.0. Contractor shall provide, in collaboration with County staff, on-site  
3970 surveys to quantify and characterize types of wastes the Customer generates. Using information  
3971 from its survey, Contractor shall develop and offer recommendations on suitable locations for  
3972 indoor Bins and outdoor Containers and signage and on optimum levels of Collection Services  
3973 that would best enable the Customer to maximize diversion of waste from landfill. Contractor  
3974 shall give priority to those Commercial Customers that generate the largest amount of waste  
3975 and those most interested in making outstanding efforts to reduce waste generation and divert  
3976 waste from landfill.  
3977

#### 3978 **4.0 PUBLICITY AND ADVERTISING**

3979

3980 **A. General.** Contractor shall develop, produce, and distribute public awareness messages and  
3981 materials to promote appropriate public understanding and participation in its Collection  
3982 Services, encourage the public to reduce wastes it generates, Divert Recyclables and  
3983 Compostables from landfills, and dispose of Solid Waste, Household Hazardous Waste, and  
3984 other hazardous or potentially hazardous materials in a safe and secure manner. Contractor  
3985 shall conduct the publicity and advertising.  
3986

3987 **B. "Non-Bill" Customers Defined.** "Non-Bill Customers" are those Customers to whom  
3988 Contractor provides services but does not directly issue a bill for those services. Non-Bill  
3989 Customers include, but are not limited to, Residential Customers that prepay their bill; and  
3990 Commercial Premises and Multi-Family Residential Premises that share services through the  
3991 oversight of a property manager or home owners association. Non-bill Customers include any  
3992 Residential or Commercial Customer that reside in or operate within a Commercial complex with  
3993 multiple businesses or Multi-Family Premise but are not billed directly by Contractor.  
3994

3995 **C. Non-Bill Mailing List.** Contractor shall create and maintain a mailing address list of all "Non-  
3996 Bill Customers," for the purposes of notifying and conveying information on Recycling and  
3997 Collection Services offered by Contractor as described in this Agreement. Contractor shall  
3998 update its list of Non-Bill Customers at least annually and shall confirm through central billing  
3999 entities or property owners or managers the identity and addresses of those Non-Bill Customers  
4000 that are "on service."  
4001

4002 **D. "Billing Insert" Mailings and Messages.** Contractor shall collaborate with and obtain pre-  
4003 approval from County in developing a set of billing inserts that Contractor shall print and send to

4004 each Customer, including Non-Bill Customers, each billing cycle. The billing inserts shall include  
4005 up to three (3) printed, 2-sided, full-color advertisements measuring, , 3.5 inches by 8.5 inches.  
4006 Contractor shall send the County-approved billing inserts by first class postage mail and may  
4007 include the inserts with its direct mail billings to Customers unless County staff provides written  
4008 waiver of all or part of this requirement.

4009  
4010 Contractor shall provide electronic links to their website on the electronically sent statements  
4011 that directs the viewer to the County-approved billing inserts.

4012  
4013 **E. Commercial Recycling Brochure.** Contractor shall design, print, and distribute in  
4014 accordance with the requirements established in this Exhibit, a commercial recycling brochure  
4015 describing details of its commercial Collection Services and all equipment, supplies and related  
4016 support and assistance that Contractor or County arranges for or provides to Commercial  
4017 Customers. Contractor shall submit to County for review and approval an updated version of the  
4018 brochure by December 1 of each year. Contractor shall print and distribute the brochure by first  
4019 class postage mail to all of its Commercial Customers, including all Non-Bill Customers January  
4020 31<sup>st</sup> each year and to all new Commercial Customers upon initiation of service.

4021  
4022 **F. Special Events Brochure and Mailings.** Contractor shall design, update content, print, and  
4023 provide the County a special events brochure describing details of its On-Call Collection  
4024 Services and all equipment, supplies and related support and assistance that Contractor or  
4025 County arranges for or provides to operators or hosts of special events within the Collection  
4026 Services Area.

4027  
4028 Contractor will provide the County the brochure by March 1 of each year for distribution to all  
4029 entities that operate or host special events within the Collection Services Area. Contractor shall  
4030 update and provide the revised special events brochure by March 1 of each year.

4031  
4032 **G. Website.** Contractor shall produce and, at a minimum monthly, update and maintain a  
4033 website displaying information on all Collection Services it provides under this Agreement and  
4034 all other opportunities and sources of information relevant to efforts of Customers to reduce  
4035 waste, recycle, compost, or dispose of hazardous and other wastes in a safe and secure  
4036 manner.

4037  
4038 **H. Countywide Reduce, Reuse, and Recycle Guide.** Contractor shall at least annually  
4039 collaborate with County, and other local agencies and organizations to update content for a  
4040 comprehensive countywide guide including information on Contractor's Collection Services and  
4041 other opportunities and sources of information Customers may access to reduce waste, recycle,  
4042 compost, or dispose of hazardous and other wastes in a safe and secure manner. Contractor  
4043 shall update the content of the website at least monthly and shall prepare design and layout of  
4044 the guide for printing. Contractor shall post the guide in its entirety on its webpage, and make it  
4045 available for posting on other public agency or other webpages as approved by the County.

4046  
4047 **I. Collection Vehicle Signage.** Contractor shall produce and install advertising messages on all  
4048 vehicles they utilize for Collection Services, except for vehicles which Contractor determines,  
4049 and County agrees, messages cannot be attached without significant risk of damage to the

4050 vehicle or other properties or significant risk to public health or safety. Contractor's vehicle  
4051 signage shall be messages that promote Contractor's services or other relevant waste  
4052 reduction, diversion, or waste management issues as pre-approved by County. Contractor shall  
4053 renew or replace each vehicle advertisement message at least every five (5) years unless  
4054 County provides Contractor with written waiver of all or part of this requirement. Contractor shall  
4055 collaborate with the County on the design, size, and text of messages of vehicle signage and  
4056 shall gain County approval of each before it produces or applies it to its vehicle.  
4057

4058 **J. Other Public Education and Information.** Contractor shall suspend purchase of telephone  
4059 book space for the County-wide Recycling guide. The Contractor shall, by April 15 of each  
4060 year, develop and provide to County a list of other public education and information measures  
4061 that it proposes to undertake during the following year. Contractor shall include in the list a  
4062 proposed timing of each item and reliable cost estimate for each. Contractor shall submit the list  
4063 to the County for consideration. Contractor shall amend the list according to County's priorities  
4064 and preferences and shall submit the final list to the County for approval by June 1 of each year.  
4065 Contractor shall complete the package of County-approved publicity and advertising measures  
4066 by June 30<sup>th</sup> of the following year.  
4067

4068 Contractor shall propose a selection of "other public education and information" items that may  
4069 include, but shall not be limited to the following.  
4070

- 4071 • Direct Mail Flyers
- 4072 • Newspaper Print Announcements
- 4073 • Magazine Print Announcements
- 4074 • Web-based Announcements on Contractor's web site
- 4075 • Social Media or other Electronic Messages
- 4076 • Digital Announcements on Contractor's web site
- 4077 • Public Agency or Local Organizations Announcements or Newsletters
- 4078 • Bus Signs
- 4079 • Bus Shelter signs
- 4080 • Billboard signs
- 4081 • Street Banners
- 4082 • Cinema Screen Announcements
- 4083 • Television Announcements
- 4084 • Radio Announcements

**EXHIBIT C**  
**PERFORMANCE STANDARDS**

**1.0 COMPANY STANDARDS**

- Services are to be completed in thorough and professional manner that constitutes litter-free, reliable, timely, courteous and high-quality service.
- Contractor shall at all times perform its duties using best industry practice for comparable operations.
- Personnel shall conduct themselves in a courteous, workmanlike manner.
- Personnel shall dress in clean, uniform shirts with suitable identification.
- Color and appearance of Collection vehicles, Containers including their colors, employee uniforms, and public education materials provided by the Contractor will be designed to provide a standard representation of the Contractor's company. If subcontractors are included, a distinct but uniform appearance of the subcontractor equipment, vehicles, and personnel will provide a standard representation of the Contractor's company.
- Contractor shall comply with the requirements for Service within this Agreement and with the specific requirements contained within this Exhibit.

**1.1 COLLECTION CONTAINERS**

- Contractor shall provide industry-standard Bins for storage of materials which shall be designated and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of 1 cubic yard or more shall meet all applicable federal, state and local regulations on Solid Waste Bin safety, public health, storm water and other pollution prevention or control.
- Contractor shall clearly color and labeled Containers in accordance to Exhibit A to indicate their designation for separate Collection of Solid Waste, Recyclables, Food Waste or Green Waste and shall indicate the types of materials to be stored in the Container for Collection. Contractor shall collaborate with and obtain approval from County prior to ordering labels for Containers.
- The Contractor is to provide all Containers as described in Exhibit A-Detail Scope of Collection Services to Customers at no charge. Replacement Containers shall be provided free of charge to Customers if previous Container is rendered unserviceable by means other than the Customer's action. If the damage is clearly caused by the Customer, and the Container was delivered to the Customer less than one year previously, Contractor may charge Customer up to an amount equal to Contractor's own direct purchase cost of the Container.
- All Carts shall be wheeled Carts with attached lids and a handle to allow for easy movement.
- Bins shall be replaced in accordance with Exhibit A, within three (3) years from the Effective Date of the Agreement.
- Contractor to maintain, repair, clean, paint, and replace Containers as needed to maintain a clean, attractive, functional, new-like condition. All graffiti shall be moved immediately.

- 4130 • Contractor shall repair or replace any Cart, Bin or Debris Box within five (5) Working  
4131 Days of Customer's request.  
4132

## 4133 1.2 VEHICLES

### 4134 A. General

4135 Contractor shall provide a fleet of industry-standard Collection vehicles and, only if and as  
4136 needed transfer vehicles sufficient in number and capacity to efficiently perform the work  
4137 required by the Agreement in strict accordance with its terms. The Contractor agrees to  
4138 maintain each piece of equipment used by it in the performance of this Agreement in good order  
4139 and repair. Contractor shall have available on service days sufficient backup vehicles and  
4140 qualified operators to respond to complaints and emergencies.  
4141

4142 Beginning on the Effective Date and throughout the Term of this Agreement, Contractor shall  
4143 replace within three (3) years of the Effective Date and not use thereafter any Collection vehicle  
4144 that is more than ten (10) years old, unless specifically approved by the County Representative  
4145 in writing.  
4146

### 4147 B. Vehicle Identification

4148 The Contractor's name, phone number, and vehicle identification number must be visibly  
4149 displayed on its vehicles in letters and figures no less than three inches high.  
4150

### 4151 C. Cleaning and Maintenance

4152 1. **General.** Contractor shall maintain all of its properties, facilities, and equipment used in  
4153 providing service under this Agreement in a safe, neat, clean and operable condition at  
4154 all times, and shall keep its properties, facilities, and equipment well and uniformly  
4155 painted, to the satisfaction of the County Representative. Vehicles shall be maintained in  
4156 such a manner that no leakage of fluids from the Collected materials occurs.  
4157

4158 2. **Cleaning.** Vehicles used in Collection shall be thoroughly washed at a minimum of once  
4159 per week, and thoroughly steam cleaned on a regular basis so as to present a clean  
4160 appearance and minimize odors. All vehicles shall be painted on a regular schedule to  
4161 maintain a clean, professional, new-like appearance, although the County  
4162 Representative may require the painting of any vehicle which does not present a  
4163 satisfactory appearance at any time. The vehicles shall be painted in a uniform manner;  
4164 although Solid Waste, Recycling, Compostable Materials, Food Waste and Green Waste  
4165 vehicles may have different painting schemes. All graffiti shall be removed immediately.  
4166 County may inspect vehicles at any time to determine compliance with sanitation  
4167 requirements. Contractor shall make vehicles available to the County Health Department  
4168 for inspection at any frequency it requests.  
4169

4170 3. **Maintenance.** Contractor shall (i) inspect each vehicle daily to ensure that all equipment  
4171 is operating properly. Vehicles which are not operating properly shall be taken out of  
4172 service until they are repaired and do operate properly; and (ii) perform all scheduled  
4173 maintenance functions in accordance with the manufacturer's specifications and  
4174 schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded  
4175

4176 according to date and mileage and shall make such records available to the County  
4177 upon request.  
4178

4179 **4. Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and  
4180 equipment, including dents, leaks, and other body damage, for which repairs are needed  
4181 because of accident, breakdown or any other cause so as to maintain all equipment in a  
4182 neat, safe and operable conditions. If an item of repair is covered by a warranty,  
4183 Contractor shall obtain warranty performance. Contractor shall maintain accurate  
4184 records of repair, which shall include date/mileage, nature of repair and the signature of  
4185 a maintenance supervisor that the repair has been properly performed.  
4186

4187 **5. Inventory.** Contractor shall furnish sufficient equipment to provide all service required  
4188 under this Agreement, including backup Collection vehicles. Contractor shall furnish the  
4189 County a written inventory of all vehicles, including Collection vehicles, used in providing  
4190 service, and shall update the inventory when vehicles are replaced and at a minimum  
4191 annually. The inventory shall list all vehicles by manufacturer, ID number, date of  
4192 acquisition, type, California Gross Vehicle Weight Rating, Legal Load capacity, Tare  
4193 Weight and decibel rating.  
4194

4195 **6. Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and  
4196 secure location(s) in accordance with County's applicable zoning regulations.  
4197

4198 **7. Operation.** All vehicles must be registered with the Department of Motor Vehicles of the  
4199 State of California and inspected by the California Highway Patrol at the frequency  
4200 required by the state. Vehicles shall be operated in compliance with the California  
4201 Vehicle Code and all applicable safety and local ordinances. Contractor shall not load  
4202 Collection or transfer vehicles in excess of the manufacturer's recommendations or  
4203 limitations imposed by state or local weight restrictions on vehicles. Contractor shall use  
4204 all reasonable means to minimize any backing up of Collection vehicles.  
4205

4206 **8. Low Emission Vehicle Requirements.** As required by law, Contractor shall convert  
4207 and/or retrofit its Collection fleet and/or fuel utilizing the most cost-effective means to  
4208 reduce air pollutant emissions and to be in full compliance with local, state, and federal  
4209 clean air requirements, including the California Air Resources Board Heavy Duty Engine  
4210 Standards contained in CCR Title 13, Section 2020 et seq.; and the Federal EPA's  
4211 Highway Diesel Fuel Sulfur regulations. The term "fuel" as used in this section may  
4212 include bio-diesel or clean diesel, as allowed within local, state and/or federal  
4213 requirements. All costs of compliance with low emission fuel and/or vehicle  
4214 requirements are the sole responsibility of the Contractor.  
4215

### 4216 **1.3 COLLECTION SCHEDULE**

- 4217 • If the day of Collection on any given route falls on New Year's Day, Thanksgiving Day, or  
4218 Christmas Day, the Contractor shall provide Collection Service for such route on such  
4219 day or the next workday following such holiday and shall not provide Collection Service  
4220 on such holiday. In the event the holiday schedule of the Disposal or Transfer Facility or  
4221 Designated Recycling Facility, Designated Food Waste Processing Facility, and

- 4222 Designated Green Waste Processing Facility are different than the holidays stated  
4223 herein, the holiday schedule will be adjusted by the Contractor in consultation with the  
4224 County to match those of the Facility(ies).
- 4225 • The Contractor shall provide one pickup per week for Cart Customers from the curbside  
4226 (with the exception of roll-out side yard or backyard service for Residential Customers  
4227 who submit a note from their physician stating there is a medical reason that prevents  
4228 the Residential Customer from moving Carts for their Basic Service as defined in Exhibit  
4229 A to the roadway or curbside and who therefore is eligible for an accommodation under  
4230 the Americans with Disabilities Act or similar State law or local laws, ordinances,  
4231 regulations or guidelines and for Customers paying additional charge for side yard or  
4232 backyard service).
  - 4233 • The Contractor shall provide pickups on the schedule requested by Customer (at least  
4234 once weekly) for Bin Customers from a location designated by the property owner.  
4235

#### 4236 **1.4 COLLECTION ROUTES**

- 4237 • Collection routes shall be established and maintained in such a manner as to provide  
4238 uniform and efficient Collection Services.
- 4239 • The Contractor shall submit route plans to the County Representative for informational  
4240 purposes at the start of the Agreement, one year prior to the end of the Base Term, at  
4241 end of the Base Term, at the end of any Extension and whenever there is a significant  
4242 routing change. The route plans shall identify the course each vehicle follows, the  
4243 properties served, approximate starting and ending time for each route, the day of week  
4244 the route will be served, etc.
- 4245 • Materials Collected shall not be mixed in Contractor's Collection equipment with any  
4246 materials Collected from another governmental jurisdiction including the other cities or  
4247 counties or from any other non-franchise sources, without prior written approval of the  
4248 County Representative.
- 4249 • Notice shall be issued to Customers when changes to routes or route days affect five (5)  
4250 percent or more of Customers on the established route.  
4251

#### 4252 **1.5 COLLECTION REQUIREMENTS**

##### 4253 **A. Care of Private Property**

4254 All Collection Containers after emptying thereof by the Contractor's employees shall be returned  
4255 to within 5 feet of the location from which the same were picked up by the Contractor's  
4256 employees, upright and with lids closed when inclement weather is in forecast for the day of  
4257 Collection, and Contractor's employees shall use all reasonable means to insure same are not  
4258 deposited in a manner that blocks any driveway, sidewalk, or street. Contractor shall ensure that  
4259 its employees close all gates opened by them in making Collections, unless otherwise directed  
4260 by the Customer, and avoid crossing landscaped areas and climbing or jumping over hedges  
4261 and fences.  
4262

4263  
4264 County shall refer complaints about damage to private property to Contractor. Reasonable care  
4265 shall be used by the Contractor's employees in handling all Collection Containers and  
4266 enclosures, and all damage caused thereto by the negligence or carelessness of the  
4267 Contractor's employees shall be promptly addressed with the property owner thereof. Damage

4268 to Customer property or other private property caused by or resulting from actions of the  
4269 Contractor or its personnel shall be repaired within thirty (30) days of the date the damage was  
4270 reported.

4271

4272 **B. Noise**

4273 All Collection operations shall be conducted as quietly as possible and shall conform to  
4274 applicable Federal, State, county and County noise level regulations, including the requirement  
4275 that the noise level during the stationary compaction process not exceed 70 decibels with the  
4276 exceptions of 85 decibels for 1-minute duration as measured from a distance of fifty (50) feet.  
4277 The County may conduct random checks of noise emission levels to ensure such compliance.  
4278 Contractor shall promptly resolve any complaints of noise to the satisfaction of the County  
4279 Representative or their designee.

4280

4281 **C. Record of Noncollection**

4282 If any materials Delivered for Collection are not Collected by the Contractor for sufficient reason,  
4283 Contractor shall place a notice on the uncollected material at least 2 inches x 6 inches in size.  
4284 The notice shall provide the Contractor's phone number and indicate the reasons for  
4285 Contractor's refusal to Collect the materials placed in the Containers giving reference to the  
4286 section of the County Ordinance Code or to the section of this Agreement which has been  
4287 violated, and which gives grounds for Contractor's refusal. This information shall either be in  
4288 writing and/or by means of a check system. Contractor shall maintain, at Contractor's place of  
4289 business, a logbook listing all complaints and taggings. Said logbook shall contain the names  
4290 and date and manner of disposition of each case. Such log shall be kept so that it may  
4291 conveniently be inspected by representatives of the County upon request.

4292

4293 **D. Load Checking**

4294 The Contractor is responsible for inspecting all materials prior to Collection for Hazardous  
4295 Waste or other unacceptable materials. The Contractor is not responsible for Collection of  
4296 Hazardous Waste or other unacceptable materials.

4297

4298 The Contractor is responsible for controlling contamination levels of Recyclable Materials and  
4299 Compostable Materials through public education efforts and tagging of improper setouts.

4300

4301 **1.6 LITTER ABATEMENT**

4302

4303 **A. Minimization of Spills**

4304 Contractor shall use due care to prevent materials placed in the Containers from being spilled or  
4305 scattered during the Collection or transportation process. If any material is spilled during  
4306 Collection, the Contractor shall promptly clean up all spilled materials. Each Collection vehicle  
4307 shall carry a broom and a shovel at all times for this purpose.

4308

4309 Contractor shall not transfer loads from one vehicle to another on any public street, unless it is  
4310 necessary to do so because of mechanical failure or accidental damage to a vehicle.

4311

4312

4313 **B. Cleanup**

4314 During the Collection transportation process, the Contractor shall clean up litter in the immediate  
4315 vicinity of any storage area (including the areas where Bins are delivered for Collection) of any  
4316 materials that escape from the Collection vehicle or Collection Containers as a result of the  
4317 Contractor's service. In the event that litter not caused by the Contractor's service is in the  
4318 vicinity of the storage area, the Contractor is required to clean up this litter whether or not  
4319 Contractor has caused the litter on a one-time basis and shall discuss the spillage directly with  
4320 the Customer responsible and shall report such instances to the County. The Contractor shall  
4321 work with the Customer to resolve the spillage problem. County will attempt to rectify such  
4322 situations with the Customer if Contractor has already attempted to do so without success.

4323  
4324 **C. Covering of Loads**

4325 All materials shall be contained or covered during transportation to the Processing Facility.  
4326 Material shall not be transported to the Processing Facility in vehicle hoppers.

4327  
4328 **D. Oil or Other Vehicle Fluid Spills**

4329 Contractor is responsible for cleaning up all oil or vehicle fluid spills immediately and must notify  
4330 the County within 24 hours of each such spill. All vehicles must carry an acceptable absorbent  
4331 material to use in the event of spills. Repair for damages caused by oil or other vehicle spills  
4332 shall be at the Contractor's expense. The Contractor will follow the spill procedures below:

- 4333
- 4334 • Driver will determine cause and source of spill.
- 4335
- 4336 • Each driver or shop employee is responsible for having enough absorbent in their vehicle to  
4337 contain or prevent any hydraulic fluid or oil from entering a storm drain or sewer and to clean  
4338 up small spills as they occur.
- 4339
- 4340 • Driver will contain or stop the leak and clean it up without endangering self.
- 4341
- 4342 • Driver will immediately notify dispatch or supervisor.
- 4343
- 4344 • Driver will not leave the spill until either a supervisor or spill response personnel arrive at the  
4345 scene.
- 4346
- 4347 • Driver will keep all people, cars, or other vehicles from walking or driving through the spill.
- 4348
- 4349 • Driver or spill response personnel will take whatever action possible to prevent the spill from  
4350 entering any storm drain, grates, or other entry points.
- 4351
- 4352 • Company shall track and report all vehicle fluid spills to the County as part of its Monthly  
4353 Reports.

4354  
4355

4356 **1.7 PERSONNEL**

4357

4358 **A. General**

4359 Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other  
4360 personnel as may be necessary to provide the Collection Services required by this Agreement  
4361 in a safe and efficient manner.

4362

4363 All Contractor employees must be able to read, write and speak English with sufficient  
4364 proficiency to enable them to successfully meet and adhere to all of the terms of this  
4365 Agreement.

