

EXCLUSIVE
FRANCHISE AGREEMENT FOR
DISCARDED MATERIALS MANAGEMENT
FOR SINGLE-FAMILY, MULTI-FAMILY,
AND COMMERCIAL GENERATORS

BETWEEN THE
COUNTY OF TULARE
AND
PENA'S DISPOSAL, INC.

DATE OF AGREEMENT: JANUARY 1, 2025

TULARE COUNTY AGREEMENT NO. 27185-C

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1 **EXCLUSIVE FRANCHISE AGREEMENT**
2 **FOR DISCARDED MATERIALS MANAGEMENT**
3 **BETWEEN THE**
4 **COUNTY OF TULARE**
5 **AND**
6 **PENA'S DISPOSAL, INC.**

7 This Exclusive Franchise Agreement for Discarded Materials Management for Single-
8 Family, Multi-Family, and Commercial Generators (Agreement) is entered into this on
9 _____, by and between the County of Tulare, a political subdivision of
10 the State of California (County), and Pena's Disposal, Inc. (Contractor), for the Collection
11 and subsequent Transfer, Transportation, Recycling, Processing, and/or Disposal of
12 Discarded Materials and provision of other related services.

13 **RECITALS**

14 WHEREAS, the Legislature of the State of California, by enactment of the California
15 Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code
16 Section 40000, et seq.), has declared that it is in the public interest to authorize and
17 require local agencies to make adequate provisions for Solid Waste handling within their
18 jurisdictions; and

19 WHEREAS, Section 40059 of the State Public Resources Code provides that the
20 County may determine aspects of Solid Waste handling which are of local concern,
21 including, but not limited to, frequency of Collection, means of Collection and
22 Transportation, level of services, charges and fees and nature, location, and extent of
23 providing Solid Waste handling services and whether the services are to be provided by
24 means of partially exclusive or wholly exclusive Agreements, contracts, licenses,
25 permits or otherwise; and
26

27 WHEREAS, the County is obligated to protect the public health and safety of the
28 residents of the County and arrangements by waste haulers for the