4366

4367 **B. Driver Qualifications**

4368 All drivers shall be trained and qualified in the operation of Collection vehicles and must have in  
4369 effect a valid license, of the appropriate class with appropriate endorsements, issued by the  
4370 California Department of Motor Vehicles. All Collection vehicle drivers shall also complete the  
4371 Contractor's in-house training program which includes education on the use of all vehicles in the  
4372 Collection fleet, Collection programs, and route information as well as Customer service  
4373 practices and safety information.

4374

4375 Contractor shall conduct a background check on each driver at the time of hire to determine  
4376 whether the driver has been determined to be a Sexually Violent Predator under California  
4377 Welfare & Institutions Code section 6600, has a record of felony conviction for any violent crime  
4378 as defined under California Penal Code section 667.5(c), or record of felony conviction for  
4379 violation of any part of the California Motor Vehicle Code. Any driver found to have a record of  
4380 SVP status, felony conviction of violent crime, or felony conviction of the Motor Vehicle Code,  
4381 cannot be employed as a driver for the Contractor. Contractor shall be permitted to comply with  
4382 all laws requiring authorization for criminal background check, all laws restricting the use of  
4383 information obtained via criminal background check, and all laws requiring interactive or other  
4384 process prior to adverse action including but not limited to the Fair Credit Reporting Act, the  
4385 California Investigative Consumer Reporting Act, and California Fair Employment and Housing  
4386 Council regulations. Contractor shall not be required to violate Penal Code section 290.46,  
4387 including but not limited to its restriction on employer action, or its obligation to bargain the  
4388 effects of this paragraph with the employee's representative under the federal National Labor  
4389 Relations Act.

4390

4391 **C. Identification Badge**

4392 Contractor shall require its drivers, and all other employees who come into contact with the  
4393 public, to wear a clean, uniform shirt with an identification badge or other means of identifying  
4394 the employee, as approved by the County Representative or their designee.

4395

4396 **D. Safety Training**

4397 Contractor shall provide suitable operational and safety training for all of its employees who  
4398 utilize or operate vehicles or equipment for Collection or who are otherwise directly involved in  
4399 such services. Contractor shall train its employees involved in Collection to identify, and not to  
4400 Collect, Hazardous Waste or Medical and Infectious waste.

4401

4402 **E. No Gratuities**  
4403 Contractor shall not permit its employees to demand, solicit or accept, directly or indirectly, any  
4404 additional compensation or gratuity from Customers for the Collection Services under this  
4405 Agreement. Contractor may permit its employees to accept small holiday gifts of nominal value.  
4406

4407 **F. Employee Appearance and Conduct**  
4408 All employees, while engaged in Collection Services within the County, shall be attired in  
4409 suitable and acceptable uniform shirts which are subject to approval by the County. Contractor  
4410 shall use its Best Efforts to assure that all employees present a neat appearance and conduct  
4411 themselves in a courteous manner. Contractor shall regularly train its employees in Customer  
4412 courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews  
4413 to perform the work as quietly as possible. If any employee is found not to be courteous or not  
4414 to be performing services in the manner required by the Agreement, Contractor shall take all  
4415 appropriate corrective measures.  
4416

4417 **G. Provision of Field Supervision**  
4418 Contractor shall designate a qualified employee(s) as supervisor of field operations. The field  
4419 supervisor(s) shall devote whatever time is necessary, but not less than the equivalent of 50  
4420 percent of the time of one full-time employee in the field checking on Collection operations,  
4421 including responding to complaints.  
4422

4423 **H. General Supervision**  
4424 The Collection Services are under the general supervision of the County Representative, and  
4425 the Contractor shall promptly comply with any County orders, directions and instructions that are  
4426 consistent with the terms of this Agreement. County reserves the right to inspect any and all of  
4427 the Contractor's equipment at any time without prior notice.  
4428

4429 **1.8 OPERATIONAL STANDARDS**  
4430 Contractor is responsible for compliance with the following requirements, and with all other  
4431 applicable requirements contained in this Agreement whether Contractor owns, or contracts for  
4432 service at the Processing Facility.  
4433

4434 **A. General Operations and Maintenance Standards**  
4435 Beginning on the Effective Date, Contractor covenants to comply with the Contractor's  
4436 performance obligations throughout the Term of the Agreement and to perform the Contractor's  
4437 performance obligations with respect to Collection and transportation for transfer and Disposal  
4438 in the Collection Services Area for Collection Services as outlined in Article 3.2 and throughout  
4439 this Agreement in accordance with accepted practice for comparable processing facilities,  
4440 sound management and operations practice, the facility's operation and maintenance manual,  
4441 plans and specifications, permits, Applicable Law (including OSHA standards), provisions  
4442 hereof, and covenants, conditions and restrictions pertaining to the site.  
4443

4444 The Contractor shall be responsible for maintaining and renewing all necessary permits,  
4445 licenses, and clearances necessary to provide the transportation and processing of Collection  
4446 Materials. Contractor shall maintain and renew permits; provided, however, Contractor shall not  
4447 be responsible for any delays in maintaining or renewing, or failure to maintain or renew, the

4448 permits, if Contractor has exercised due diligence in maintaining and/or renewing the permits,  
4449 and such failure is caused by any action or inaction of the issuing or renewing authority.  
4450

4451 The Contractor shall meet all applicable regulations, industrial codes, and all applicable  
4452 standards of technical societies, either as stated or as in standard industry practice.  
4453

4454 The Contractor shall have the responsibility for the sale of recovered materials and collection of  
4455 payment thereof.  
4456

4457 **B. Maintenance and Repair**

4458 The Contractor shall maintain the facility and site in good working order and repair, including  
4459 maintaining spare parts inventory and performing periodic maintenance in accordance with the  
4460 operations and maintenance manual, manufacturer's recommendations, accepted practice for  
4461 comparable facilities, and sound management and operations practice. Contractor shall  
4462 maintain the aesthetic appearance of the facility and site in a clean and neat manner in  
4463 accordance with the plans and specifications, with due regard for reasonable control of odors,  
4464 dust, and noise.  
4465

4466 **C. Safety**

4467 Contractor shall conduct facility operations in a safe manner, in accordance with Applicable  
4468 Law, requirements of insurance carried, and standard industry practices in the waste  
4469 management, composting, organics handling, and materials recovery industry.  
4470

4471 **D. Personnel**

4472 The Contractor shall engage and train qualified and competent employees, including  
4473 managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary  
4474 and sufficient for facility operations and to perform the Contractor's obligation under this  
4475 Agreement. The Contractor shall train such staff to perform their work in a safe and efficient  
4476 manner in accordance with the health and safety plan in the facility's operations and  
4477 maintenance manual.  
4478

4479 **E. Transportation of Residue**

4480 The Contractor shall transport and deliver all Residue in accordance with the City-County MOU  
4481 (Exhibit L) to the Designated Disposal or Transfer Facility after its delivery to the Contractor's  
4482 facility within the timeframes required by the facility's permits and in no event longer than  
4483 required by Applicable Law. The Contractor shall select routes from its facility to the Designated  
4484 Disposal or Transfer Facility which minimize inconvenience and disturbance to the public and  
4485 comply with permits and Applicable Law. Contractor shall enclose or cover all vehicles  
4486 transferring Residue from its facility to prevent spillage.  
4487

4488 **F. Weighing**

4489 The Contractor shall transport and Deliver materials to Processing Facilities that have a system  
4490 of weighing materials received from Collection vehicles and tracking recovery of incoming  
4491 materials and disposition of Residue. The Contractor shall utilize the information to record  
4492 tonnages of material received. At a minimum, the recorded data must indicate for each delivery,

4493 hauler's name, truck number if applicable, time of delivery, tonnage delivered, vehicle license  
4494 number, and person receiving the delivery.

4495

4496 **G. Substitute Scales**

4497 The Contractor shall transport and Deliver materials to Processing Facilities that have  
4498 provisions for utilizing substitute scales when scales normally utilized are not available. To the  
4499 extent that all the scales are inoperable, being tested, or otherwise unavailable, the Processing  
4500 Facility shall have the means to substitute portable scales until the permanent scales are  
4501 replaced or repaired.

4502

4503 Pending substitution of portable scales, Contractor shall utilize estimates provided by  
4504 Processing Facilities for the quantity of materials being Delivered to the Processing Facility and  
4505 Residue and recovered materials being transported from the Processing Facility, on the basis of  
4506 delivery truck and transfer trailer volumes, tare weight, broker's weigh records, and data  
4507 obtained through historical information from the Processing Facility and purchasers of recovered  
4508 materials using a methodology acceptable to the County. These estimates shall take the place  
4509 of actual weighing and shall be the basis for records while scales are inoperable.

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**EXHIBIT D**  
**COLLECTION SERVICES AREA**

*A legal description of the service area and a service area map is attached.*

**LEGAL DESCRIPTION**

NOW, THEREFORE IT IS AGREED AS FOLLOWS.

1. This agreement shall supersede in its entirety that Franchise Agreement between the parties dated December 19, 1972, including all amendments thereto.
2. Contractor is hereby granted by County an exclusive franchise for Garbage Zone One of the Unincorporated Territory of the County of Napa, which said territory is particularly described as follows, to wit:

Being an area in the Southern portion of Napa County, California, and more particularly described as follows:

Beginning at the point formed by the intersection of the center line of the "Napa River" with the center line of the drainage facility known as "Mud Slough"; thence northwesterly along the center line of said "Mud Slough" to the point formed by the intersection of the center line of said "Mud Slough" with the boundary line separating Sections 8 and 17, T4N, R4W, M.D.B. & M.; thence Westerly, along the Southerly line of Sections 8 and 7, T4N, R4W, M.D.B. & M. to the point formed by the intersection of the Southerly line of said Section 7 with the boundary line separating Napa and Sonoma Counties; thence Northerly, along said Napa and Sonoma County boundary to the point formed by the intersection of said boundary line with the center line of the State Highway, Route 12/121, known as "Carneros Highway"; thence leaving said boundary line, Northeasterly, to the point formed by the intersection of the center line of the County Road known as "Henry Road" with the Range Line separating R4W and R5W, M.D.B. & M.; thence Northerly, along said Range Line to the point formed by the intersection of said Range Line, with the Township Line separating T5N and T6N, M.D.B. & M.; thence from said Township Corner, N 45.5° W, 6,500 feet more or less to the point of intersection with a line bearing South from the point formed by the intersection of the center line of the County Road known as "Redwood Road" with the center line of the County Road known as "Mt. Veeder Road"; thence North, to the point of intersection of said "Redwood Road" and "Mt. Veeder Road"; thence N 20°E, 13,600 feet more or less to the point of intersection with the Range Line separating R4W and R5W, M.D.B. & M., said point also being the point formed by the intersection of said Range Line with the Westerly extension of a line parallel to, and distant 200 feet at right angles Southerly, from the center line of the County Road known as "Trubody Lane", thence leaving said Range Line, Northeasterly, parallel to, and distant 200 feet at right angles Southerly from the center line of said "Trubody Lane" and its Westerly and Easterly extensions, to the point of intersection with the center line of the County Road known as "Silverado Trail"; thence Northeasterly, to the Southwest corner of Section 3, T6N, R4W, M.D.B. & M.; thence Easterly, along the southerly line of said Section 3, 2,640 feet more or less to the

4517

Southerly quarter corner of said Section 3; thence leaving said Southerly line, Southeasterly, to the Westerly quarter corner of Section 11, T6N, R4W, M.D.B. & M.; thence Southerly, along the Westerly line of said Section 11, 2,640 feet more or less to the Southwest corner of said Section 11; thence Easterly, along the Southerly line of said Section 11 to the Southeast corner of said Section 11; thence Southerly, along the Westerly line of Section 13, T6N, R4W, M.D.B. & M., to the Southwest corner of said Section 13; thence Easterly, along the Southerly line of said Section 13, to the Southeast corner of said Section 13; thence Southerly, along the Westerly line of Section 19, T6N, R3W, M.D.B. & M., to the Southwest corner of said Section 19; thence Easterly, along the Southerly line of said Section 19, to the Southeast corner of said Section 19; thence Southerly, along the Westerly line of Sections 29 and 32, T6N, R3W, M.D.B. & M., to the Southwest corner of said Section 32, said corner also being corner number T13 as shown on a map on file in the office of the County Recorder, Napa, California, in the Book of Patents, entitled, "Plat of Tulucay Rancho"; thence Easterly, along the grant line of said Tulucay Rancho to corner No. T14; thence Southerly, along said grant line to the Southwest corner of Section 5, T5N, R3W, M.D.B. & M.; thence leaving said grant line, Southeasterly, to the point formed by the intersection of the center line of the County Road known as "Wild Horse Valley Road" with the center line of the County Road known as "Shady Brook Lane"; thence Southeasterly, to the Northerly quarter corner of Section 17, T5N, R3W, M.D.B. & M.; thence Southerly to the center of said Section 17; thence Southwesterly, to the Southwest corner of said Section 17; thence Westerly, along the Southerly line of Section 18, T5N, R3W, and Section 13, T5N, R4W, M.D.B. & M., and the Westerly extension thereof, to the point formed by the intersection of the extension of said Southerly line with a line parallel to, and distant 2,640 feet at right angles Easterly from the center line of the State Highway 221 and 29, known together as "Napa-Vallejo Highway"; thence Southeasterly along said parallel line to the point of intersection with the Easterly extension of the center line of the County Road known as "Green Island Road"; thence Westerly along the easterly extension and actual center line of said "Green Island Road" to the point of intersection with the center line of the Sonoma branch of the Union Pacific Rail Road line; thence Northwesterly along said Rail Road center line to the point of intersection with the center line of the "Napa River"; thence southerly along the center line of said "Napa River" to the Point of Beginning.

EXCEPTING THEREFROM any and all lands lying and being within the incorporated limits of the City of American Canyon and the City of Napa as said limits now or may hereafter extend. There shall further be excepted from such "Garbage Zone One" the area encompassed within the limits of any other city as may hereafter be incorporated therein.

*Description Approved:*

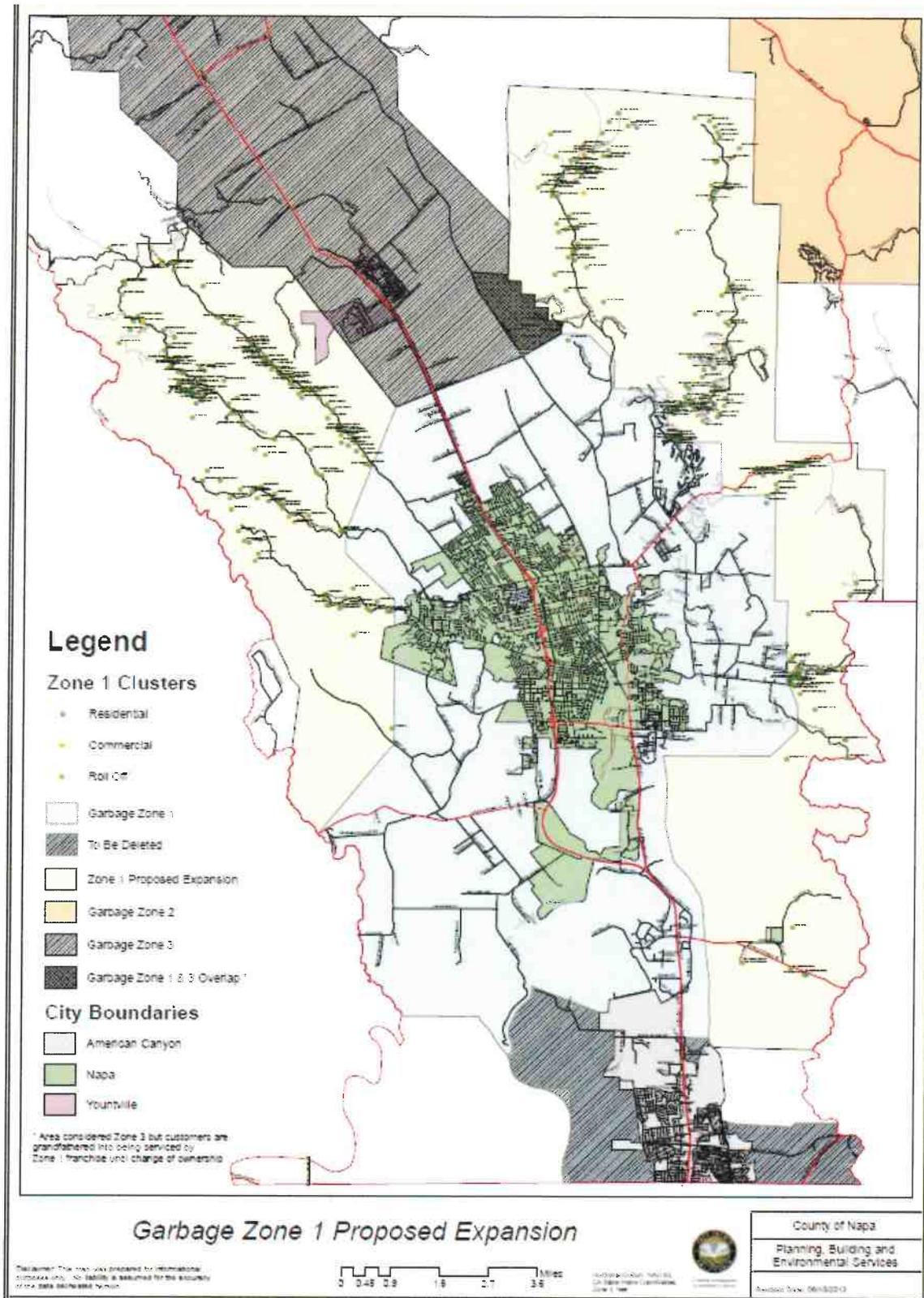


*Richard E. McLaughlin* 10/4/2013  
Napa County Surveyor

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# SERVICE AREA MAP



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**EXHIBIT E  
SCHEDULE OF INITIAL RATES  
EFFECTIVE JANUARY 1, 2018**

Service Description	With County Fees		
	Rates Effective 1/1/18	Maximum Commingled and Green Waste Recycling Fee (1)	Maximum Front Loader Compacted Fee (4)

**Residential**

Residential with Food Waste Cart Collection in year 4 Proposed Rates in Dollars per Container per Month Solid Waste Cart			
20 gallon	\$ 21.37	\$ -	\$ -
35 gallon	\$ 24.37	\$ -	\$ -
65 gallon	\$ 37.86	\$ -	\$ -
96 gallon	\$ 55.82	\$ -	\$ -

**Commercial**

Commercial/Multi-Family/Mobile Homes Cart and Bin Collection Proposed Rates in Dollars per Container per Month			
35 gallon container	\$ 32.37	\$ -	\$ -
65 gallon container	\$ 44.96	\$ -	\$ -
96 gallon container, 1 pickup per week	\$ 73.39	\$ -	\$ -
96 gallon container, 2 pickup per week	\$ 128.77	\$ -	\$ -
96 gallon container, 3 pickup per week	\$ 166.17	\$ -	\$ -
96 gallon container, 4 pickup per week	\$ 184.84	\$ -	\$ -
96 gallon container, 5 pickup per week	\$ 223.02	\$ -	\$ -
96 gallon container, 6 pickup per week	\$ 298.13	\$ -	\$ -

1 cubic yards, 1 pickup per week	\$ 268.93	\$ -	\$ 537.86
1.5 cubic yards, 1 pickup per week	\$ 345.35	\$ -	\$ 690.70
2 cubic yards, 1 pickup per week	\$ 472.64	\$ -	\$ 945.28
3 cubic yards, 1 pickup per week	\$ 670.54	\$ -	\$ 1,341.08
4 cubic yards, 1 pickup per week	\$ 757.11	\$ -	\$ 1,514.22
6 cubic yards, 1 pickup per week	\$ 1,101.27	\$ -	\$ 2,202.54

1 cubic yards, 2 pickup per week	\$ 504.52	\$ -	\$ 1,009.04
1.5 cubic yards, 2 pickup per week	\$ 657.40	\$ -	\$ 1,314.80
2 cubic yards, 2 pickup per week	\$ 906.36	\$ -	\$ 1,812.72
3 cubic yards, 2 pickup per week	\$ 1,302.17	\$ -	\$ 2,604.34
4 cubic yards, 2 pickup per week	\$ 1,469.75	\$ -	\$ 2,939.50
6 cubic yards, 2 pickup per week	\$ 2,152.56	\$ -	\$ 4,305.12

1 cubic yards, 3 pickup per week	\$ 740.11	\$ -	\$ 1,480.22
1.5 cubic yards, 3 pickup per week	\$ 969.41	\$ -	\$ 1,938.82
2 cubic yards, 3 pickup per week	\$ 1,340.11	\$ -	\$ 2,680.22
3 cubic yards, 3 pickup per week	\$ 1,933.81	\$ -	\$ 3,867.62
4 cubic yards, 3 pickup per week	\$ 2,182.43	\$ -	\$ 4,364.86
6 cubic yards, 3 pickup per week	\$ 3,203.84	\$ -	\$ 6,407.68

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Service Description	With County Fees		
	Rates Effective 1/1/18	Maximum Commingled and Green Waste Recycling Fee (1)	Maximum Front Loader Compacted Fee (4)

**Commercial (Continued)**

Commercial/Multi-Family/Mobile Homes Cart and Bin Collection Proposed Rates in Dollars per Container per Month			
1 cubic yards, 4 pickup per week	\$ 975.71	\$ -	\$ 1,951.42
1.5 cubic yards, 4 pickup per week	\$ 1,281.46	\$ -	\$ 2,562.92
2 cubic yards, 4 pickup per week	\$ 1,773.57	\$ -	\$ 3,547.14
3 cubic yards, 4 pickup per week	\$ 2,565.45	\$ -	\$ 5,130.90
4 cubic yards, 4 pickup per week	\$ 2,895.05	\$ -	\$ 5,790.10
6 cubic yards, 4 pickup per week	\$ 4,255.13	\$ -	\$ 8,510.26

1 cubic yards, 5 pickup per week	\$ 1,211.28	\$ -	\$ 2,422.56
1.5 cubic yards, 5 pickup per week	\$ 1,593.48	\$ -	\$ 3,186.96
2 cubic yards, 5 pickup per week	\$ 2,207.61	\$ -	\$ 4,415.22
3 cubic yards, 5 pickup per week	\$ 3,197.09	\$ -	\$ 6,394.18
4 cubic yards, 5 pickup per week	\$ 3,607.73	\$ -	\$ 7,215.46
6 cubic yards, 5 pickup per week	\$ 5,306.42	\$ -	\$ 10,612.84

1 cubic yards, 6 pickup per week	\$ 1,482.83	\$ -	\$ 2,965.66
1.5 cubic yards, 6 pickup per week	\$ 1,905.52	\$ -	\$ 3,811.04
2 cubic yards, 6 pickup per week	\$ 2,641.34	\$ -	\$ 5,282.68
3 cubic yards, 6 pickup per week	\$ 3,828.73	\$ -	\$ 7,657.50
4 cubic yards, 6 pickup per week	\$ 5,039.61	\$ -	\$ 10,079.22
6 cubic yards, 6 pickup per week	\$ 6,357.70	\$ -	\$ 12,715.40

Commercial/Multi-Family/Mobile Homes Cart and Bin Collection - Customer Owned Proposed Rates in Dollars per Container per Month			
1 cubic yards, 1 pickup per week	\$ 235.60	\$ -	\$ 471.20
1.5 cubic yards, 1 pickup per week	\$ 312.02	\$ -	\$ 624.04
2 cubic yards, 1 pickup per week	\$ 433.76	\$ -	\$ 867.52
3 cubic yards, 1 pickup per week	\$ 651.65	\$ -	\$ 1,263.30
4 cubic yards, 1 pickup per week	\$ 712.67	\$ -	\$ 1,425.34
6 cubic yards, 1 pickup per week	\$ 1,051.27	\$ -	\$ 2,102.54

1 cubic yards, 2 pickup per week	\$ 471.19	\$ -	\$ 942.38
1.5 cubic yards, 2 pickup per week	\$ 624.06	\$ -	\$ 1,248.12
2 cubic yards, 2 pickup per week	\$ 867.46	\$ -	\$ 1,734.92
3 cubic yards, 2 pickup per week	\$ 1,263.30	\$ -	\$ 2,526.56
4 cubic yards, 2 pickup per week	\$ 1,425.31	\$ -	\$ 2,850.62
6 cubic yards, 2 pickup per week	\$ 2,102.55	\$ -	\$ 4,205.10

Service Description	With County Fees		
	Rates Effective 1/1/18	Maximum Commingled and Green Waste Recycling Fee (1)	Maximum Front Loader Compacted Fee (4)

**Commercial (Continued)**

Commercial/Multi-Family/Mobile Homes Cart and Bin Collection - Customer Owned			
Proposed Rates in Dollars per Container per Month			
1 cubic yards, 3 pickup per week	\$ 706.77	\$ -	\$ 1,413.54
1.5 cubic yards, 3 pickup per week	\$ 936.09	\$ -	\$ 1,872.18
2 cubic yards, 3 pickup per week	\$ 1,301.23	\$ -	\$ 2,602.46
3 cubic yards, 3 pickup per week	\$ 1,894.94	\$ -	\$ 3,789.88
4 cubic yards, 3 pickup per week	\$ 2,137.98	\$ -	\$ 4,275.96
6 cubic yards, 3 pickup per week	\$ 3,153.84	\$ -	\$ 6,307.68

1 cubic yards, 4 pickup per week	\$ 942.37	\$ -	\$ 1,884.74
1.5 cubic yards, 4 pickup per week	\$ 1,248.14	\$ -	\$ 2,496.28
2 cubic yards, 4 pickup per week	\$ 1,734.99	\$ -	\$ 3,469.98
3 cubic yards, 4 pickup per week	\$ 2,526.58	\$ -	\$ 5,053.16
4 cubic yards, 4 pickup per week	\$ 2,850.61	\$ -	\$ 5,701.22
6 cubic yards, 4 pickup per week	\$ 4,205.13	\$ -	\$ 8,410.26

1 cubic yards, 5 pickup per week	\$ 1,177.95	\$ -	\$ 2,355.90
1.5 cubic yards, 5 pickup per week	\$ 1,560.14	\$ -	\$ 3,120.28
2 cubic yards, 5 pickup per week	\$ 2,168.71	\$ -	\$ 4,337.42
3 cubic yards, 5 pickup per week	\$ 3,158.20	\$ -	\$ 6,316.40
4 cubic yards, 5 pickup per week	\$ 3,563.29	\$ -	\$ 7,126.58
6 cubic yards, 5 pickup per week	\$ 5,256.43	\$ -	\$ 10,512.86

1 cubic yards, 6 pickup per week	\$ 1,449.49	\$ -	\$ 2,898.98
1.5 cubic yards, 6 pickup per week	\$ 1,872.18	\$ -	\$ 3,744.36
2 cubic yards, 6 pickup per week	\$ 2,602.45	\$ -	\$ 5,204.90
3 cubic yards, 6 pickup per week	\$ 3,789.86	\$ -	\$ 7,579.72
4 cubic yards, 6 pickup per week	\$ 4,995.16	\$ -	\$ 9,990.32
6 cubic yards, 6 pickup per week	\$ 6,307.69	\$ -	\$ 12,615.38

Residential/Commercial/Multi-Family/Mobile Homes - Temporary Bin Collection			
Proposed Rates in Dollars per Pickup			
Per Cubic Yard:			
1 cubic yards	\$ 57.16	\$ -	\$ 114.32
1.5 cubic yards	\$ 72.33	\$ -	\$ 144.66
2 cubic yards	\$ 99.24	\$ -	\$ 198.48
3 cubic yards	\$ 142.47	\$ -	\$ 284.94
4 cubic yards	\$ 159.99	\$ -	\$ 319.98
6 cubic yards	\$ 236.98	\$ -	\$ 473.96

Service Description	With County Fees		
	Rates Effective 1/1/18	Maximum Commingled and Green Waste Recycling Fee (1)	Maximum Front Loader Compacted Fee (4)

**Commercial (Continued)**

Commercial Solid Waste Compactor Service Proposed Rates in Dollars per Daily Pickup			
Per Cubic Yard:			
1 YD	\$ 64.20	\$ 32.10	\$ 64.20
1.5 YD	\$ 96.31	\$ 48.16	\$ 96.31
2 YD	\$ 128.40	\$ 64.20	\$ 128.40
3 YD	\$ 192.57	\$ 96.29	\$ 192.57
4 YD	\$ 256.77	\$ 128.39	\$ 256.77
5 YD	\$ 320.97	\$ 160.49	\$ 320.97
6 YD	\$ 385.15	\$ 192.58	\$ 385.15
7 YD	\$ 408.30	\$ 204.15	\$ 408.30
8 YD	\$ 431.42	\$ 215.71	\$ 431.42
9 YD	\$ 454.55	\$ 227.28	\$ 454.55
10 YD	\$ 641.95	\$ 320.98	\$ 641.95
11 YD	\$ 665.11	\$ 332.56	\$ 665.11
12 YD	\$ 688.23	\$ 344.12	\$ 688.23
13 YD	\$ 711.36	\$ 355.68	\$ 711.36
14 YD	\$ 734.48	\$ 367.24	\$ 734.48
15 YD	\$ 768.01	\$ 384.01	\$ 768.01
16 YD	\$ 791.96	\$ 395.98	\$ 791.96
17 YD	\$ 815.78	\$ 407.89	\$ 815.78
18 YD	\$ 905.84	\$ 452.92	\$ 905.84
19 YD	\$ 930.78	\$ 465.39	\$ 930.78
20 YD	\$ 986.92	\$ 493.46	\$ 986.92
21 YD	\$ 994.69	\$ 497.35	\$ 994.69
22 YD	\$ 1,019.07	\$ 509.54	\$ 1,019.07
23 YD	\$ 1,043.44	\$ 521.72	\$ 1,043.44
24 YD	\$ 1,067.82	\$ 533.91	\$ 1,067.82
Over 25 CY - per one cubic yard disposal fee increments	\$ 35.68	\$ 17.84	\$ 35.68
25 YD	\$ 1,092.07	\$ 546.04	\$ 1,092.07
30 YD	\$ 1,270.43	\$ 635.22	\$ 1,270.43
34 YD	\$ 1,413.12	\$ 706.56	\$ 1,413.12
40 YD	\$ 1,627.17	\$ 813.59	\$ 1,627.17

Service Description	With County Fees		
	Rates Effective 1/1/18	Maximum Commingled and Green Waste Recycling Fee (1)	Maximum Front Loader Compacted Fee (4)

**Commercial (Continued)**

Commercial Solid Waste Drop Box Service Proposed Rates in Dollars per Daily Pickup			
Per Cubic Yard:			
10 YD	\$ 371.02	\$ 185.51	\$ -
20 YD	\$ 485.78	\$ 242.89	\$ -
25 YD	\$ 554.25	\$ 277.13	\$ -
30 YD	\$ 609.96	\$ 304.98	\$ -
40 YD	\$ 752.09	\$ 376.05	\$ -

Commercial Carpet Drop Box Service Rates in Dollars per Daily Pickup			
Per Cubic Yard:			
20 YD	\$ 456.73	\$ -	\$ -
25 YD	\$ 517.49	\$ -	\$ -
30 YD	\$ 566.38	\$ -	\$ -
40 YD	\$ 694.00	\$ -	\$ -

**Special Services**

Extra Pickup Residential and Commercial (Residential - Refer to Agreement 6431, page A-2 of Exhibit A):			
Kitchen Bag	\$ 5.64	\$ -	\$ -
35 gallon cart	\$ 16.86	\$ -	\$ -
65 gallon cart	\$ 24.73	\$ -	\$ -
96 gallon cart	\$ 32.19	\$ -	\$ -
1 CY bin	\$ 60.65	\$ -	\$ -
1.5 CY bin	\$ 65.89	\$ -	\$ -
2 CY bin	\$ 80.09	\$ -	\$ -
3 CY bin	\$ 103.32	\$ -	\$ -
4 CY bin	\$ 131.76	\$ -	\$ -
6 CY bin	\$ 199.08	\$ -	\$ -

Miscellaneous:			
Yard waste Service, extra toter over 4	\$ 10.79	\$ -	\$ -
Clean or Exchange Bin	\$ 107.88	\$ -	\$ -
Move Drop Box	\$ 107.88	\$ -	\$ -
Heavy Waste Surcharge per ton in excess of 400 pounds per yard	\$ 67.27	\$ -	\$ -

Service Description	With County Fees		
	Rates Effective 1/1/18	Maximum Commingled and Green Waste Recycling Fee (1)	Maximum Front Loader Compacted Fee (4)

**Special Services (Continued)**

Commercial Roundtrip Charge for On-Call Businesses:			
Up to 35 gallons	\$ 17.99	\$ -	\$ -
Up to 6 cubic yards	\$ 53.94	\$ -	\$ -
More than 6 cubic yards	\$ 89.91	\$ -	\$ -

Rental Rates:			
Daily rental - roll off after 5 days	\$ 11.11		

Non-Curbside Footage Charges:			
5 feet to 130 feet	\$ 21.58	\$ -	\$ -
131 feet to 330 feet	\$ 28.78	\$ -	\$ -
331 feet to 660 feet	\$ 35.97	\$ -	\$ -
661 feet to 1056 feet	\$ 43.15	\$ -	\$ -
1057 feet to 2000 feet	\$ 53.94	\$ -	\$ -
over 2000 feet	\$ 71.93	\$ -	\$ -

Other Charges:			
Backyard/Wheel-Out charge	\$ 17.99	\$ -	\$ -
On-call bulky item pickup	\$ 17.99	\$ -	\$ -
E-Waste bundled pickup	\$ 17.60	\$ -	\$ -
Key charges	\$ 17.99	\$ -	\$ -
Endosure charges	\$ 8.99	\$ -	\$ -
Gate service charges	\$ 8.99	\$ -	\$ -
Maximum charge (2)	\$ 8.99	\$ -	\$ -

Deposits (3)			
Residential	\$ 179.81	\$ -	\$ -
Commercial	\$ 899.02	\$ -	\$ -

(1) Commerical Rate  
 (2) Charges for key, endosure, gate, and long walk service are not cumulative pickup charges. The contractor's rate for a customer requiring one or more of the four special services will be a maximum rate (as specified in the table above) as adjusted for CPI, per pickup for any combination of the four service categories.  
 (3) In the event a customer requests a replacement solid waste container more frequently than once every two years, which replacement shall not be the fault of the contractor, a deposit will be allowed.  
 (4) Compactor Rates - Rates can not exceed amount stated

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**EXHIBIT F  
LIQUIDATED DAMAGES**

In the event that the Contractor fails to perform fully any of the Contractor's obligations under this Agreement, the Contractor shall be in breach ("event of Breach") of this Agreement. Upon delivery of written notice to the Contractor and as provided in Article 9.1.D, the County may impose the following Liquidated Damages upon the Contractor, in addition to any other available remedies the County may have. ~~Contractor shall pay any Liquidated Damages as provided in Exhibit J Lock Box Agreement.~~

**Provision of Service to Customers**

1. Failure to commence service to a new Customer within seven (7) days of receiving order as set forth in Exhibit A, Section 1.0: \$100.00 per incident.
2. Failure to provide Carts, Bins, or other Collection Containers to Customer within five Working Days of the Customer's request for service as set forth in Exhibit A, Section 1.0: \$200.00 per incident.
3. For each occurrence in excess of ten (10) per calendar year to replace emptied Containers upright, with lids closed, and within 5 feet of the location from which the same were picked up by the Contractor's employees as set forth in Exhibit C, Section 1.5: \$100.00.
4. Failure to repair or replace any Cart, Bin, Debris Box, Compactor or other Collection Container, when so required by this Agreement within five (5) Working Days as set forth in Exhibit C, Section 1.1: \$100.00 per occurrence.
5. Failure to correct a missed pickup within the required times set forth in Article 4.3C: \$100.00 per occurrence; and \$100 for each additional 24-hour working day beyond times set forth in Article 4.3C.
6. Failure to tag materials not Collected due to contamination or inappropriate set out as set forth in Article 4.6A; Exhibit A, section 4.0; and Exhibit C, Section 1.5: \$200.00 per occurrence.
7. Failure to respond to a Customer complaint as provided in Article 4.3: \$100.00 per day per incident.
8. Failure to record a response to a Customer complaint or request within 24 hours of resolution as set forth in Article 4.3: \$100.00 per occurrence.
9. Failure to notify Customers of improper setouts as set forth in Exhibit C, Section 1.5: \$100 per incident.
10. Discourteous behavior by Contractor staff as set forth in Article 3.3A, 4.1, 4.2A, and 4.3A; Exhibit A, Section 1.0; and Exhibit C, Section 1.0: \$300.00 per incident.

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11. Failure to answer the telephone or answering machine during the Customer service hours specified in Article 4.2.B: \$200.00 per incident.

12. Additional penalty when Contractor receives more than 25 valid service-related complaints in any 30-day period as set forth in Article 4.3: \$2,500.00.

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4559 **County Services**

13. Failure to Collect Collection Materials as required by this Agreement and/or as otherwise arranged with County as set forth in Article 3.3 and Exhibit A: \$300.00 per day per incident.

14. Failure to provide Collection Services at County-sponsored or co-sponsored events pursuant to Exhibit A Section 9.0.A: \$1,000.00 per event.

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4561 **Contractor Operations**

15. Undertaking Collection operations during hours outside of allowable Collection hours as specified in Article 3.3B: \$250.00 per verified complaint.

16. Failure to complete at least ninety-five (95) percent of a scheduled route on the regular scheduled route day as set forth in Article 4.4 and Exhibit C, Section 1.4: \$500.00 per uncompleted route.

17. Making changes to routes or route days affecting five (5) percent or more of Customers without notice to County or Customers as required in Article 4.4 and Exhibit C, Section 1.4: \$100.00 per Customer per day.

18. Failure to properly cover materials in Collection vehicles as set forth in Exhibit C, Section 1.6: \$300.00 per incident.

19. Failure to correct leakage of fluids from Collection vehicle upon notice from the County and prior to resuming use of the vehicle within the County as set forth in Exhibit C, Section 1.6: \$300.00 per incident.

20. Failure to clean up spillage or litter occurring during Collection as set forth in Exhibit C, Section 1.6: \$100.00 per occurrence.

21. Failure to have a vehicle properly licensed, registered and inspected as set forth in Exhibit C, Section 1.2: \$100.00 per incident.

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22. Exceeding the weight limitations by the standard used by California Highway Patrol (CHP) (i.e. currently a maximum variance of 200 pounds is allowed by CHP) as set forth in the State of California Vehicle Code as set forth in Exhibit C, Section 1.2: \$1,000 per incident.
23. Failure to clean Collection vehicles once per week as set forth in Exhibit C, Section 1.2: \$100.00 per incident.
24. For each occurrence over five (5) per calendar year of excessive noise as set forth in Exhibit C, Section 1.5: \$300.00.
25. Failure to maintain properties, facilities, and equipment in clean, safe, and sanitary manner, upon notice by County as set forth in Exhibit C, Section 1.8: \$100.00 per day.

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4565 **Segregation and Delivery of Collection Materials**

26. Failure to keep Solid Waste and Recyclable Materials segregated once Delivered for Collection by Customers, and without County approval as set forth in Article 3.2C and Exhibit A, Section 1.0: \$1,000 per incident.
27. Failure to Deliver Collected Solid Waste to the Designated Disposal or Transfer Facility, and without County approval as set forth in Article 3.2C: \$1,000 per incident.
28. Failure to Deliver Collected Green Waste to the Designated Green Waste Processing Facility, and without County approval as set forth in Article 3.2C: \$1,000 per incident.
29. Delivery of Collected Recyclable Materials to any facility or location, other than the Designated Recyclables Processing Facility without County approval as set forth in Article 4.4: \$1,000.00 per incident.
30. Failure to meet the requirement for a maximum of ten (10) percent Residue from total Single-Stream Recyclables Collected under this Agreement as set forth in Exhibit A, Section 1.0: \$1,000 per incident or amount charged to the County per incident by the Designated Recyclables Processing Facility, whichever is higher.

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4567 **Contractor Personnel and Liability**

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31. Failure to have a vehicle driver properly licensed as set forth in Exhibit C, Section 1.7: \$100.00 per incident per day.
32. Failure to perform background check on each driver at time of hire as set forth in Exhibit C, Section 1.7: \$100 per each driver

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33. Failure to repair damage to Customer property or other private property caused by or resulting from actions of the Contractor or its personnel within thirty (30) days of the date the damage was reported as set forth in Exhibit C, Section 1.5: \$100.00 per incident per location.

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4571 **Diversion Requirements**

34. Failure to achieve the Minimum Diversion Rate (MDR) for Collected materials measured every year for the duration of the Agreement and commencing on January 1, 2018 as set forth in Exhibit A, Section 1.0: \$10,000 per failure during any year period.

35. Failure to conduct Commercial Customer Site Inspections annually in accordance with Exhibit B, Section 3.0; \$250 per Commercial Customer per year

36. Failure to contact property managers, operators or home owner associations in accordance with Exhibit B, Section 3.0; \$250 per Commercial Customer per year.

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4573 **Payment and Reporting Requirements**

37. Failure to comply with the substantive requirements of the Lock Box Agreement ~~contained in Exhibit C~~; \$5,000 per incident.

38. Failure to maintain or submit documents and reports, other than regular monthly and annual reports listed in Article 7.2 A. - C., including Customer complaint logs as required under the terms of this Agreement after ten day notice: \$100.00 per incident per day.

39. Failure to maintain a Customer complaint log, or fraudulent record keeping or fraudulent information provided by the Contractor with regard to Customer complaint logging, tracking and resolution as set forth in Article 4.3: \$10,000 per incident.

40. Failure to provide monthly and annual reports in accordance with Article 7.2 A. – C. within five (5) business days of the stipulated deadlines: \$100 per incident per day.

41. Failure to report or clean up any vehicle fluid spills to the County's satisfaction as set forth in Article 7.2 and Exhibit C, Section 1.6: \$1,000 per incident.

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4575 **All Other Contractor Obligations**

42. Failure to provide Customer service levels and route information to County upon request for County use related to resolution of Customer service, customer billing or other related service issues as set forth in Article 4.3: \$1,000 per occurrence.

43. Failure to provide detailed route maps and full Customer lists to County upon request to assist the County in negotiating or procuring future Collection Services as set forth in Article 9.8: \$10,000 per occurrence.

44. Failure to perform any other requirements of the Agreement not specifically stated in this Exhibit F, and not corrected or in the process of correction within twenty-four (24) hours of notice from the County: \$200.00 each.

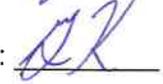
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4577 Above amounts may be adjusted by the County on each October 1, beginning with October 1,  
4578 2018 to reflect changes in the Consumer Price Index for the preceding twelve (12) month  
4579 period.  
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4581 In initialing this Exhibit F in the area provide below, representatives of each of the Parties  
4582 confirms their understanding of each of the above damages, and that each Party has consulted  
4583 legal counsel, and obtained adequate explanation of the Liquidated Damages prior to the  
4584 Effective Date.  
4585

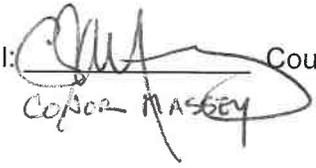
4586 Contractor: 

County: Belia Ramos

4587 Initial Here: 

Initial Here: 

4588 Approved as to form:

4591 Contractor legal counsel: 

County Counsel: 

4592 Initial Here: 

Initial Here: JMR

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EXHIBIT G  
INSTRUMENT FOR SECURING PERFORMANCE

CONTINUATION CERTIFICATE

In consideration of premium charged,

Philadelphia Indemnity Insurance Company hereby continues in force

BOND No. PB03203500009

Dated November 27, 2012

in the amount of \$750,000.00 Dollars

on behalf of Napa County Recycling and Waste Services, LLC

, as Principal, in favor of County of Napa

for the period beginning January 1, 2017

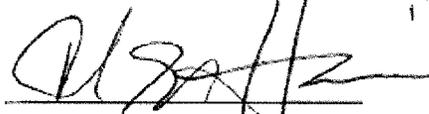
and ending January 1, 2018 subject to all terms and conditions of said bond;

PROVIDED that the liability of Philadelphia Indemnity Insurance Company shall not exceed in the aggregated amount above written, whether the loss shall have occurred during the term of said bond or during any continuation or continuations thereof, or partly during said term and partly during any continuation or continuations thereof.

SIGNED AND SEALED THIS December 27, 2016

Philadelphia Indemnity Insurance Company

By:



David G. Harris, Attorney in Fact

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PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

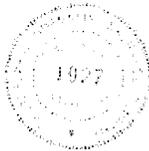
KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint David G. Harris, Julia Pitta, Stephanie Worden of Heffernan Insurance Brokers, as true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$25,000,000.00.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November, 2016.

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

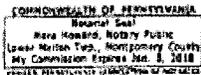
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICER THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2016.



(Seal)

Robert D. O'Leary Jr., President & CEO  
Philadelphia Indemnity Insurance Company

On this 14<sup>th</sup> day of November, 2016, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed



(Notary Seal)

Notary Public:

residing at:

Bala Cynwyd, PA

My commission expires:

January 8, 2018

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and this Power of Attorney issued pursuant thereto on this 14<sup>th</sup> day of November, 2016 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 27<sup>th</sup> day of DECEMBER, 2016.



Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa )

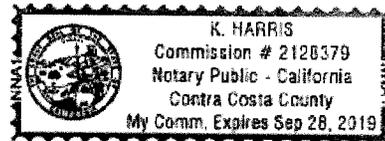
On 12/27/16 before me, K. Harris, Notary Public  
(insert name and title of the officer)

personally appeared DAVID G HARRIS  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



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## EXHIBIT H INSURANCE CERTIFICATES



NAPAREC-01

RCORRIE

### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/08/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Malloy Imrie & Vasconi Insurance Services, LLC 899 Adams Street Suite C St. Helena, CA 94574	<b>CONTACT NAME</b> PHONE (A/C. No. Ext): (707) 963-2777      FAX: (707) 963-4073 E-MAIL ADDRESS: myagency@mivinsurance.com INSURER(S) AFFORDING COVERAGE INSURER A: Navigators Insurance INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
--	--

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTD	TYPE OF INSURANCE	ADDL INSR	SUBP NO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIED PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES - EA occurrence \$ MED EXP (ANY AND PERSON) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPLE ADS \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED <input type="checkbox"/> AUTO ONLY <input type="checkbox"/> SCHEDULED AUTO <input type="checkbox"/> HIRED AUTO ONLY <input type="checkbox"/> NON-OWNED AUTO ONLY						COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: <input checked="" type="checkbox"/> RETENTIONS: 0			SF17EXC863232V	04/01/2017	04/01/2018	EACH OCCURRENCE \$      10,000,000 AGGREGATE \$      10,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY POLICE OFFICER, PARTNER, EXECUTIVE OFFICER/MEMBER EXCLUDED (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS BELOW						PER STATUTE    OTHER EL EACH ACCIDENT \$ EL DISBADE - SA EMPLOYEE \$ EL DISBADE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Proof of Excess Liability coverage

<b>CERTIFICATE HOLDER</b>  County of Napa County Executive Office 1195 3rd Street, Suite 310 Napa, CA 94558	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

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ACORD 25 (2016/03)

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AGENCY CUSTOMER ID: NAPAGRO-02

LOC #: \_\_\_\_\_

### ADDITIONAL REMARKS SCHEDULE

Page 2 of \_\_\_\_\_

<b>AGENCY</b> Hoffman Insurance Brokers		<b>NAMED INSURED</b> Napa Recycling & Waste Services, LLC P O Box 239 Napa, CA 94558	
<b>POLICY NUMBER</b> QL5268223 CA4489717, WC15893787		<b>EFFECTIVE DATE:</b> 04/01/2017 to 04/01/2018	
<b>CARRIER</b> National Union Fire Ins. Co. of Pittsburg, PA	<b>NAIC CODE</b> 19445		

#### ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM.**

**FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Remarks

Named Insured

Napa Recycling & Waste Services, LLC  
 Napa County Recycling & Waste Services, LLC  
 600 Tower Road Operations, LLC dba Valley Recycling & Disposal  
 Northern Recycling & Waste Services, LLC  
 Northern Recycling Operations & Waste Services, LLC  
 600 Tower Road Holdings, LLC  
 Northern Holdings, LLC  
 Northern Recycling LLC

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II - Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of

Insurance shown in the Declarations;  
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective 12:01 AM 04/01/2017 forms a part of Policy No. WC 015-89-3787

Issued to NAPA RECYCLING & WASTE SERVICES LLC

By NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization with whom you have a written contract that requires you to obtain this agreement from us, as regards any work you perform for such person or organization.

The additional premium for this endorsement shall be 2.00 % of the total estimated workers compensation premium for this policy.

WC 04 03 61  
(Ed. 11/90)

Countersigned by \_\_\_\_\_



Authorized Representative

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**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 04/01/2017 forms a part of

policy No. CA 448-97-17 issued to NAPA RECYCLING & WASTE SERVICES LLC

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT**

*This endorsement modifies insurance provided under the following:*

BUSINESS AUTO COVERAGE FORM

**SCHEDULE**

**ADDITIONAL INSURED:**

ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS BUT ONLY TO THE EXTENT OF SUCH PERSON OR ORGANIZATIONS LIABILITY ARISING OUT OF THE USE OF A COVERED AUTO.

I. SECTION II - LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured, is amended to add:

d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

- (1) The coverage and/or limits of this policy; or
- (2) The coverage and/or limits required by said contract or agreement.

  
\_\_\_\_\_  
Authorized Representative or  
Countersignature (in States Where  
Applicable)

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**EXHIBIT I**  
**COMPANY GUARANTEE**

LIMITED LIABILITY COMPANY AGREEMENT  
OF  
NAPA COUNTY RECYCLING & WASTE SERVICES, LLC

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, 15 U.S.C. § 15b ET SEQ., AS AMENDED (THE "**FEDERAL ACT**"), IN RELIANCE UPON ONE (1) OR MORE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE FEDERAL ACT. IN ADDITION, THE ISSUANCE OF THIS SECURITY HAS NOT BEEN QUALIFIED UNDER THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968, OR ANY OTHER STATE SECURITIES LAWS (COLLECTIVELY, THE "**STATE ACTS**"), IN RELIANCE UPON ONE (1) OR MORE EXEMPTIONS FROM THE REGISTRATION PROVISIONS OF THE STATE ACTS. IT IS UNLAWFUL TO CONSUMMATE A SALE OR OTHER TRANSFER OF THIS SECURITY OR ANY INTEREST THEREIN TO, OR TO RECEIVE ANY CONSIDERATION THEREFOR FROM, ANY PERSON OR ENTITY WITHOUT THE OPINION OF COUNSEL FOR THE COMPANY THAT THE PROPOSED SALE OR OTHER TRANSFER OF THIS SECURITY DOES NOT AFFECT THE AVAILABILITY TO THE COMPANY OF SUCH EXEMPTIONS FROM REGISTRATION AND QUALIFICATION, AND THAT SUCH PROPOSED SALE OR OTHER TRANSFER IS IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL SECURITIES LAWS. THE TRANSFER OF THIS SECURITY IS FURTHER RESTRICTED UNDER THE TERMS OF THE LIMITED LIABILITY COMPANY AGREEMENT GOVERNING THE COMPANY, A COPY OF WHICH IS ON FILE WITH THE COMPANY.

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**LIMITED LIABILITY COMPANY OPERATING  
AGREEMENT  
OF  
NAPA COUNTY RECYCLING & WASTE  
SERVICES, LLC**

---

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF Napa County Recycling & Waste Services, LLC, ("Agreement") is entered into as of 1/31 2005, by and between Garbarino Waste Industries, LLC, a California limited liability company, Garaventa Enterprises, Inc., a California corporation, Pestoni Napa County, LLC, a California limited liability company and B & K Napa Waste, LLC, a California limited liability company. The capitalized terms used herein shall have the respective meanings assigned to such terms in Article XII. The parties to this Agreement hereby rescind any and all prior operating agreements adopted for the operation, management or any other aspect of the Company.

**ARTICLE I  
FORMATION**

1.01 Formation

In conjunction with the Articles of Organization of the Company filed with the Secretary of State of California on January 31, 2005, the Members hereby form a California limited liability company pursuant to the provisions of the Beverly-Killea Limited Liability Company Act of California ("California Act") and this Agreement. In connection therewith, the Members shall execute the necessary formation documents in accordance with the California Act, which shall be duly filed with the Office of the California Secretary of State. The Members shall also execute, acknowledge and/or verify such other documents and/or instruments as may be necessary and/or appropriate in order to form the Company under the California Act and/or to continue its existence in accordance with the provisions of the California Act.

1.02 Names and Addresses

The name of the Company is "Napa County Recycling & Waste Services, LLC." The registered office of the Company in the State of California shall be at 3216 Vichy Avenue, City of Napa, County of Napa, California 94558. The name and address of the registered agent for the Company in the State of California shall be Craig F. Andersen, Esq., Andersen & Bonnifield, 1320 Willow Pass Road, Suite 500, Concord, California 94520. The principal office of the Company in the State of California shall be at 3216 Vichy Avenue, Napa, California 94558. The names and addresses of the Members are as follows:

Garaventa Enterprises, Inc.  
4080 Mallard Drive  
P.O. Box 5397  
Concord, CA 94520

Garbarino Waste Industries, LLC  
565 Jacoby Street  
San Rafael, CA 94901

Pestoni Napa County, LLC  
P. O. Box 382  
St. Helena, CA 94574  
Attn: Robert and Marvin Pestoni

B & K Napa Waste, LLC  
3216 Vichy Ave  
Napa, CA 94558

#### 1.03 Nature of Business

The express, limited and only purposes of the Company shall be

- (a) to prepare a proposal to provide waste collection, hauling, disposal, recycling and other related activities to the County of Napa, and to other jurisdictions if agreed upon by all of the Members;
- (b) to accept and fully perform all of the responsibilities, duties, covenants and conditions required to be performed by the County of Napa or other jurisdictions if the Company's proposal is accepted by the County of Napa or by other jurisdictions; and
- (c) to conduct such other activities with respect to waste collection, disposal, recycling and related activities as are necessary or appropriate to accomplish the foregoing purposes.

#### 1.04 Fiduciary Duties

(a) Fiduciary Duties. For purposes of this section 1.04, the word "Member" shall mean any Member or a Member's Affiliate. In view of the limited purposes of the Company, no Member shall have any obligations (fiduciary or otherwise) with respect to the Company or to the other Member insofar as making other investment opportunities available to the Company or to the other Members, except as expressly set forth herein. Each Member may, notwithstanding the existence of this Agreement, engage in whatever activities such Member may choose, except for Competitive Activities, which the Members agree to refrain from performing, without having or incurring any obligation to offer any interest in such activities to the Company or to the other Members. Neither this Agreement nor any activities undertaken pursuant hereto shall prevent any Member from engaging in such non-Competitive Activities, and the fiduciary duties of the

Members to each other and to the Company shall be limited solely to, and the term "Competitive Activities" shall mean, those activities arising from, relating to or interfering with the purposes of the Company described in Section 1.03 above. Notwithstanding the foregoing, any Member may conduct a Competitive Activity with the unanimous written approval of all Members. To the extent any provision herein violates any California state or federal anti-trust laws, it shall be considered unenforceable and non-binding on the Members and shall not be performed by the Members without otherwise affecting the enforceability of this Agreement.

(b) Nothing contained herein shall prevent any Member's or Member's Affiliates, constituent members, partners, shareholders or representatives, except for the Operations Manager, from devoting time to other businesses which are non-Competitive Activities. The Operations Manager shall be permitted to passively invest or otherwise hold a passive interest in a non-Competing Activity. The Members hereby acknowledge that the Members' respective businesses as they exist on the date of this Agreement are not Competitive Activities, and the Members further acknowledge that the Members' expansion of current businesses or creation of new businesses after the date of this Agreement does not, by itself, constitute a Competitive Activity. Attached hereto and labeled Exhibit A is a list of businesses and activities conducted by several of the Members which all Members hereby agree and confirm do not constitute Competitive Activities. Said list is not intended to be a complete and final listing of Members' non-Competitive Activities, and the absence of a business or activity from said list shall not by itself disqualify it from being considered a non-Competitive Activity.

#### 1.05 Term of Company

The term of the Company shall commence on the date the articles of formation for the Company are filed with the California Secretary of State. The existence of the Company as a separate legal entity shall continue until the cancellation or dissolution of the Company.

## **ARTICLE II** **MANAGEMENT RIGHTS IN MEMBERS**

#### 2.01 Management Rights

##### (a) Management Rights in Members.

Except as otherwise provided in this Agreement or as otherwise agreed, management of the Company is vested in the Members in proportion to their Percentage Interest in accordance with this Agreement.

##### (b) Exercise of Company Powers.

Except as otherwise provided in this Agreement, all powers of the Company are exercised by or under the authority of the Members and the business and affairs of the Company are managed under the direction of the Members in accordance with this Agreement.

(c) Alteration of Management Responsibilities.

Management responsibilities may not be altered except by the action of the Members representing a majority of the Percentage Interest at a meeting called on written notice expressly describing alteration of management responsibilities as one of the purposes of the meeting, or by written Action of all Members in accordance with the California Act expressly setting forth the alteration of management responsibilities.

(d) Managing Member Compensation.

Members may receive compensation as determined by all Members for services provided in the management of the Company.

(e) Reimbursement of Expenses.

Each Member is entitled to reimbursement from the Company of all expenses of the Company reasonably incurred and paid by the Member on behalf of the Company.

(f) [Intentionally Left Blank.]

(g) Company Books and Records.

Upon approval of Members representing a majority of Percentage Interest, the Members may employ a competent person to be responsible for authenticating the records of the Company, including keeping correct and complete books of account that show accurately at all times the financial condition of the Company; safeguarding all funds, notes, securities, and other valuables that may from time to time come into possession of the Company; and depositing all funds of the Company with such depositories as the Members designate. Such employee may have other duties that the Members representing a majority of Percentage Interest from time to time jointly prescribe, but under no circumstances does such employee have any of the rights, powers, responsibilities, or duties of a Member of the Company. Any person responsible for the above-described duties may be terminated at any time by Members representing a majority of Percentage Interest, and Members representing a majority of Percentage Interest may restrict the duties and/or authority of the person responsible for these duties at any time.

(h) Spousal Consent.

Each married Member, if any, shall cause their spouse to execute and deliver the Spousal Consent immediately following the Members' signatures to this Agreement. Each such executed Spousal consent shall be kept with the Company's books and records.

2.02 Primary Responsibilities of Operations Manager

There is hereby established the office of "**Operations Manager,**" the duties and obligations of which are set forth herein and in any written employment contract between the

Company and the Operations Manager. Greg Kelley is hereby designated as the initial Operations Manager, subject to the terms and provisions of a separate employment contract. Except as otherwise provided in this Agreement or in any written employment contract, the Operations Manager, shall be responsible to execute the management of the overall business and affairs of the Company and its day-to-day operations as determined and defined by the Members. Any and all agreements, contracts and other documents or instruments affecting or relating to the day-to-day business and affairs of the Company may be executed on the Company's behalf by the Operations Manager alone and without execution by the other Members provided that the amount involved for any such agreement or other document is within the parameters established in the Budget (as the same may be revised in accordance with the provisions of Section 2.04 below) or otherwise approved by the Members. The Operations Manager shall use his best efforts to carry out the day-to-day business and affairs of the Company as determined and defined by the Members and shall devote such time to the Company as is necessary in the reasonable discretion of the Members, for the efficient operation of the day-to-day business and affairs of the Company. The Operations Manager shall be a full-time employee. The Company and the Operations Manager shall execute a written employment contract.

To permit the Members to have adequate current information regarding the business activities of the Company, Operations Manager shall make available to the Members information and documentation which will enable them to determine, on a monthly and quarterly basis, the financial condition of the Company and results of its operations, progress as measured against the Budget, and all issues (not anticipated at the date of this Agreement) which are likely to have a material adverse effect on the business activities of the Company. Copies of all significant documents pertaining to the business activities of the Company, shall be furnished to each of the Members with the monthly and/or quarterly report which is furnished after the documents are created and/or received by the Company.

Without limiting the Operations Manager's authority set forth above in this Section 2.02, but subject to the restrictions on the Operations Manager's authority set forth below in Sections 2.03 and 2.04, the Operations Manager (on behalf and at the expense of the Company) shall have the right, power, responsibility, and authority to undertake (or cause to be undertaken) any and all of the following:

(a) Any and all normal business activities with respect to waste disposal, recycling and other related activities that may be reasonably required in connection with the normal operation of the waste disposal and recycling agreement by and between the Company and the County of Napa (the "County of Napa Agreement"), and with any other jurisdiction with which the Members decide the Company shall conduct business;

(b) The preparation and submission for the review and approval of the Members, of the Business Plan and Budget, and once approved, the implementation of any such Business Plan and Budget as provided in Section 2.04;

(c) Subject to Section 2.03, the procurement of any and all interim, permanent, and other financing and refinancing for the business activities of the Company, and the encumbrance of all or any portion of the assets of the Company with any liens, and any other instruments or documents a prospective lender may require to secure any and all such financing

procured by the Company, so long as said financing is outlined and delineated in the Business Plan and Budget. To the extent that any and all such financing is not outlined and delineated in the Business Plan and Budget, such financing shall require the Members' prior approval and, if it so qualifies, shall be considered a "Major Decision" under Section 2.03;

(d) The protection and preservation of all rights, titles and interests of the Company in and to the County of Napa Agreement or such other agreements with any other jurisdiction with which the Members elect to conduct business;

(e) The selection, employment, supervision, coordination, and discharge of any and all management, office, service, repair, mechanics, consultants, workers subcontractors, brokers, appraisers, bookkeepers, (but not as to attorneys and accountants of the Company, which shall be left to a majority of the Percentage Interest,) clerical personnel, consultants, and other persons or entities necessary or appropriate to render services to the Company in order to facilitate the accomplishment by the Company of its purposes, on such terms and for such compensation as the Operations Manager shall reasonably determine;

(f) The general supervision of the business activities of the Company including the County of Napa Agreement or agreements with any other jurisdiction with which the Members determine to conduct business;

(g) The preparation and supervision of the preparation of any written documentation and reports as may be required for the use of any public agency, including but not limited to the County of Napa and State of California in connection with the operation of the business activities of the Company;

(h) The procurement of any and all licenses and permits including, without limitation, any business or other licenses that may be required to be obtained by the Company in connection with the business activities of the Company;

(i) In accordance with the terms of this Agreement, (i) the payment with Company funds of all Company expenses (including, without limitation, payments to employees, independent contractors, subcontractors, manufacturers, and suppliers performing or providing equipment, services, products and materials for the Company; taxes, special assessments, and similar obligations imposed against the business activities of the Company or any Company property; insurance; utility payments; and principal and interest payments on any financing for the Company); (ii) the performance of any and all accounting functions of the Company and the making of all decisions relative to Company accounting including, without limitation, determining the source and amount of Company disbursements; and (iii) the collection and receipt of any and all funds for the benefit of the Company;

(j) The management of the Company's cash assets including, without limitation, short-term investments thereof in interest-bearing accounts, United States governmental securities and certificates of deposit;

(k) The compliance by the Company with the terms and conditions of all contracts, leases, and other agreements to which the Company is a party or which otherwise affect the Company, or the business of the Company;

(l) Subject to Section 2.06, the procurement and maintenance, from Company funds, of any and all contracts of insurance for the protection of the Company, the Members, and/or the conservation of the assets of the Company;

(m) Except as otherwise provided herein, the execution and delivery on behalf of the Company of any and all contracts, agreements, leases, and/or documents that the Operations Manager reasonably determines are necessary or desirable to carry out the day-to-day business and affairs of the Company, and the exercise and enforcement, on behalf of the Company, of the Company's rights, privileges, prerogatives, and discretions under any such contract, agreement, or lease to which the Company is a party or which otherwise affect the business of the Company; and

(n) The performance of any and all other services and/or functions necessary or desirable, as reasonably determined by the Operations Manager, in connection with the management of the business and affairs of the Company; provided, however, that such services and/or functions are not prohibited under this Agreement.

#### 2.03 General Limitations

Notwithstanding any provision set forth in this Article II (or elsewhere in this Agreement), neither the Operations Manager nor any Member shall have the authority to undertake any of the following activities, or other matters (each being a "**Major Decision**") without the prior written consent of all of the Members :

(a) The bulk sale or other disposition of all or substantially all of the assets of the Company;

(b) The procurement by the Company of any financing or refinancing, or any other encumbrance of the assets of the Company with any deeds of trust, mortgages or liens;

(c) The amendment of this Agreement;

(d) Except to the extent the dissolution of the Company is mandated by this Agreement or any applicable law which requires dissolution, the dissolution and winding up of the Company;

(e) Except as otherwise expressly permitted under this Agreement, the entry into by the Company of any contract with any Member or any Affiliate of any Member and with respect to any such contract, the making of any amendment, modification, and/or rescission thereof, all such issues shall require a vote of at least 75% of the Percentage Interest, notwithstanding anything to the contrary contained herein; the declaration of a default thereunder; the institution, settlement and/or compromise of a claim with respect thereto; the

waiver of any rights of the Company against the other party(ies) thereto; or the consent to the assignment of any rights and/or the delegation of any duties by the other party(ies) thereto;

(f) Unless done in conformity with Article VI or done in conformity with any other written agreement among all Members, the transfer of a Member's Interest in the Company;

(g) Subject to Article VI, the admission of an additional member into the Company;

(h) The use of the Company's capital or funds in any way other than for the Company's business and the use by the Company of any and all funds invested in the Company by the Members, all loan proceeds, and all sale or other proceeds not previously distributed to the Members for any purpose other than to benefit the Company;

(i) Subject any Company asset as security for any obligation of any Member or any Affiliate or other representative thereof, or commit to borrow money, or borrow any money except in accordance with the terms of this Agreement;

(j) The voluntary entry into or undertaking by the Company of any obligation or liability or the payment of any Company funds, except in accordance with the Budget and Business Plan or as required by any contract entered into in accordance with the terms of this Agreement;

(k) The extension by the Company of credit to or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;

(l) The release, settlement, compromise, assignment, or transfer of any claim of the Company if the amount involved exceeds Twenty Five Thousand Dollars (\$25,000);

(m) The commencement by the Company of any litigation or the submission by the Company of any claim to arbitration, unless the amount in dispute is less than Fifty Thousand Dollars (\$50,000);

(n) The confession of a judgment against the Company involving an amount in excess of Ten Thousand Dollars (\$10,000);

(o) The engagement by the Company in any activities that are inconsistent with the business purposes of the Company as set forth in Section 1.03; and

(p) Any other matter requiring the approval of all the Members in accordance with the terms of this Agreement.

(q) The use of an Affiliate to provide goods or services in connection with the Company.

(r) Obligating the Company to perform any agreement, or the Company's acquisition of any franchise, to perform waste hauling, disposal or recycling services for any prospective client, public or private; or obligating the Company to perform any collective bargaining agreement.

(s) Entering or amending any employment contract with the Operations Manager, which shall require a vote of 75% of the Percentage Interest, notwithstanding anything to the contrary contained herein.

If the Operations Manager or any Member requests the approval of the other Members of any of the matters described in this Section 2.03, the other Members shall endeavor to approve or reasonably disapprove the matter within ten (10) days after the request is received in writing. If the other Members fail to so approve or reasonably to disapprove any such matter within such ten (10) day period, then the matter in question shall be deemed disapproved. Notwithstanding anything to the contrary herein, the approval of the Members is not required for any matter if the requesting Member or the Operations Manager believes, in good faith and under standards of commercial reasonableness, that action without approval of the Members is immediately necessary as a result of an emergency (i) for the preservation or safety of a material asset of the Company, or (ii) for the safety of persons.

#### 2.04 Development of the Business Plan

In conjunction with the formation of the Company, the Operations Manager shall prepare and submit to the Members a plan for the efficient business activities of the Company. Only when said plan is approved by 100% of the Percentage Interest, including any revisions or amendments approved by 100% of the Percentage Interest ("the **Business Plan**"), shall such business plan be attached hereto as Exhibit "B". The Business Plan includes a narrative description of any activity proposed to be undertaken by the Company for the operation of waste collection, hauling, disposal and recycling services for the County of Napa, California, and to any other jurisdiction if agreed upon by the Members. The Business Plan shall also include an itemized budget (the "**Budget**") which shall be approved by the Members as amended or revised by approval of the Members.

The Operations Manager may, from time to time, prepare and submit for the review and approval of the Members holding 100% of the Percentage Interest, one (1) or more revised Business Plans at such times as are reasonably necessary to inform the Members as to any material developments with respect to the Company and/or the business activities of the Company. In addition, the Operations Manager shall prepare on a quarterly basis within fifteen (15) days after the end of each calendar quarter, a revised Budget reflecting the variance (if any) between the original budget and the most recently revised Budget. The Operations Manager shall submit any revised Business Plan and/or Budget to the Members for their review and approval by all of the Members. The Business Plan (or Budget, as the case may be) last submitted to, and approved by, the Members shall become the Business Plan (or Budget, as the case may be) for all purposes of this Agreement.

The Operations Manager shall have the right to make expenditures in accordance with the Budget, but only to the extent that, in any calendar year, any such expenditures are not more than

the lesser of \$20,000.00 or five percent (5.0%) in excess of the amount set forth in the line item therefore in the Budget for such expenditure and not more than \$100,000.00 in excess of the aggregate Budget. The Operations Manager shall have the power and authority to move realized cost savings and contingency items, between line items, but any such moves shall be reported in a revised Budget (or revised Business Plan, as the case may be.) Cost savings shall be considered realized when the items included in the line item have been purchased or contracts executed for amounts which are, in the aggregate, less than the amount included in the line item. Amounts so expended shall be considered made in accordance with the Budget.

Irrespective of the Business Plan's provisions, the Operations Manager shall provide monthly reports ("**Reports**") to the Members. The Reports shall contain accurate sales and financial information.

#### 2.05 Insurance

The Operations Manager shall procure or cause to be procured at the expense and in the name of the Company, and thereafter maintain or cause to be maintained, in full force and effect at all times during the term of the Company, policies of insurance, deemed necessary or appropriate by the Operations Manager, with companies reasonably acceptable, in the judgment of the Operations Manager, for claims arising out of or relating to acts, omissions and events occurring during the term of this Agreement including, without limitation, the business activities of the Company and the activities of the Operations Manager and the Members on behalf of the Company. In no event shall the Operations Manager be required to procure or maintain (or cause to be procured or maintained) for the Company flood, earthquake or environmental impairment insurance for the Company unless such insurance is required by the County of Napa and/or State of California, by any other public entity that has jurisdiction over the Company's operations or if directed to do so by the Members.

#### 2.06 Liability and Indemnity

No Member (nor any officer or Operations Manager of the Company) shall be liable or accountable in damages or otherwise to the Company or to the other Members for any error of judgment or any mistake of fact or law or for anything that such Member (and/or such officer, including the Operations Manager) may do or refrain from doing hereafter, except in the case of willful misconduct or gross negligence. To the fullest extent permitted by law, the Company hereby indemnifies and agrees to defend, protect and hold each Member (and each such officer or Operations Manager) wholly harmless from and against any loss, expense or damage suffered by such Member (and/each such officer or Operations Manager) by reason of anything which such Member (and/or such officer or Operations Manager) may do or refrain from doing hereafter for and on behalf of the Company and in furtherance of its interest; provided, however, the Company shall not be required to indemnify, defend, protect or hold harmless any Member (and/or any officer or Operations Manager) from any loss, expense or damage which such Member (and/or such officer or Operations Manager) may suffer as a result of such Member's (and/or such officer's or Operations Manager's) willful misconduct or gross negligence in performing or in failing to perform such Member's (and/or such officer's or Operations Manager's) duties hereunder.

## 2.07 Designation of Officers

The Members may, from time to time, jointly approve and designate officers of the Company and delegate to such officers such authority and duties as the Members may deem advisable and may assign titles (including, without limitation, chief executive officer, president, vice-president, secretary and/or treasurer) to any such officer. Unless the Members otherwise determine, if the title assigned to an officer of the Company is one commonly used for officers of a business corporation formed under the California Act, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are customarily associated with such office pursuant to the California Corporation Law. Any number of titles may be held by the same officer. Any officer to whom a delegation is made pursuant to the foregoing shall serve in the capacity delegated unless and until such delegation is revoked by the Members or such officer resigns.

## 2.08 Meetings

The Members are not required to hold meetings on any regular basis. Meetings may be called upon the written request of the Operations Manager or any Member upon at least five (5) days' prior written notice for the purpose of discussing and/or voting on Company matters. Any such meetings shall be held during normal business hours either telephonically, at any other location agreed upon by the Members representing a majority of the Percentage Interest, or at the principal office of the Company in California on such day and at such time as are reasonably convenient for a majority of the Members. The Operations Manager may select a day and time for any such meeting if the Members do not agree on the day and time for such meeting within forty-eight hours after such agreement is requested by any Member. A quorum for a meeting shall consist of those Members present representing a majority of the Percentage Interest as that term is defined in Article XII of this Agreement. The Members present at the meeting which represent a majority of the Percentage Interest shall be entitled to approve or to disapprove any matter which comes before the meeting, whether or not such matter was described in any notice of the meeting. Minutes of each such meeting, reasonably describing any action or approval given at such meeting, shall be distributed to all Members within five (5) days after the meeting. In lieu of a meeting, Members may conduct business by written Action signed by all Members to the extent permitted by the California Act.

## 2.09 Removal and Replacement of Operations Manager.

Those Members representing seventy five percent (75%) of the Percentage Interest as defined in Article XII of this Agreement may remove the Operations Manager as Operations Manager of the Company at any time subject to the terms and conditions of the written management contract referenced in Section 2.02.

**ARTICLE III**  
**MEMBER'S CONTRIBUTIONS TO COMPANY**

3.01 Initial Cash Contributions

The following Member's initial capital contribution shall be One Thousand Dollars (\$1,000.00): Garaventa Enterprises, Inc. and Pestoni Napa County, LLC, Garbarino Waste Industries, LLC and B & K Napa Waste, LLC.

The contributions of each party under this Section shall be credited to that party's Capital Account and to its Unrecovered Contribution Account as of the date when made.

3.02 [This Section Intentionally Left Blank]

3.03 Cash Flow Deficit Contributions

If the majority of the Members determine, in their reasonable discretion, that additional funds are necessary for the Company to meet its current or projected financial requirements, then the Operations Manager shall deliver written notice of such actual or projected cash deficit to the Members, which notice shall summarize, with reasonable particularity, the Company's actual and projected cash obligations, cash on hand, and projected sources and amounts of future cash flow, and which shall specify a contribution date ("**Contribution Date**") (which shall not be less than ten (10) days following the effective date of such notice) upon which the Members shall be obligated to contribute to the capital of the Company, in cash, the funds necessary to satisfy such cash deficit in accordance with the remaining provisions of this Section 3.03. The cash deficit shall be funded by the Members in proportion to their respective Percentage Interests. Any and all contributions made to the capital of the Company by any Member pursuant to this Section 3.03 shall be credited to each of the Capital Account and Unrecovered Contribution Account of such Member as and when any such contribution is made.

3.04 Remedy for Failure to Contribute

If any Member (a "Non-Contributing Member") fails to contribute all or any portion of the capital required to be contributed by such Member pursuant to Sections 3.01 or 3.03 by the Contribution Date, the Operations Manager shall within five days after said failure notify in writing each other Member who has timely made the required capital contribution ("Contributing Member"), of the total amount of Non-Contributing Member capital contributions not made (the "Additional Capital Shortfall"), and shall specify a number of days within which each Contributing Member may make an additional capital contribution, which shall not be less than an amount bearing the same ratio to the amount of Additional Capital Shortfall as the Contributing Member's Capital Account balance bears to the total Capital Accounts of all Non-Contributing Members. If the total amount of Additional Capital Shortfall is not so contributed, the Operations Manager may use any reasonable method to provide Members the opportunity to make additional capital contributions, until the Additional Capital Shortfall is as fully contributed as possible. Following the Contributing Members' making of such additional Capital Contributions, each Member's Percentage Interest shall be adjusted to reflect the ratio that the Member's Capital Account bears to the total Capital Accounts of all of the Members.

### 3.05 Capital Contributions in General

Except as otherwise expressly provided in this Agreement, (a) no part of the contributions of any Member to the capital of the Company may be withdrawn by such Member, (b) no Member shall be entitled to receive interest on such Member's contributions to the capital of the Company, (c) no Member shall have the right to demand or receive property other than cash in return for such Member's contribution to the Company, (d) no Member shall be required or be entitled to contribute additional capital to the Company other than as permitted or required by this Article III, and (e) all capital contributions, including those sums paid by Contributing Members, shall be paid in cash only.

## ARTICLE IV ALLOCATION OF PROFITS AND LOSSES

### 4.01 Net Losses

Net Losses of the Company shall be allocated to the Members in the following order of priority:

(a) First, to the Members in proportion to, and to the extent of, their respective positive Capital Account balances, if any; provided, however, if such Net Losses do not equal or exceed the aggregate positive balances in the Capital Accounts of all of the Members, then such Net Losses shall be allocated among the Members, in such proportions as would result, as closely as possible, in the respective Capital Account balances of the Members as of the end of the fiscal year (after debiting and crediting Capital Accounts for all Net Profits and Net Losses for the fiscal year) equaling the amount of distributions the Members would receive if an amount equal to the aggregate balance of the Capital Accounts of all of the Members (as determined above) were distributed in accordance with the provisions of Section 5.01; and

(b) Thereafter, to the Members in proportion to their respective Percentage Interests.

### 4.02 Net Profits

Net Profits of the Company shall be allocated to the Members in the following order of priority:

(a) First, to the Members in proportion to, and to the extent of, the negative balance, if any, standing in each such Member's Capital Account; and

(b) Thereafter, to the Members in such proportions as would result, as closely as possible, in the respective Capital Account balances of the Members as of the end of the fiscal year (after debiting and crediting Capital Accounts for all Net Profits and Net Losses for the fiscal year) equaling the amount of distributions the Members would be entitled to receive if an amount equal to the aggregate positive balances of the Capital Accounts of all of the Members (as determined above) were distributed in accordance with the provisions of Section 5.01.

#### 4.03 Special Allocations

Notwithstanding any other provision of this Agreement, no allocation of Net Losses shall be made to any Member to the extent such an allocation would cause or increase the deficit balance standing in such Member's Capital Account (in excess of such Member's allocable share of minimum gain and after taking into account any adjustments set forth in Treasury Regulation Section 1.704(b)-1(b)(2)(ii)(d)) and any such Net Losses shall instead be allocated one hundred percent (100%) to the other Members. In addition, items of income and gain shall be specially allocated to the Members in accordance with the qualified income offset provisions set forth in Treasury Regulation Section 1.704-1(b)(2)(ii)(d). Notwithstanding any other provision in this Article IV, (i) any and all "nonrecourse deductions" (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Company shall be allocated to the Members in proportion to their respective Percentage Interests, and (ii) each Member shall be specially allocated items of Company income and gain in accordance with the minimum gain chargeback requirements set forth in Treasury Regulation Sections 1.704-2(f).

#### 4.04 Curative Allocations

The effect of the limitation on the amount of Net Losses and the qualified income offset provision set forth in the first two (2) sentences of Section 4.03 above shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to this Article IV, so that the net amount of any items so allocated and the Net Profits, Net Losses and all other items allocated to each Member pursuant to this Article IV shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article IV if such special allocations had not occurred.

#### 4.05 Compliance with Code

The foregoing provisions of this Article IV relating to the allocation of Net Profits and Net Losses, and other Company deductions, income, and gain, are intended to comply with Section 704(b) of the Code and the Treasury Regulations promulgated thereunder and shall be interpreted and applied in a manner consistent therewith.

### ARTICLE V DISTRIBUTION

#### 5.01 Distribution of Cash Flow

Cash Flow of the Company shall be distributed to the Members in the following order of priority:

- (a) First, to the Members in proportion to, and to the extent of, the positive balances standing in their respective Unrecovered Contribution Accounts, if any; and
- (b) Thereafter, to the Members in proportion to their respective Percentage Interests.

Cash Flow shall be determined and distributed on a quarterly basis or at such other times as those Members representing a majority Percentage Interest determine that funds are available therefor, taking into account the reasonable business needs of the Company.

#### 5.02 Limitations on Distributions

Notwithstanding any other provision contained in this Agreement, the Company shall not make a distribution of Cash Flow (or other proceeds) to any Member if such distribution would violate the California Act or any other applicable law or cause a dissolution of the Company under such laws or the Code.

#### 5.03 In-Kind Distribution

Assets of the Company (other than cash) shall not be distributed in kind to the Members without the prior written approval of all of the Members. If any assets of the Company are distributed to the Members in kind, then for purposes of this Agreement, such assets shall be valued on the basis of the agreed upon fair market value thereof (without taking into account Section 7701(g) of the Code) on the date of distribution, and any Member entitled to any interest in such assets shall receive such interest as a tenant-in-common with the other Member(s) so entitled with an undivided interest in such assets in proportion to their respective Capital Accounts (after taking into account all Capital Account adjustments, including any book-up or book-down caused by such distribution) or as such Members may otherwise unanimously agree. Upon such distribution, the Capital Accounts of the Members shall be adjusted to reflect the amount of gain or loss that would have been allocated to the Members pursuant to the appropriate provisions of this Agreement had the Company sold the assets being distributed for their agreed upon fair market value (taking into account Section 7701(g) of the Code) immediately prior to their distribution.

### **ARTICLE VI** **RESTRICTIONS ON TRANSFERS OF COMPANY INTERESTS**

#### 6.01 Membership Approval Prior to Transfer.

(a) Conditions for Transfer of Members' Interest. Except as expressly provided in this Agreement, a Member shall not transfer any part of the Member's Interest in the Company, whether now owned or later acquired, unless (i) the other Members unanimously approve the transferee's admission to the Company as a Member upon such transfer and (ii) the Member's Interest to be transferred, when added to the total of all other Members' Interests transferred in the preceding 12 months, will not cause the termination of the Company under the California Act or the Code; and (iii) any necessary written approval has been obtained from any public entity that requires such approval. Except for security interests and pledges required by lenders as a condition to financing Company business, no Member may encumber or permit or suffer any encumbrance of all or any part of the Member's Interest in the Company unless such encumbrance has been approved by the unanimous vote of the Members. Any transfer or encumbrance, or attempt thereof, of a Membership Interest, without such approval, shall be void.

(b) Changes in Members' Ownership Can Constitute "Transfer." Exceptions. Except for transfers described in this paragraph, the transfer of fifty per cent or more of an ownership interest in a Member (in one or more transactions) shall constitute a transfer for purposes of this Section 6.01. Notwithstanding the immediately foregoing sentence, i) a Member who is a natural person may transfer all or any portion of his or her Member's Interest to any revocable trust created for the benefit of the Member, or any combination between or among the Member, the Member's spouse, and the Member's issue; provided that the Member retains a beneficial interest in the trust and all of the voting interest included in such Member's Interest. A transfer of a Member's beneficial interest in such trust, or failure to retain such voting interest, shall be deemed a transfer of a Member's Interest. ii) as to Member Pestoni Napa County, LLC, the following individuals may become owners of Pestoni Napa County, LLC in any proportion without obtaining approval of any other Members: Robert Pestoni, Marvin Pestoni, Linda Sereni, Christy Abrau and Andy Pestoni. iii) as to Member Garbarino Waste Industries, LLC, the following individuals may become owners of Garbarino Waste Industries, LLC in any proportion without obtaining approval of any other Members: Sally Garbarino, Patty Garbarino, Judy Rosa, Joanne Pelfini, Sue Oranje, Angelina Garbarino, Joseph Garbarino and Angelina Garbarino 1988 Trust, Ray Garbarino, Dave Garbarino and Allen Garbarino; iv) as to B & K Napa Waste, LLC, the following individuals may become owners of such entity without obtaining approval of any other members: Carolyn Bacagalupi, Bill Bacagalupi, Medley Kelley, Greg Kelley, William Kelley, Andrew Kelley and McKenzie Kelley. Any individuals mentioned in Section 6.01(b)(ii, iii, and iv) of this Agreement shall be permitted to take any such interest in any of such named entities in a revocable trust for the benefit of such individual without obtaining approval of any other Members.

## ARTICLE VII REPRESENTATIONS AND WARRANTIES

### 7.01 Representations of Entity Members

As of the date hereof each of the statements in this Section 7.01 shall be a true, accurate and full disclosure of all facts relevant to the matters contained therein. As of the date hereof, Garaventa Enterprises, Inc. and Pestoni Napa County, LLC, Garbarino Waste Industries, LLC and B & K Napa Waste, LLC ("the Entity Members") hereby represent and warrants individually for themselves and not on behalf of any other Entity Member that that:

(a) It is a corporation or a limited liability company duly organized and in good standing under the laws of the State of California;

(b) The execution and delivery of this Agreement by the Entity Members has been duly authorized and this Agreement constitutes a valid and binding obligation of the Entity members enforceable in accordance with its terms;

(c) Each of the Entity Members has the requisite power and authority to enter into and carry out the terms of this Agreement;

(d) No approval of any board, court or other body is necessary in order to permit any of the Entity Members to enter into this Agreement;

(e) Except as otherwise known to or disclosed in writing to the other Members, to the Actual Knowledge of each of the Entity Members, there is no matter which would materially and adversely affect the business activities of the Company;

(f) Each Entity Member has not received any notice of, and to the Actual Knowledge of each Entity Member, there has been no violation of applicable law promulgated and/or enforced by any governmental agency, body, or subdivision affecting or relating to the business activities of the Company (or any portion thereof) including, without limitation, any building, use, or environmental law, ordinance, rule, requirement, or regulation;

(g) To the Actual Knowledge of each Entity Member, there is no pending or threatened proceeding in eminent domain, or otherwise, which would affect the Company (or any portion thereof);

(h) Any and all estimates, projections or other items pertaining to the business activities of the Company (or any portion thereof) that have been delivered to the other Members are based, to the Actual Knowledge of each of the Entity Members, upon current, accurate and complete information as of the time of their making (except as otherwise disclosed in writing by each of the Entity Members to the other Members at the time such item is delivered to the other Members), and there have been, to the Actual Knowledge of each of the Entity Members, no material changes in such information prior to the formation of the Company (except as otherwise disclosed in writing by any of the Entity Members to the other Members prior to the formation of the Company). Notwithstanding the foregoing, each of the Entity Members makes no representation that any such estimates or projections will be achieved; and

(i) To the Actual Knowledge of each Entity Member, no representation, warranty or covenant of each Entity Member in this Agreement, or in any document or certificate furnished or to be furnished by an Entity Member prior to the formation of the Company to the other Members pursuant hereto contains or will contain any untrue statement of material fact or omits or will omit to state material facts necessary to make the statements or facts contained therein not misleading. All such representations, warranties or statements of each Entity Member are based, to the Actual Knowledge of each Entity Member, upon current, accurate and complete information as of the time of their making, and there have been, to the Actual Knowledge of each Entity Member, no changes in such information at the time such information was provided to the other Members.

(j) No Entity Member is a party to a waste collection, transportation or recycling agreement.

7.02 [Intentionally Left Blank]

**ARTICLE VIII**  
**DISSOLUTION AND WINDING UP OF THE COMPANY**

8.01 Events Causing Dissolution of the Company

Upon any Member's bankruptcy, retirement, resignation, expulsion or other cessation to serve, the Company shall be dissolved and its affairs wound up, unless all of the remaining Members elect to continue the business of the Company. In addition, the Company shall be dissolved upon the first to occur of: (a) the sale, transfer or other disposition by the Company of all or substantially all of its assets and the collection by the Company of any and all Cash Flow derived therefrom; (b) the affirmative election of all of the Members to dissolve the Company; or (c) the entry of a decree of judicial dissolution pursuant to Section 17351 of the California Act. The admission of any new Member into the Company shall not dissolve the Company, but the business of the Company shall continue without interruption and without any break in continuity.

8.02 Winding Up of the Company

Upon the Liquidation of the Company caused by other than the termination of the Company under Section 708(b)(1)(b) of the Code (in which latter case the Company shall remain in existence in accordance with the provisions of such Section of the Code), the Liquidating Trustee shall proceed to the winding up of the affairs of the Company. During such winding up process, the Net Profits, Net Losses and Cash Flow distributions shall continue to be shared by the Members in accordance with this Agreement. The assets shall be liquidated as promptly as consistent with obtaining a fair value therefore, and the proceeds therefrom, to the extent available, shall be applied and distributed by the Company on or before the end of the taxable year of such Liquidation or, if later, within ninety (90) days after such Liquidation, in the following order: (a) first, to creditors of the Company (including Members who are creditors), in the order of priority as provided by law, including, without limitation, to the setting up of any reasonable reserves which the Liquidating Trustee deems necessary, in its reasonable discretion, for any contingent, conditional or unmatured liabilities or obligations of the Company (which shall be distributed as soon as practicable, as determined in the reasonable discretion of Liquidating Trustee, to the Members in the order of priority set forth in Section 5.01), and (b) thereafter, to the Members in the order of priority set forth in Section 5.01.

The Members believe and intend that the effect of making any and all liquidating distributions in accordance with the provisions of Section 5.01 (relating to distributions of Cash Flow) will result in such liquidating distributions being made to the Members in proportion to the positive balances standing in their respective Capital Accounts. If the immediately preceding sentence is for any reason inaccurate, then the Liquidating Trustee, upon the advice of tax counsel to the Company, is hereby authorized to make such amendments to the provisions of Article IV and/or to file such amended tax returns for the Company as may be reasonably necessary to cause such allocations to be in compliance with Section 704(b) of the Code and the Treasury Regulations promulgated thereunder.

### 8.03 Negative Capital Account Restoration

No Member shall have any obligation whatsoever upon the Liquidation of such Member's Interest, the Liquidation of the Company or in any other event, to contribute all or any portion of any negative balance standing in such Member's Capital Account to the Company, to any other Member or to any other person or entity.

## **ARTICLE IX** **BOOKS AND RECORDS**

### 9.01 Books of Account and Bank Accounts

The fiscal year and taxable year of the Company shall be the year ending December 31. The Company books and records shall be maintained on a cash or an accrual basis, as determined in the reasonable discretion of the Members. During normal business hours at the principal office of the Company in California all of the following shall be made available for inspection and copying by all of the Members at their own expense: (i) true and full information regarding the status of the business and financial condition of the Company including, without limitation, all ledgers, reports and statements pertaining to the Company's operations, expenses, obligations, income and deposit or savings account(s), (ii) any financial or other reports provided to any municipal, state or federal governmental entity, including but not limited to the County of Napa and/or the State of California, (iii) a current list of the name and last known business, residence or mailing address of each Member, (iv) a copy of this Agreement, the Articles of Organization and all amendments thereto, together with executed copies of any written powers-of-attorney pursuant to which this Agreement, the Articles of Organization and all amendments thereto have been executed, (v) the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member to the capital of the Company and which each Member has agreed to contribute in the future, (vi) the date upon which each Member became a member of the Company, and (vii) Reports prepared pursuant to Section 2.02. All receipts, funds and income of the Company shall be deposited into a bank account selected by the Members and disbursements from such account may be made by the Operations Manager.

### 9.02 Annual Reports and Tax Returns

Within ninety (90) days after the close of each fiscal year, the Operations Manager shall cause to be prepared and distributed to each Member, at the expense of the Company, financial statements, which shall include, without limitation, a balance sheet of the Company, an operating (income or loss) statement, and all other information customarily shown on financial statements prepared in accordance with generally accepted accounting principles, consistently applied. Within ninety (90) days after the close of each fiscal year, the Operations Manager shall cause to be prepared and timely filed and distributed to each Member, at the expense of the Company, all required federal and state Company tax returns. All tax returns shall be prepared by an independent certified public accountant experienced in the accounting for businesses which provide waste disposal and recycling services selected by those Members representing a majority of the Percentage Interest as that term is defined in Article XII of this Agreement.

9.03 Tax Matters Partner

Garaventa Enterprises, Inc. is hereby designated as the initial "Tax Matters Partner" of the Company as determined in accordance with the provisions of Section 6231(a)(7) of the Code and the Treasury Regulations promulgated thereunder. Garaventa Enterprises, Inc. shall remain the Tax Matters Partner until such time as those Members representing a majority of the Percentage Interest designate another Tax Matters Partner. The Tax Matters Partner hereby agrees, in its capacity as Tax Matters Partner, to keep the other Members reasonably informed as to the progress of any Company audits and proceedings with the Internal Revenue Service and to send promptly to the other Members copies of all material notices and correspondence with the Internal Revenue Service that are received by the Company. The other Members will be entitled to be present at and take part in all meetings and conferences with the Internal Revenue Service that relate to the Company. The Tax Matters Partner shall give notice to the other Members of its intention to settle any tax issues involving the Company, extend the statute of limitations, select a court or take an audit position and shall not take any such action for a period of ten (10) days after the effective date of any such notice to the other Members in order to allow the other Members sufficient time, at its option, to file a statement under Section 6224 of the Code which provides that the tax matters. The Tax Matters Partner does not have the authority to enter into a settlement agreement on behalf of the other Members. Upon the expiration of such ten (10) day period, Tax Matters Partner may take such action without any further notice to the other Members regardless of whether any such action has been approved by the other Members.

**ARTICLE X**  
**MISCELLANEOUS**

10.01 Notices

All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered or sent, as the case may be, by any of the following methods: (i) personal delivery, (ii) overnight commercial carrier, (iii) registered or certified mail, postage prepaid, return receipt requested, or (iv) telegraph, telex, telecopy, or cable. Any such notice or other communication shall be deemed received and effective upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if delivered by overnight commercial carrier, one (1) day following the receipt of such communication by such carrier from the sender, as shown on the sender's delivery invoice from such carrier; (c) if mailed, on the date of delivery as shown by the certification receipt; (d) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid; or (e) if given by telex or telecopy, on the date shown on the transmission verification printed at the time such telex or telecopy was sent. Any notice or other communication sent by cable, telex, or telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. Any reference herein to the date of receipt, delivery, or giving, or effective date, as the case may be, of any notice or communication shall refer to the date such communication becomes effective under the terms of this Section 11.01. Any such notice or other communication so delivered shall be addressed to the party to be served at the address for such party set forth in Section 1.02. Such addresses may be changed by giving written notice to the other parties in the manner set forth in this Section 11.01. Rejection or other refusal to accept or

the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice or other communication sent.

#### 10.02 Construction of Agreement

The Article and Section headings of this Agreement are used herein for reference purposes only and shall not govern, limit, or be used in construing this Agreement or any provision hereof. Time is of the essence of this Agreement. The provisions of this Agreement shall be construed and enforced in accordance with the laws of the State of California, and all rights, duties, obligations and remedies shall be governed by the California Act, and other California law. If any proceeding is brought by any Member against any other Member that arises out of, or is connected with, this Agreement, then the prevailing Member in such proceeding shall be entitled to recover reasonable attorneys' fees and costs. Each Member agrees to perform any further acts, and to execute and deliver (with acknowledgment, verification, and/or affidavit, if required) any further documents and instruments, as may be reasonably necessary or desirable to implement and/or accomplish the provisions of this Agreement and the transactions contemplated herein. Subject to the restrictions set forth in Article VI, Section 11.04, and subject to any other written agreement the Members might execute, this Agreement shall inure to the benefit of and shall bind the parties hereto and their respective personal representatives, successors, and assigns. Any agreement to pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of the Members and their respective successors and assigns, and such agreements and assumptions shall not inure to the benefit of the obligees of any other indebtedness or any other party, whomsoever, deemed to be a third-party beneficiary of this Agreement. Where the context so requires, the use of the neuter gender shall include the masculine and feminine genders, the masculine gender shall include the feminine and neuter genders, and the singular number shall include the plural and vice versa. Every provision of this Agreement is intended to be severable. This Agreement contains the entire understanding between the parties hereto with respect to their relative rights, duties and obligations as Members of the Company and supersedes any prior or contemporaneous understanding, correspondence, negotiations or agreements between them with respect thereto. No alteration, modification or interpretation hereof shall be binding unless in writing signed by all of the Members. This Agreement may be executed in multiple counterparts, all of which, taken together, shall constitute one (1) and the same Agreement binding upon the parties hereto. Each Member acknowledges that (i) each Member is of equal bargaining strength; (ii) each Member has actively participated in the drafting, preparation and negotiation of this Agreement; and (iii) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, any portion hereof or any amendments hereto.

#### 10.03 Company Intended Solely for Tax Purposes

The Members have formed the Company as a California limited liability company under the California Act, and do not intend to form a corporation or general or limited partnership or any other entity under California law or the law of any other state. The Members do not intend to be shareholders and/or partners to one another or to any third party. The Members intend the Company to be classified and treated as a partnership solely for federal and state income taxation purposes. Each Member agrees to act consistently with the foregoing provisions of this

Section 11.03 for all purposes, including, without limitation, for purposes of reporting the transactions contemplated herein to the Internal Revenue Service and all state and local taxing authorities.

#### 10.04 Investment Representations

Each Member agrees as follows with respect to investment representations:

(a) Each Member understands:

(i) That the Interests in the Company evidenced by this Agreement have not been registered under the Securities Act of 1933, 15 U.S.C. § 15b *et seq.*, the California Corporate Securities Law of 1968, or any other state securities laws (collectively, the “**Securities Acts**”) because the Company is issuing Interests in the Company in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering;

(ii) That the Company has relied upon the representation made by each Member that such Member’s Interest in the Company is to be held by such Member for investment; and

(iii) That exemption from registration under the Securities Acts would not be available if any Interest in the Company was acquired by a Member with a view to distribution. Each Member agrees that the Company is under no obligation to register the Interests in the Company or to assist the Members in complying with any exemption from registration under the Securities Acts if such Member should at a later date wish to dispose of such Member’s Interest in the Company.

(b) Accordingly, each Member hereby represents to the Company that such Member is acquiring such Member’s Interest in the Company for such Member’s own account, for investment and not with a view to, or for resale in connection with, any distribution thereof. No other person or entity has any interest in or right with respect to the Interest issued to such Member, nor has such Member agreed to give any person or entity any such interest or right in the future.

(c) Each Member recognizes that no public market exists with respect to the Interests and no representation has been made that such a public market will exist at a future date.

(d) Each Member hereby represents that such Member has not received any advertisement or general solicitation with respect to the sale of the Interests.

(e) Each Member acknowledges that such Member has a preexisting personal or business relationship with the Company or its officers, directors, or principal Interest holders, or, by reason of such Member’s business or financial experience or the business or financial experience of such Member’s financial advisors (who are not affiliated with the Company), could be reasonably assumed to have the capacity to protect such Member’s own interest in

connection with the acquisition of the Interests. Each Member further acknowledges that such Member is familiar with the financial condition and prospects of the Company's business, and has discussed with the Company the current activities of the Company. Each Member believes that the Interests are securities of the kind such Member wishes to purchase and hold for investment, and that the nature and amount of the Interests are consistent with such Member's investment program.

(f) Before acquiring any Interest in the Company, each Member has investigated the Company and its business and the Company has made available to each Member all information necessary for the Member to make an informed decision to acquire an Interest in the Company. Each Member considers itself to be a person or entity possessing experience and sophistication as an investor adequate for the evaluation of the merits and risks of such Member's investment in the Company.

(g) Each Member understands the meaning and consequences of the representations, warranties and covenants made by such Member set forth herein and that the Company has relied upon such representations, warranties and covenants. Each Member hereby indemnifies, defends, protects and holds wholly free and harmless the Company from and against any and all losses, damages, expenses or liabilities arising out of the breach and/or inaccuracy of any such representation, warranty and/or covenant. All representations, warranties and covenants contained herein shall survive the execution of this Agreement, the formation of the Company, and the liquidation of the Company.

#### 10.05 Arbitration

Any controversy between the Members involving the construction or application of any of the terms, covenants, or conditions of the Agreement shall be submitted to binding arbitration in Walnut Creek, California, on the request of any Member, and except as expressly otherwise provided herein. The parties stipulate and agree that the phrase "any controversy" shall not include the authority to overturn a decision made by the Member holding the greatest Percentage Interest when that Member's approval is required or if the terms of this Agreement require the approval of all of the Members. As an example, Section 2.01 (regarding a non-Major Decisions) calls for management of the Company being vested in the Members in proportion to their Percentage Interest. If the Members representing a majority of the Percentage Interest do not authorize a particular or proposed activity (which is not a Major Decision as described in Section 2.03), the failure of the Members representing a majority of the Percentage Interest to provide consent or authority to undertake the proposed activity is not subject to arbitration and the arbitrator has no authority to overturn the decision by the Members representing a majority of the Percentage Interest. The arbitration shall be conducted by a single arbitrator and shall comply with and be governed by the provisions of the commercial arbitration rules of JAMS. Each party shall pay an equal share of the arbitration costs and fees as they are incurred. The prevailing party in any such arbitration shall be entitled to recover from the other party its attorneys' fees and costs incurred in connection with the arbitration.

#### 10.06 Counterparts and Faxed Signatures

This Agreement may be signed in counterparts, and the Members consent to attaching their counterpart signatures to this Agreement. The Members further agree that their signatures on this Agreement may be delivered via facsimile copy and may be attached to this Agreement in counterparts by the use of facsimile signatures. No Member shall object to the use of counterpart and/ or faxed signatures to this Agreement.

#### 10.07 Proxies

A Member may appoint a proxy to vote or otherwise act for a Member pursuant to a written appointment form executed by the Member or the Member's duly appointed attorney-in-fact. The determination of whether a quorum exists shall be calculated by including the presence of (a) duly appointed proxy(ies) and the Percentage Interest the proxy(ies) represent(s). An appointment of a proxy is effective when received by the Operations Manager or by any other officer of the Company. A proxy appointment is valid for six months unless otherwise expressly stated in the appointment form.

### ARTICLE XI DEFINITIONS

#### 11.01 Actual Knowledge

The term "**Actual Knowledge**" means (i) in the case of Entity Members, the actual present knowledge of any of the Chief Executive Officer and Chief Financial Officer of the Entity Members without any duty to investigate (other than the review of any documents and/or files currently in the possession and/or control of the Chief Executive Officer and Chief Financial Officer of the Entity Members, and (ii) in the case of Individual Members, the actual present knowledge of the Individual Members without any duty to investigate (other than the review of any documents and/or files currently in the possession and/or control of the Individual Members).

#### 11.02 Affiliate

The term "**Affiliate**" means any person or entity which, directly or indirectly, through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity. The term "control" as used herein (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power (i) to vote fifty-one percent (51%) or more of the outstanding voting securities of such person or entity, or (ii) otherwise to direct management policies of such person by contract or otherwise.

#### 11.03 Agreement

The term "**Agreement**" means this Limited Liability Company Agreement of Napa County Recycling & Waste Services, LLC.

#### 11.04 California Act

The term "**California Act**" means the Beverly-Killea Limited Liability Act as set forth in Title 2.5, Chapter 1 et seq. of the California Corporations Code, as hereafter amended from time to time.

#### 11.05 Capital Account

The term "**Capital Account**" means with respect to each Member the amount of money contributed by such Member to the capital of the Company, increased by the aggregate fair market value at the time of contribution (as determined by the Managing Member) of all property contributed by such Member to the capital of the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), the aggregate amount of all Net Profits allocated to such Member, and any and all items of gross income or gain specially allocated to such Member pursuant to Section 4.03, and decreased by the amount of money distributed to such Member by the Company (exclusive of any guaranteed payment within the meaning of Section 707(c) of the Code paid to such Member), the aggregate fair market value at the time of distribution (as determined by the Managing Member) of all property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), the amount of any Net Losses charged to such Member, and any and all partnership and/or partner "nonrecourse deductions" specially allocated to such Member pursuant to Section 4.03.

#### 11.06 Cash Flow

The term "**Cash Flow**" means the excess, if any, of all cash receipts of the Company as of any applicable determination date in excess of the sum of (i) all cash disbursements (inclusive of any guaranteed payment within the meaning of Section 707(c) of the Code paid to any Member, and reimbursements made to any Member, but exclusive of distributions to the Members in their capacities as such) of the Company prior to that date, plus (ii) any reserve, determined in the reasonable discretion of the Managing Member, for anticipated cash disbursements that will have to be made before additional cash receipts from third parties will provide the funds therefore. Cash Flow shall be determined and distributed on a quarterly basis or at such other times as the Managing Member determines that funds are available therefore, taking into account the reasonable business needs of the Company.

#### 11.07 Code

The term "**Code**" means the Internal Revenue Code of 1986, as heretofore and hereafter amended from time to time (and/or any corresponding provision of any superseding revenue law).

#### 11.08 Company

The term "**Company**" means the limited liability company created pursuant to this Agreement and the filing of articles of formation with the California Secretary of State in accordance with the provisions of the California Act.

11.09 Contributing Member

The term "**Contributing Member**" is defined in Section 3.04.

11.10 Contribution Date

The term "**Contribution Date**" is defined in Section 3.03.

11.11 Budget

The term "**Budget**" is defined in Section 2.04.

11.12 Business Plan

The term "**Business Plan**" is defined in Section 2.04.

11.13 Interest

The term "**Interest**" means in respect to any Member, all of such Member's right, title and interest in and to the Net Profits, Net Losses, Cash Flow, distributions and capital of the Company, and any and all other interests therein in accordance with the provision of this Agreement and the California Act.

11.14 Liquidating Trustee

The term "**Liquidating Trustee**" shall be an individual appointed by a majority of the Percentage Interest.

11.15 Liquidation

The term "**Liquidation**" means, (i) in respect to the Company the earlier of the date upon which the Company is terminated under Section 708(b)(1) of the Code or the date upon which the Company ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts and distributing any remaining balance to its Members), and (ii) in respect to a Member wherein the Company is not in Liquidation, means the liquidation of a Member's Interest in the Company under Treasury Regulation Section 1.761-1(d).

11.16 Major Decision

The term "**Major Decision**" is defined in Section 2.03.

11.17 Operations Manager

The term "**Operations Manager**" is defined as a person elected by a majority of the Member's Percentage Interest to execute those responsibilities set forth in Section 2.02 and as limited by Section 2.03 and by any other applicable provisions of this Agreement.

#### 11.18 Member(s)

The term "**Members**" means Garaventa Enterprises, Inc., Pestoni Napa County, LLC, Garbarino Waste Industries, LLC, and B & K Napa Waste, LLC, collectively; the term "**Member**" means any one (1) of the Members.

#### 11.19 Net Profits and Net Losses

The terms "**Net Profits**" and "**Net Losses**" mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss, as the case may be, for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss and deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss); provided, however, for purposes of computing such taxable income or loss, (i) such taxable income or loss shall be adjusted by any and all adjustments required to be made in order to maintain Capital Account balances in compliance with Treasury Regulation Sections 1.704-1(b), and (ii) any and all items of gross income or gain, partnership and/or partner "nonrecourse deductions" specially allocated to any Member pursuant to Section 4.03 shall not be taken into account in calculating such taxable income or loss.

#### 11.20 Non-Contributing Member

The term "**Non-Contributing Member**" is defined in Section 3.04.

#### 11.21 Percentage Interest

The term "**Percentage Interest**" means in respect to Garaventa Enterprises, Inc., twenty five percent (25%), in respect to Garbarino Waste Industries, LLC, twenty five percent (25%), in respect to Pestoni Napa County, LLC, twenty five percent (25%), in respect to B & K Napa Waste, LLC, twenty five percent (25%) at the time of the execution of this Agreement, and as modified from time to time consistent with the transfer of a Member's Interest as permitted by this Agreement. Unless stated otherwise herein, phrases in this Agreement such as "all Members," "unanimous vote of the Members" or similar import shall mean one hundred percent of the Percentage Interest. Unless stated otherwise herein, phrases in this Agreement such as "approved by the Members" or similar import shall mean approval by a majority of the Percentage Interest.

#### 11.22 Securities Acts

The term "**Securities Acts**" is defined in Section 11.04(a)(i).

#### 11.23 Weekly Reports

The term "**Weekly Reports**" is defined in Section 2.04.

#### 11.24 Tax Liability

The term "**Tax Liability**" means, with respect to the Members only for any relevant fiscal year of the Company, an amount equal to forty percent (40%) of the distributive share of taxable income of the Company allocated to such Member for such fiscal year (inclusive of any income or gain allocated to such Member under Section 704(c) of the Code), as reflected on the Company's 1065, U.S. Partnership Return.

#### 11.25 Treasury Regulation

The term "**Treasury Regulation**" means any proposed, temporary, and/or final federal income tax regulation promulgated by the United States Department of the Treasury as heretofore and hereafter amended from time to time (and/or any corresponding provisions of any superseding revenue law and/or regulation).

#### 11.26 Unrecovered Contribution Account

The term "**Unrecovered Contribution Account**" means with respect to each Member, the amount of money and/or the agreed upon fair market value of any property contributed (or deemed contributed) by such Member to the capital of the Company pursuant to Sections 3.02, and/or 3.03, as the case may be (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to pursuant to Section 752 of the Code), and decreased by the amount of money distributed or deemed distributed by the Company to such Member pursuant to Sections 3.04 and/or 5.01(b) and the agreed upon fair market value of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code) pursuant to Section 5.01(b).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GARAVENTA ENTERPRISES, INC., A California Corporation

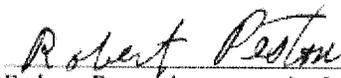
By:   
SILVIO GARAVENTA, JR., its CEO

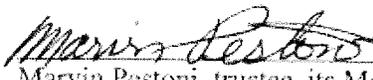
GARBARINO WASTE INDUSTRIES, LLC, A California Limited Liability Company

By:   
JOSEPH J. GARBARINO, its Member

By:   
JOSEPH GARBARINO, its Member

PESTONI NAPA COUNTY, LLC, a California Limited Liability Company

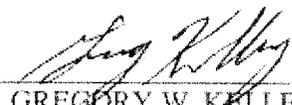
By:   
Robert Pestoni, trustee, its Member

By:   
Marvin Pestoni, trustee, its Member

B&K NAPA WASTE, LLC, a California Limited Liability Company

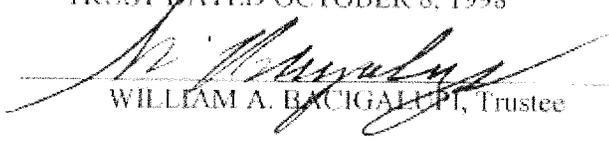
By: Its Members:

GREGORY AND MEDLEY KELLEY  
REVOCABLE TRUST DATED APRIL 29,  
1999

  
GREGORY W. KELLEY, Trustee

  
MEDLEY A. KELLEY, Trustee

WILLIAM A. BACIGALUPI REVOCABLE  
TRUST DATED OCTOBER 8, 1998

  
WILLIAM A. BACIGALUPI, Trustee

Figarvent/napa coloperating agreement of UCar&wa (keep clean on 3-29-05)

**EXHIBIT J**  
**REQUIRED TERMS OF LOCK BOX AGREEMENT**

Napa County Agreement No. \_\_\_\_\_

This AGREEMENT, effective January 1, 2018 ("Lockbox Agreement"), is entered into among Napa County Recycling and Waste Services, LLC, a California Limited Liability Company ("Hauler"), and Mechanics Bank, a California state chartered bank ("Bank") ~~and the COUNTY OF NAPA, a political subdivision of the State of California ("County").~~

Preliminary Statement

1. Hauler and Napa County have entered into a Franchise Agreement for solid waste and recyclable materials ("Franchise Agreement"), of which a Lockbox Agreement is a ~~component requirement~~. County is granting to Hauler an exclusive franchise to provide solid waste collection and recycling services for the businesses and residents of a designated portion of the County.

~~2. Hauler and County wish to establish an accounts receivable lockbox account ("Lockbox Account") into which are to be deposited all payments made by the residents and businesses in the portion of the County for which solid waste collection and recycling services are provided by the Hauler.~~

~~3. In order to provide for the orderly deposit of funds into the Lockbox Account, and in order to provide for disbursements of moneys from the Lockbox Account, the parties hereto wish to enter into this Lockbox Account Agreement.~~

~~4.2.~~ In accordance with the terms of the Franchise Agreement, this Lockbox Agreement shall be made a part of and included as Exhibit J of the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Hauler ~~the County~~ and the Bank hereby enter into this Lockbox Agreement.

Agreement

1. The Bank shall provide to Hauler ~~and County~~ the following minimum services, and as more particularly set forth in attached Schedule A, and shall honor disbursements made by the Hauler. The minimum services are, and shall be based on the following:

~~a. With respect to all commercial and residential customers, Hauler will be responsible for issuing bills, monthly statements, and maintaining an accounts receivable record.~~

~~3-a~~ Bank will obtain a post office box lockbox address from the United States Post Office in California. Hauler will direct all customers to mail all payments, payable to Hauler, to the Lockbox address. Hauler and Bank shall establish a procedure where electronic payments and credit card payments are credited to the Lockbox Account. Bank will have exclusive access to the Lockbox.

~~3-b~~ Hauler will instruct its Customers not to send cash to the Lockbox.

~~4-b~~ Each business day, Bank will pick up at, and transport from, the Lockbox to the processing site designated by Bank, all payments delivered to the Lockbox.

~~4-c~~ Hauler authorizes Bank to endorse checks and other payment instruments received at the Lockbox, and to deposit them into the Lockbox Account which will be a demand deposit account that is owned by the Hauler and maintained under the Tax identification of the Hauler.

2. With respect to the Lockbox Account:

- a. Hauler shall make an initial deposit to the Lockbox Account of \$175,000 to cover initial and recurring expenses that exceed funds available in the Lockbox Account. This sum shall be maintained at all times in the Lockbox Account, increased annually by the same inflationary index used to increase rates to Customers as set forth in the Franchise Agreement. Hauler will jointly notify Bank of any such increase. Said deposit amount shall be reimbursed to Hauler at the expiration or termination of the Franchise Agreement.
- b. Based on specific dollar amount instructions from the Hauler, the Bank shall in the following order and priority process requests to disburse remaining moneys on hand in the Lockbox Account on a monthly basis within three (3) business days of receipt of instructions from the Hauler. In accordance with the instructions generated from Hauler, funds shall be disbursed in the form of checks, ACH entries, Wire and Transfer requests for the following purposes:
  - (i) Amounts invoiced to either the County or Hauler by the Napa-Vallejo Waste Management Authority for the use by Hauler of the Devlin Road Transfer Station.
  - (ii) Amounts invoiced to either the County or the Hauler by the material diversion facility or other processing facilities utilized by Hauler and agreed to by County.
  - (iii) The franchise fee and surcharge fee owing to County as provided for in the Franchise Agreement.
  - (iv) The remainder, less the retained minimum balance, to Hauler and weekly disbursements to Hauler for the month as noted in c. below.
- c. Hauler is allowed to transfer funds to their operating account on a weekly basis

to cover operating expenses and will maintain an average balance based on the language in paragraph 2. a.

3. Upon termination of the Franchise Agreement, and without a waiver of Hauler's rights thereunder, Bank and Hauler acknowledge and agree that Hauler shall have no rights to any moneys on deposit in the Lockbox Account except for amounts payable to Hauler under paragraph (b)(iv) of Section 2.

4. The Bank shall not be liable for any damage, loss or liability (including attorneys' fees and expenses) arising from the use of the Lockbox Account except to the extent that said damage, loss or liability (including attorneys' fees and expenses) arises from the Bank's own bad faith, willful misconduct, negligence or breach of this Agreement.

5. This Lockbox Agreement expires without action by any of the parties hereto on termination of the Franchise Agreement, either by term expiration or termination for cause ("Expiration Date"). ~~County and Hauler, by mutual agreement, may terminate this Lockbox Agreement prior to the Expiration Date upon written notice to Bank received 30 days prior to the requested date of termination provided, however, that if Hauler receives County's written consent, Hauler and County may terminate this Lockbox Agreement on five business days' advance notice after notice from either Hauler or County that either (i) Bank has failed to disburse moneys from the Lockbox Account as set forth in Section 2, or (ii) Bank has failed to adequately account for moneys in the Lockbox Account, either as required by Section 6 or as reasonably requested by Hauler or County from time to time, and such failure by the Bank has not been cured within seven business days of receipt of this notice of failure to perform as provided in Section 11. In the event that County submits a Termination Notice to Bank, this Agreement shall not terminate if, within the seven-business-day notice and cure period, the Bank cures the breach specified in the Termination Notice or demonstrates to the satisfaction of County that such breach did not occur.~~

6. Bank shall provide Hauler ~~and County~~ with the following information on the following schedule:

- a. On or before the fifth Business Day of each month, a statement of:
  - i.) Amounts of deposit in the Lockbox Account prior to any disbursements from the Lockbox Account on the first Business Day of the current month.
  - ii.) Revenues received from and after the date of the last monthly statement through and including the first Business Day of the current month.
  - iii.) Disbursements made during the current month.
- b. On or before the fifth Business Day after the termination date or Expiration Date of the Agreement, which obligation shall survive expiration or termination of this Lockbox Agreement, a statement of the information

described in clauses (i) through (iii) of the preceding paragraph 6(a) for the period since the last monthly statement.

7. The parties acknowledge that time is of the essence in performance of each and all of the terms and conditions of this Lockbox Agreement.
8. Bank shall not assign any interest in this Agreement or subcontract any of the services Bank is to perform hereunder without prior written consent of ~~County and~~ Hauler, which shall not be unreasonably withheld.
9. This Lockbox Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
10. This Agreement may be executed in two or more counterparts that shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto, although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument.
11. This Agreement is made in Napa County, California, and shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any legal action in state court filed by any 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. The venue for any legal action in federal court filed by any 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 any party to submit to mediation or arbitration any dispute arising under this Agreement.
12. Any notices or other communications given or required to be given under this Agreement shall be effective only if rendered and given in writing, sent by registered or certified mail, or delivered personally or by overnight courier service, addressed to the parties at their respective addresses as set forth below:

THE HAULER: Napa County Recycling and Waste Services, LLC  
3216 Vichy Avenue  
Napa, CA 94558  
Attn: Mr. Greg Kelley

~~THE COUNTY: County of Napa  
Auditor/Controller  
1105 Third Street, Suite B-10  
Napa, CA 94559~~

THE BANK: ~~Mechanics Bank~~

~~133 Sausal Avenue, Suite B161  
Napa, CA 94550~~

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.

13. In the case that any provision of this Lockbox Agreement shall be deemed invalid, illegal or unenforceable, the validity, legality, and enforceability of such provisions in other contexts and the remaining provisions hereof, shall not in any way be affected or impaired thereby.

14. This Lockbox Agreement may not be modified without the prior written consent of all of the parties hereto by an instrument in writing executed by all of the parties hereto. No requirement hereof may be waived at any time except by writing signed by the party against whom such a waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

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IN WITNESS WHEREOF, the Bank ~~and~~ the Hauler ~~and the County~~ have caused this Lockbox Agreement to be duly executed and delivered as of the day and year first above written.

BANK

HAULER

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: General Manager

**Schedule A**  
**LOCKBOX SERVICES**

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4       1.   Collection of Mail from Post Office

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6           The mail will be collected from the postal center daily by bonded bank.

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8       2.   Sorting and Opening Mail

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10          The envelopes will be examined for proper addressee.

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12       3.   Removal and Verification of Contents

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14          Contents of the envelopes will be removed and inspected. Remittance  
15          checks will be examined for regularity to see that:

- 16  
17           a.   Checks are payable to the company which provided  
18                services;  
19           b.   Written and figure amounts on the checks agree; and  
20           c.   Checks are not post-dated and contain no qualifying endorsement or  
21                statements.

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23       4.   Minor Errors on Remittance Checks

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25          Minor errors on remittance checks such as differences between the  
26          written and figure amounts, will be guaranteed and processed if the  
27          correct amount can be determined. Otherwise, such checks will be held  
28          for disposition.

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30       5.   Post Dated Checks

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32          Based on instructions from Hauler, Bank will send postdated checks to  
33          Hauler via US mail for disposition.

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35       6.   Detachable Vouchers, Remittance Advices, etc.

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37          All detachable vouchers, remittance advices and other material  
38          received and not scanned by bank will be forwarded to Hauler via US  
39          mail.

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41       7.   Balancing

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43          Invoices will be listed and balanced along with the checks. Lockbox  
44          remittance activity will be made available to Hauler via Bank's online service  
45          by end of business day.

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47       8.   Endorsement and Deposit of the Checks

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49          The Lockbox remittance checks will be processed using "Check 21" imaging.

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9. Miscellaneous

- a. Items deposited to account will be credited subject to the Bank's published availability schedule.
- b. Processing days will be Monday through Friday with the exception of Bank holidays.
- c. Incoming electronic payments and credit card payments must be processed and posted to the Lockbox Checking Account within two business days.

10. On-line Banking Services

Hauler will use Barile's on-line banking services to perform ACH transactions for the collection of payments invoiced to commercial and residential customers. The ACH transactions will be credited to the Lockbox Account.

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**EXHIBIT K**  
**Contractor's Lists of Accepted Materials**

Contractor agrees to Divert from waste Disposal through Residential Commercial and On-Call Services the following:

**Single Stream Recyclables** – including but not limited to the following Recyclable Materials that fit in a Contractor-provided Collection Container with lid closed

1. Newspaper, catalogs, magazines, and phone books (including inserts, coupons, and advertisements)
2. Chipboard and paperboard packaging
3. Corrugated cardboard packaging
4. Mixed paper items, including but not limited to white or colored writing, printing, computer, and copy or construction papers, junk mail, unsoiled egg cartons, bags, soft-bound books.
5. Glass containers, including clear and colored glass bottles and jars
6. Drink/juice cartons
7. Aluminum products, including beverage and food cans and containers, trays, foils, or wrappings, and small scrap metal items (36 inches or less)
8. Steel, tin, and bi-metal cans, containers, and trays (aerosol cans must be empty)
9. Scrap metal including non-e-waste 36 inches or less (ferrous and non-ferrous) e.g. metal toaster, small griddle
10. Plastic containers, toys, and products, excluding plastic bags, expanded polystyrene products, and other plastic items or types that Contractor and County agree to exclude
11. Plastic film and shrink wrap (accepted from Commercial Customers bundled and bagged only)
12. Other Recyclable Material that the County determines would be feasible or in the public interest to include

**Special Recyclables** – including but not limited to the following.

1. Televisions & computer monitors
2. Computer & office equipment
3. Consumer electronics
4. Household appliances and oversize metal items (*over 36"*) (e.g. oven, washer/dryer)
5. Cooking oil (*in Contractor-supplied Collection container*)
6. Household batteries (*when set out with other acceptable materials*)
7. Clothing, Shoes and various reusable items (e.g. purses, backpacks)
8. Other Recyclable Material that the County determines would be feasible or in the public interest to include

- 111 **Food Waste** - including but not limited to the following Compostable Materials that fit in a  
112 Contractor-provided Container with lid closed.
- 113 1. Fruits and vegetables
  - 114 2. Seafood and Shellfish
  - 115 3. Meat, carcasses, bones, pet food
  - 116 4. Grains, bread, beans, baked goods, and pastas
  - 117 5. Dairy products, cheese
  - 118 6. Eggshells and eggs
  - 119 7. Soiled, stained, or soaked paper products, including paper towels, napkins, tissues,  
120 paper cups, plates, and bowls, coffee grounds and filters, tea bags, paper take-out food  
121 containers, pizza boxes, waxed and butcher paper, waxed cardboard, certified  
122 Compostable bags or wipes
  - 123 8. Other Compostable Material that the County determines would be feasible or in the  
124 public interest to include
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- 126 **Green Waste** - including but not limited to the following Compostable Materials that fit in a  
127 Contractor-provided Container with lid closed.
- 128 1. Leaves, garden plants, and grass
  - 129 2. Tree and brush trimmings and branches up to 6 inches diameter
  - 130 3. Flowers, floral trimmings and holiday greenery (non-synthetic)
  - 131 4. Sawdust, cotton balls, cotton swaps with paper stems or wood stems
  - 132 5. Natural cork and untreated and unpainted wood under 36 inches in diameter (e.g. small  
133 wooden crate)
  - 134 6. Hair, fur, and feathers (non-synthetic)
  - 135 7. Animal bedding and manure from non-meat eating animals (e.g. chickens, cows)
  - 136 8. Food Waste that does not exceed 50% of total weight in the Collection Container
  - 137 9. Other Compostable Material that the County determines would be feasible or in the  
138 public interest to include
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140 **Used Motor Oil and Oil Filters** - in Contractor-provided containers

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- 142 **Bulk Recyclables** - Bulk Recyclables are Source Separated and fit in a Contractor-provided  
143 Container, including but not limited to the following
- 144 1. Clean Wood (untreated and unpainted)
  - 145 2. Stumps and Branches (shall be less than one feet in diameter and eight feet in length, 2'  
146 x 4' or 3' x 1')
  - 147 3. Concrete
  - 148 4. Asphalt
  - 149 5. Pomace (grape stems, skins, and seeds)
  - 150 6. Scrap Metals
  - 151 7. Carpet and Carpet Pad (shall be clean and dry)
  - 152 8. Wallboard (sheetrock) (no wall paper)
  - 153 9. Other Recyclable Material that the County determines would be feasible or in the public  
154 interest to include.

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157 Any other materials mutually agreed to by Contractor and County.  
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159 Any County additions or deletions to the list above will be considered a Change in Scope as  
160 provided in Article 4.7 of the Agreement, and with appropriate adjustment (up or down) in  
161 Contractor service rates.

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**EXHIBIT L**

**NAPA COUNTY AGREEMENT NO. 6430  
CITY OF NAPA AGREEMENT NO. 8782**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF NAPA AND THE CITY OF NAPA  
RELATING TO THE NAPA MATERIALS DIVERSION FACILITY**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made as of May 3, 2005, by and between the COUNTY OF NAPA, a political subdivision of the State of California ("County") and the CITY OF NAPA, a charter city ("City").

**RECITALS**

A. The City has recently purchased a materials diversion facility ("Facility") located at 820 Levitan Way, Napa. The Facility is operated by USA Waste of California, Inc. ("USA Waste") pursuant to an Interim Operating Lease which will expire on September 30, 2005.

B. Recyclable Materials and Yardwaste which originate in the City and in portions of the County, as well as from within other jurisdictions, are delivered to the Facility for processing and composting.

C. The residue of materials delivered to the Facility that can neither be recycled nor composted is delivered to a Transfer Station, which is located adjacent to the Facility and is operated by the Napa-Vallejo Waste Management Authority, a joint powers agency whose members include the County and the City.

D. The contracts between the City and Napa Garbage Service ("NGS"), a division of USA Waste of California, Inc. ("USA Waste"), and between the County and Napa Valley Disposal Service ("NVDS"), also a division of USA Waste, each expire on September 30, 2005, concurrently with the expiration of the Interim Operating Lease of the Facility.

E. The County solicited proposals to provide collection of municipal solid waste, Recyclable Materials, and Yardwaste within the portion of its jurisdiction called Zone 1 commencing October 1, 2005.

F. The City solicited proposals to provide collection of municipal solid waste, Recyclable Materials and Yardwaste within the City and to operate the Facility commencing October 1, 2005.

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G. The City has awarded a contract for these services to Napa Recycling and Waste Services, LLC, and the County has awarded a contract for these services to Napa County Recycling and Waste Services, LLC, two affiliated companies with common ownership

H. The County has determined that it will be in the best interests of residents and businesses in Zone 1 for certain Recyclable Materials and Yardwaste collected within that Zone by Napa County Recycling and Waste Services, LLC and by County employees to be delivered to the Facility for processing and composting. The City has determined that it is in its best interest to accept such materials at the Facility on the terms contained in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

I. COOPERATIVE PROVISIONS APPLICABLE TO PHASE ONE (BEFORE THE CITY BEGINS OPERATING THE FACILITY)

The parties recognize that there will be a transition period during which the equipment currently in use at the Facility will be removed and new equipment installed, tested and placed into service by Napa Recycling and Waste Services, LLC, on behalf of the City. The Interim Operating Lease between the City and USA Waste contemplates that this transition period will end on or about September 30, 2005, and that during this period Clean MRF Recyclable Materials delivered to the Facility will be accepted, but then transferred by the City's Contractor to another facility for processing. The parties recognize that the transition period may extend beyond September 30, 2005. The City and County will work closely during this transition period to facilitate the installation of new processing equipment and will cooperate with the City and its Contractor's requests and directions relating to vehicle access, parking and materials delivery.

II. COOPERATIVE PROVISIONS APPLICABLE TO PHASE TWO (AFTER THE CITY BEGINS OPERATING THE FACILITY)

1. The City will arrange for the County to have priority (second only to the City's) to the processing capacity of the Facility for Clean MRF Recyclable Materials and Yardwaste. The City will require the Facility operator to refuse to accept Clean MRF Recyclable Materials and Yardwaste delivered by any third party if at any time the operator becomes unable to accommodate all materials of these types delivered by or on behalf of the County and City.

2. The County will direct Napa County Recycling and Waste Services, LLC to deliver to the Facility:

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A. All Clean MRF Recyclable Materials collected in the areas of the County that are shown on Attachment 1 (i.e., Zone 1) (1) from residential customers, and (2) from commercial/business customers in containers whose capacity is six cubic yards or less.

B. All Yardwaste collected in the areas of the County that are shown on Attachment 1 (i.e., Zone 1) (1) from residential customers, and (2) from commercial/business customers in containers whose capacity is six cubic yards or less.

3. If the County collects Clean MRF Recyclable Materials or Yardwaste within Zone 1 through its own forces, it will deliver all such materials to the Facility. The County will continue diversion programs (e.g., curbside collection of Clean MRF Recyclable Materials and Yardwaste) as provided in the agreement between the County and Napa County Recycling and Waste Services, LLC, dated as of May 3, 2005, Section 3.2.

4. Clean MRF Recyclable Materials and Yardwaste collected by Napa County Recycling and Waste Services, LLC in Zone 1 in containers whose capacity is greater than six cubic yards may be, but is not required to be, delivered to the Facility under this agreement.

5. The County may direct its contractor to deliver other materials (e.g., bulky goods, tires, electronic waste, wood and concrete) collected in Zone 1 to the Facility, but need not do so. If the City accepts these other materials from third parties it will also accept them from the County.

6. If the City implements Food Waste composting, the County may direct Food Waste to the Facility, but is not obligated to do so.

7. The City will require the operator of the Facility to deliver any residue (i.e., materials which cannot be recycled or successfully composted) to the Transfer Station for disposal. "Residue" does not include materials delivered to landfills for use as "Alternative Daily Cover" or wood chips delivered to Transformation facilities for fuel, whether or not the operator receives payment for such materials.

8. A. The City will charge (or credit) the County, and the County will pay (or accept) exclusively from revenues generated from ratepayers in the Unincorporated Area of Zone 1 commencing October 1, 2005, the following amounts for Yardwaste and Clean MRF Recyclable Materials delivered to the Facility by or for the County from Zone 1.

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Period (calendar year)	Charge for Yardwaste (\$/ton)	Credit for Clean MRF Recyclable Materials (\$/ton)
2005 (10/1-12/31)	25.00	(35.00)
2006	25.00	(35.00)
2007	26.00	(34.00)

B. Commencing January 1, 2008, the City may, after 60 days notice to County, change the rates for Yardwaste and/or Clean MRF Recyclable Materials.

C. The charge for Yardwaste is subject to increase at any time if the processing method at the Facility is modified in order to comply with regulatory requirements or environmental conditions, e.g., if aerated static pile (ASP) composting is implemented to control odors. The charge will be increased by the same amount per Ton that the City is required to pay the Facility operator for processing City-delivered Yardwaste.

D. Napa County Recycling and Waste Services, LLC will be charged no more than the posted Gate Fee for other materials (e.g., bulky goods, tires, electronic waste, wood, concrete) collected in Zone 1 which it elects to deliver to the Facility.

E. If the City implements Food Waste composting and the County wishes to arrange for Food Waste to be delivered to the Facility, the parties will meet and confer to establish the amount per Ton that the County will pay.

F. The amounts set forth in this section II.8 are predicated on Napa County Recycling and Waste Services, LLC serving as the collection contractor for the County's Zone 1 and Napa Recycling and Waste Services, LLC serving as Facility operator under contract with the City. If either party changes its contractor (other than to an affiliated successor with substantially identical ownership), the parties will meet and confer to establish new charges and credits. If the parties cannot reach agreement within 90 days, either party may terminate this Agreement and the County may thereafter direct both Clean MRF Recyclable Materials and Yardwaste to a different facility.

9. The City will bill the County monthly, in arrears. The City will issue a single invoice for all Clean MRF Recyclable Materials and Yardwaste delivered by the County's collection contractor, all Clean MRF Recyclable Materials and Yardwaste delivered by County employees and all other material delivered by County employees. The invoice will show

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subtotals by principal material type (Clean MRF Recyclable Materials and Yardwaste) and for each other type of material for which a different charge is payable. The invoice will show a credit for Clean MRF Recyclable Materials and a charge for all other materials, including a separately identified surcharge for contaminated loads. The City's invoice will also indicate the number and value of County coupons issued to residents of and businesses located in County Zone 1 and collected by the City's contractor. The County must pay the City for such collected coupons at face value. The invoice will indicate the portion of materials delivered by the County through its own forces. The invoice total will be a net figure. Concurrently, the City will send a copy of each monthly invoice to Napa County Recycling and Waste Services, LLC.

Invoices are due and payable within forty-five (45) days after issuance. Delinquent payments will bear interest at ten percent (10%) per year, or the maximum legally allowable rate if lower. If the County is delinquent in paying two consecutive monthly invoices, the City may require the County to either or both (1) post a deposit equal to the total payment due for the previous three (3) months or (2) pay an estimated amount each month, in advance. The City will not owe interest on any deposit required in the event of delinquent payments unless required by law. If the County fails to pay an invoice for more than sixty (60) days after it is due, the City may terminate this Agreement. Invoices will be sent to:

Audit Manager  
Napa County Auditor-Controller's Office  
1195 Third Street, Room B-10  
Napa, CA 94559

10. The City will not enter into a contract with any third party allowing it to deliver Clean MRF Recyclable Materials and Yardwaste on terms that are more favorable than those extended to the County in Section II.8.A, taken together.

11. Residents of and businesses located in County Zone 1 will be charged the posted Gate Fees established by the City for materials which they self-haul to the Facility. The City will accept coupons that the County's Contractor issues to residents and businesses in Zone 1 to be applied toward gate fees. The City will honor such coupons at face value.

### III. TERM

1. The term of this MOU begins on October 1, 2005 and ends on November 30, 2015, unless earlier terminated as provided below.

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2. If the Facility is destroyed or substantially damaged by earthquake, fire or other cause, and if City elects not to rebuild or reconstruct it, this Agreement will terminate thirty (30) days after City gives notice to County of its election.

3. If the City, pursuant to Section II.8.B, changes the charge for Yardwaste, and/or the credit for Clean MRF Recyclable Materials after January 1, 2008, or if charges are changed pursuant to Section II.8.C, at any time, the County may, on 60 days notice to City, terminate this MOU and direct both Yardwaste and Clean MRF Recyclable Materials to a different facility which offers more favorable terms to the County if the City does not elect to match the terms of the offer from the other facility. Any such offer must be in writing and binding on the owner and operator of the other facility and a complete copy must be provided to City at the same time the County provides notice of its intent to terminate this MOU.

#### IV. OTHER AGREEMENTS

1. The City or its representative will issue contamination violation notices to the County's collection contractor (Napa County Recycling and Waste Services, LLC) and to the County for any loads of Clean MRF Recyclable Materials or of Yardwaste delivered to the Facility which contain more than ten percent (10%) by weight of materials constituting Contamination. For any such load, the City may: 1) direct Napa Recycling & Waste Services to process the contaminated load and charge the County a "contaminated load surcharge" for the load, which shall be calculated based on the \$/ton contaminated load surcharge rate posted at the scalehouse multiplied by the total number of tons in the load; or 2) require that the contaminated load be reloaded by Napa Recycling & Waste Services at the expense of the vehicle operators and remove load from the MDF, and charge the County a standard "reload fee" which shall be the rate posted at the scalehouse. The City will provide notification of contaminated loads to the County on a monthly basis. Notifications will be sent to:

County Executive Office  
1195 Third Street  
Room 310  
Napa, CA 94559

In addition, the County will comply, and require Napa County Recycling & Waste Services, LLC to comply, with all hazardous waste exclusion program regulations adopted by the City.

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2. At the request of the County, the City will meet up to one time per calendar year to discuss the list of materials accepted at the Facility under the categories of Clean MRF Recyclable Materials and Yardwaste. Changes to the list of materials may be suggested by the County at the meeting, but must be approved in writing by the City prior to acceptance of the material types at the Facility.

3. The City will have the sole and exclusive right to establish and collect Gate Fees for all materials delivered to the Facility by third parties without contracts, including but not limited to other local government agencies, collection companies engaged by such government agencies, independent landscapers, roofers and contractors, and members of the public.

4. If the City elects to accept Special Recycling Waste at the Facility, residents of and businesses located in Zone 1 of the County may deliver such waste upon payment of the posted Gate Fees, provided that the City is permitted to accept Special Recycling Waste from outside the City. The City has no obligation under this MOU to accept waste of this type and, if it begins to accept it, the City may terminate its acceptance at anytime. If the City elects to discontinue accepting any Special Recycling Waste, City may, on 60 days notice to the County, terminate this service.

5. The City will arrange for reports to be prepared on Tons delivered to the Facility from or by the County and Tons diverted from landfill disposal that are similar in content and format to the reports that the City will prepare for its own use in documenting compliance with the Act. Such reports will be delivered to the County at the same time and frequency as the City's reports are produced. The City will provide the County a monthly report of inbound material delivered by the County in accordance with Section II herein.

#### V. MISCELLANEOUS AGREEMENTS

1. Capitalized terms in this MOU shall have the meanings assigned to them in Attachment Two unless the context indicates otherwise.

2. This MOU may be amended only in a writing approved and executed by both parties.

3. The County may not assign any of its rights under this MOU, nor delegate any duties or those of its contractor arising under this MOU, without the prior written consent of the City.

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4. Without waiving the provisions of Section V.3, all of the rights and duties of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns.

5. All notices given under this MOU shall be in writing. Notices shall be sent:

If to the City:                      City of Napa  
   955 School Street  
   Napa, CA 94559  
   Attention: City Finance Director  
   Facsimile: (707) 257-9251

If to the County:                    County of Napa  
   1165 Third Street, Room 310  
   Napa, CA 94559  
   Attention: County Executive Officer  
   Facsimile: (707) 253-4176

Notice shall be sufficiently given when (a) personally delivered to the recipient, (b) mailed first class postage prepaid, (c) delivered by overnight delivery service with charges prepaid, or (d) sent by facsimile to the last facsimile number of the recipient so long as a duplicate copy of the notice is promptly given by first class mail or the receiving party delivers a written confirmation receipt. Either party may change the address to which notices to it are to be sent by means of a notice delivered to the other party as provided above.

6. Nothing in this MOU, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

7. If, and for as long as, performance by a party is made impossible by acts of God, casualty, State or federal government action, civil commotion, acts of terrorism or other causes not the fault of and beyond the reasonable control of the party obligated to perform, performance by that party is excused. This section does not excuse a failure to pay money when due.

8. Time is of the essence of this MOU and each of its provisions

9. If any term or provision of this MOU is held invalid or unenforceable, the remainder of this MOU shall not be affected.

10. No waiver of a breach of any provision shall be deemed a waiver of any other breach, and no waiver shall be valid unless it is in writing and executed by the waiving party.

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No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

11. This MOU may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of the MOU shall be deemed to have occurred, and this MOU shall be enforceable and effective, only upon the complete execution of this MOU by County and City.

12. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this MOU or because of a dispute, breach, or default in connection with this MOU, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other proper relief. "Prevailing party" includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

13. The title and headings of the sections of this MOU are intended solely for reference and do not modify, explain, or construe any provision of this MOU. All references to sections and recitals refer to the sections and recitals of this MOU. In construing this MOU, the singular form shall include the plural and vice versa. This MOU shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the MOU with the assistance of independent legal counsel for each.

14. This MOU constitutes the entire agreement between the parties. There are no oral agreements which are not expressly set forth in this MOU.

15. All persons executing this MOU on behalf of a party warrant that they have the authority to execute this MOU on behalf of that party.

16. The attachments to this MOU are a part of this MOU and are incorporated into it by this reference.

17. This MOU shall be governed by, and construed and enforced in accordance with, the laws of California.

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IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year first above written.

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COUNTY OF NAPA

CITY OF NAPA:

By: *Diane Dillon*

*Jill Techel*  
(Signature)

Name: Diane Dillon

JILL TECHEL, Mayor  
(Type name and title)

Title: Chair, Board of Supervisors

Date: May 3, 2005

ATTEST: PAMELA MILLER,  
Clerk of the Board of Supervisors

ATTEST:

By: *Pamela Miller*

*Pamela Means*  
(Signature)

PAMYLA MEANS, City Clerk  
(Type name and title)

APPROVED May 3, 2005  
BOARD OF SUPERVISORS  
COUNTY OF NAPA

COUNTERSIGNED:

PAMELA A. MILLER  
CLERK OF THE BOARD

*John Mayer, Acting*  
(Signature)

BY *Sherry Patton* Deputy

JED CHRISTENSEN, Finance Director  
(Type name and title)

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ROBERT WESTMEYER  
Napa County Counsel

*Robert Paul*  
(Signature)

By: e-signature by Robert Paul

\_\_\_\_\_, City Attorney  
(Type name and title)

Budget Code: \_\_\_\_\_

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LIST OF ATTACHMENTS

Attachment One

Map of Zone One Service Area

Attachment Two

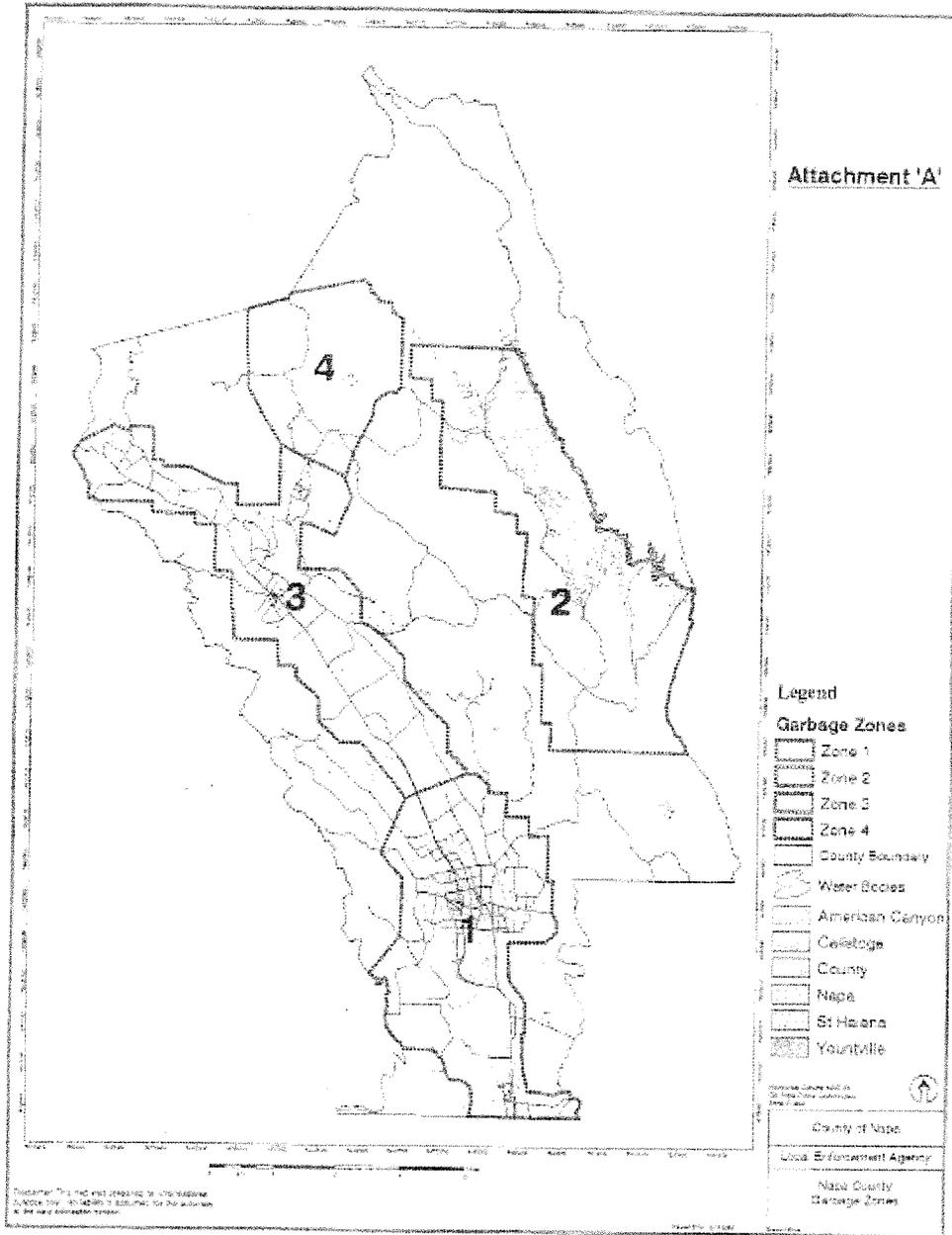
Definitions

Attachment Three

Clean MRF Recyclable Materials

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**ATTACHMENT ONE  
MAP OF ZONE ONE SERVICE AREA**



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## ATTACHMENT TWO

### DEFINITIONS

"Clean MRF Recyclable Materials" means those materials which are to be processed at the Clean MRF areas of the Facility, which are listed in Attachment Three. Clean MRF Recyclable Materials include both Single Stream Recyclables and Source Separated materials listed in Attachment Three.

"Contamination" means materials which are not specified in the definition for Yardwaste or listed as acceptable on Attachment Three for Clean MRF Recyclable Materials. For example, plastics would constitute Contamination if delivered to the Facility in a load of Yardwaste and tree trimmings would constitute Contamination if delivered to the Facility in a load of Clean MRF Recyclable Materials.

"Food Waste" means surplus, spoiled or unsold food, such as vegetables and culls, as well as plate scrapings.

"Single Stream Recyclables" means materials collected after having been separated from municipal solid waste (e.g., garbage or refuse) by a residential or commercial/business customer, consisting of a mixture of some or all of the materials listed in Attachment Three.

"Special Recycling Waste" means electronic waste (including cathode ray tubes, computers, televisions, cell phones, stereos, copiers, fax machines and peripherals), tires and bulky goods (including furniture, household or industrial appliances, shipping crates and containers, other large, and bulky or heavy objects not normally discarded on a regular basis at residential, commercial or business establishments). Items listed may be changed as agreed upon by the City Finance Director and the County Executive Officer.

"Source Separated" means materials collected after having been separated from municipal solid waste (e.g., garbage or refuse) by a residential or commercial/business customer, consisting primarily of a single material.

"Yardwaste" means tree trimmings, grass cuttings, leaves, branches and similar organic materials, including vineyard clippings, weeds, tree prunings, bush prunings, plant

material, and tree trunks/stumps/branches 6" or less in diameter. It excludes, for example, rocks, dirt, plastic bags, municipal solid waste, Single-Stream Recyclables, pet waste, Hazardous Waste, and tree trunks/stumps/branches greater than 6" in diameter.

ATTACHMENT THREE

CLEAN MRF RECYCLABLE MATERIALS

Acceptable Materials	Examples of Unacceptable Materials (Contamination)
Newspaper Phone books Catalogs Magazines Brown paper bags Packaging Egg cartons White paper Colored paper Envelopes (windows are not contamination) Junk mail Glossy paper Shredded paper Carbonless paper Chipboard/boxboard Cardboard Wrapping paper Empty aluminum cans Empty tin cans Juice containers Beer containers Sauce containers Soda cans Tuna cans Soup cans Loose jar lids Empty aerosol Empty glass beverage containers Empty glass food containers All glass colors Empty CRV plastic containers and bottles #1 through #7 Soft cover books/manuals Milk/juice cartons	Paper tissues Paper towels Paper with plastic coating (i.e., photographs, label paper) Paper with food Wax paper Foil lined paper Tyvex (non-tearing) envelopes Non-paper bags Plastic liners (i.e., cereal bags) Windows Mirrors Dishware Ceramics Light bulbs Florescent tubes Toys Irrigation pipe Furniture Styrofoam MSW Hazardous Waste Hard cover books/manuals Pyrex materials Fiberglass materials

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**AMENDMENT NO. 1  
NAPA COUNTY AGREEMENT NO. 6430  
CITY OF NAPA AGREEMENT NO. 8782**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF NAPA AND THE CITY OF NAPA  
RELATING TO THE NAPA MATERIALS DIVERSION FACILITY**

THIS AMENDMENT NO.1 OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF NAPA AND THE CITY OF NAPA (which MOU is referred to as Napa County Agreement No. 6430 and Napa City Agreement No. 8782) is made and entered into as of this 21<sup>st</sup> day of July, 2015, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "County", and CITY OF NAPA, a charter city, hereinafter referred to as "City."

**RECITALS**

**WHEREAS**, under Napa County Agreement No. 6430 (hereinafter referred to as "Agreement") entered into as of May 3, 2005, City agreed to accept Clean MRF Recyclable Materials including curbside recyclables and Yardwaste collected in County Garbage Zone 1 by the County's contractor and by County staff; and

**WHEREAS**, County and City now desire to amend the Agreement to modify charges, add provisions for the collection of Food Waste, and clarify certain terms and conditions of the Agreement.

**TERMS**

**NOW, THEREFORE**, the Agreement is amended as follows:

1. Agreement section II.8.A "Cooperative Provisions Applicable to Phase Two (After the City Begins Operating the Facility)," is hereby deleted in its entirety and replaced with the following:

"8.A. The City will charge (or credit) the County, and the County will pay (or accept) exclusively from revenues generated from ratepayers in the Unincorporated Area of Zone 1 for the period of October 1, 2005 through December 31, 2015 and for each year the MOU is extended under Section III.2, as amended, the following amounts of Yardwaste, Food Waste, and Clean MRF Recyclable Materials delivered to the Facility by or for the County from Zone 1.

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Period (calendar year)	Charge for Yardwaste (\$/ton)	Charge for Source Separated Food Waste (\$/ton)	Credit for Clean MRF Recyclable Materials (\$/ton)
2005 (10/1-12/31)	25.00	---	(35.00)
2006	25.00	---	(35.00)
2007	26.00	---	(34.00)
2008-2014	26.00	---	(34.00)
2015 (effective 7-1-15)	28.00	43.00	(35.00)
2016	29.00	44.00	(36.00)
2017	30.00	45.00	(37.00)
2018	31.00	46.00	(38.00)
2019	32.00	47.00	(39.00)

2. Agreement section II.8.B "Cooperative Provisions Applicable to Phase Two (After the City Begins Operating the Facility)," is hereby deleted in its entirety and replaced with the following:

"8.B. Commencing July 1, 2015, the City may, after 60 days-notice to County, change the rates for Yardwaste, Source Separated Food Waste and/or Clean MRF Recyclable Materials listed in table shown under section II.8.A."

3. Agreement section III, "Term," is hereby deleted in its entirety and replaced with the following:

**"III. TERM**

1. The term of this MOU begins on October 1, 2005 and ends on December 31, 2015 ("Base Term"), unless extended or terminated earlier as provided below.

2. Extensions. Following the Base Term, at the sole discretion of the County, County may exercise up to four (4) one-year Extensions of this MOU with County's full rights and responsibilities thereunder ("Extension Term"). The County shall provide City written notice of each Extension no less than one hundred and twenty (120) days prior to the conclusion of the Base Term or each Extension Term as applicable.

3. If the Facility is destroyed or substantially damaged by earthquake, fire or other cause, and if City elects not to rebuild or reconstruct it, this Agreement will terminate thirty (30) days after City gives notice to County of its election.

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4. If the City, pursuant to Section II.8.B, changes the charge for Yardwaste, Source Separated Food Waste, and/or the credit for Clean MRF Recyclable Materials, or if charges are changed pursuant to Section II.8.C. at any time, the County may, on 60 days' notice to City, terminate this MOU and direct Yardwaste, Source Separated Food Waste, and Clean MRF Recyclable Materials to a different facility which offers more favorable terms to the County if the City does not elect to match the terms of the offer from the other facility. Any such offer must be in writing and binding on the owner and operator of the other facility and a complete copy must be provided to City at the same time the County provides notice of its intent to terminate this MOU."

4. Agreement section V.1 is hereby deleted in its entirety and replaced with the following:

"1. Capitalized terms in this MOU shall have the meanings assigned to them in Attachment Two, unless the term is modified by Federal or State laws or regulations."

5. Agreement Attachment Two, "Definitions," is hereby amended to delete the definitions for "Food Waste" and "Yardwaste" in their entirety and replace the definitions with the following:

"Food Waste" or "Source Separated Food Waste" means surplus, spoiled, or unsold food, such as vegetables and culls, as well as plate scrapings and food soiled paper that is Source Separated."

"Yardwaste" means (1) green materials as defined in Section 17852(21) of Title 14 of the California Code of Regulations, and as subsequently amended by successor laws or regulations, which includes materials such as leaves, grass, weeds, and wood materials from trees and shrubs; and (2) no more than 10% of Food Waste. The Facility will be operating under the revised City of Napa Materials Diversion Facility solid waste facility permit and the 10% Food Waste commingling restriction will not apply however Yard Waste will still need to represent the majority of the organic material delivered to the City MDF to be considered as a Yard Waste.

6. Except as provided in paragraphs 1 through 5 above, the terms and

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conditions of County Agreement No. 6430/City Agreement No. 8782 shall in all other respects remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 1 to the Agreement was executed by the parties hereto as of the date first above written.

**COUNTY OF NAPA**

**CITY OF NAPA:**

By:   
DIANE DILLON, Chair  
Board of Supervisors

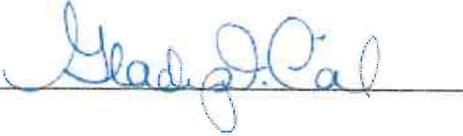
  
JILL TECHEL, Mayor

Date: July 21, 2015

Date: July 25, 2015

ATTEST: GLADYS I. COIL,  
Clerk of the Board of Supervisors

ATTEST: Dorothy Roberts  
City Clerk

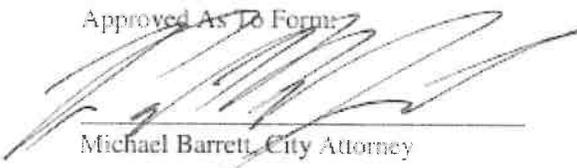




APPROVED AS TO FORM:  
MINH TRAN, Napa County Counsel  
By: Robert C. Martin, Deputy  
Date: 6/9/15

Countersigned:  
  
Desiree Brun, City Auditor

Approved by the Napa County  
Board of Supervisors  
Date: 7/21/15

Approved As To Form:  
  
Michael Barrett, City Attorney

Processed by:  
  
Deputy Clerk of the Board

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**AMENDMENT NO. 2  
OF  
NAPA COUNTY AGREEMENT NO.  
6430  
CITY OF NAPA AGREEMENT NO.  
8782**

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**MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY  
OF NAPA AND THE CITY OF NAPA RELATING TO THE NAPA  
MATERIALS DIVERSION FACILITY**

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THIS AMENDMENT NO.2 OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF NAPA AND THE CITY OF NAPA (which MOU is referred to as Napa County Agreement No. 6430 and Napa City Agreement No. 8782) is made and entered into as of this \_\_\_\_\_ day of December, 2017, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "County", and CITY OF NAPA, a charter city, hereinafter referred to as "City."

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**RECITALS**

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**WHEREAS**, under Napa County Agreement No. 6430 (hereinafter referred to as "Agreement") entered into as of May 3, 2005, City agreed to accept Clean MRF Recyclable Materials including curbside recyclables and yardwaste collected in County Garbage Zone 1 by the County's contractor and by County staff; and

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**WHEREAS**, County and City now desire to amend the Agreement to modify the term and charges of the Agreement.

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**TERMS**

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**NOW, THEREFORE**, the Agreement is amended as follows:

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1. Agreement section III, "Term," is hereby amended by deleting subparagraphs "1" and "2" in their entirety, and replacing them with the following:

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1. The term of this MOU begins on October 1, 2005 and ends on December 31, 2018 ("Base Term"), unless extended or terminated earlier as provided below.
  2. Extensions. Following the Base Term, at the sole discretion of the County, County may exercise one (1) one-year Extension of this MOU with County's full rights and responsibilities thereunder ("Extension Term"). The County shall provide City written notice of the Extension no less than one hundred and twenty (120) days prior to the conclusion of the Base Term.

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2. Agreement section II.8.A "Cooperative Provisions Applicable to Phase Two (After the City Begins Operating the Facility)," is hereby deleted in its entirety and replaced with the following:

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"8.A. The City will charge (or credit) the County, and the County will pay (or accept) exclusively from revenues generated from ratepayers in the Collection Services Area commencing October 1, 2005 through December 31, 2018 and for each year the MOU is extended under Section III.2, as amended, the following amounts for Single-Stream Recyclables, Green Waste, and Source Separated Food Waste delivered to the Facility by or for the County from the Collection Services Area.

Period (calendar year)	Charge for Green Waste (\$/ton)	Charge for Source Separated Food Waste (\$/ton)	Credit for Single-Stream Recyclables (\$/ton)
2005 (10/1-12/31)	25.00	---	(35.00)
2006	25.00	---	(35.00)
2007-2014	26.00	---	(34.00)
2015 (effective 7-1-15)	28.00	43.00	(35.00)
2016	29.00	44.00	(36.00)
2016 (effective 3-1-16)	32.00	44.00	(36.00)
2017	33.00	45.00	(37.00)
2018	34.00	46.00	(38.00)
2019 (if extended)	35.00	47.00	(39.00)

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[Remainder of this page left blank intentionally]

330 IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Memorandum of  
331 Understanding as of the day and year first above written.

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**COUNTY OF NAPA**

**CITY OF NAPA:**

By: \_\_\_\_\_  
BELIA RAMOS, Chair  
Board of Supervisors

By: \_\_\_\_\_  
Name: JILL TECHEL, Mayor  
City Council

Date: \_\_\_\_\_, 2017

Date: \_\_\_\_\_, 2017

ATTEST: GLADYS I. COIL,  
Clerk of the Board of Supervisors

ATTEST: DOROTHY ROBERTS,  
City Clerk

APPROVED AS TO FORM:

COUNTERSIGNED:

Napa County Counsel

\_\_\_\_\_  
Desiree Brun, City Auditor

By: Jeffrey M. Richard (via e-signature)  
Acting County Counsel

Date: November 20, 2017

Approved by Napa County  
Board of Supervisors:

APPROVED AS TO FORM:  
MICHAEL BARRETT,  
City Attorney

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Processed by:

Date: \_\_\_\_\_, 2017

\_\_\_\_\_  
Deputy Clerk of the Board

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**EXHIBIT M  
EXAMPLE OF INCOME STATEMENT ANALYSIS**

**NAPA COUNTY RECYCLING & WASTE SERVICES  
EXAMPLE OF INCOME STATEMENT ANALYSIS**

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		Projections			Actual Results	
		2018	2019	2020	2020	
	284,936 \$	(74,287) \$	(162,088) \$	237,407	\$ 224,871	
	<b>4,836,660 \$</b>	<b>5,376,593 \$</b>	<b>5,941,233 \$</b>	<b>6,731,532</b>	<b>\$ 6,600,000 \$</b>	<b>6,765,000 \$</b>
	2,781,875 \$	3,453,191 \$	3,831,339 \$	4,058,246	\$ 4,100,000 \$	4,100,000
	16,178 \$	122,985 \$	196,203 \$	235,109	\$ 235,109 \$	235,109
	<b>2,798,053 \$</b>	<b>3,576,176 \$</b>	<b>4,027,542 \$</b>	<b>4,293,355</b>	<b>\$ 4,335,109 \$</b>	<b>4,335,109</b>
	1,338,833 \$	1,362,689 \$	1,398,671 \$	1,421,959	\$ 1,421,959 \$	1,421,959
	800 \$	800 \$	800 \$	800	\$ 800 \$	800
	414,038 \$	554,259 \$	554,259 \$	629,562	\$ 617,261 \$	617,261
	<b>284,936 \$</b>	<b>(117,331) \$</b>	<b>(40,039) \$</b>	<b>385,856</b>	<b>\$ 224,871 \$</b>	<b>389,871</b>
	<b>89.8%</b>	<b>103.4%</b>	<b>101.0%</b>	<b>90.5%</b>	<b>94.5%</b>	<b>90.5%</b>

**Example**

This amount equals the adjustment to the Rates in addition to the Contractor's compensation that could be Set on October 1, 2021

2.50%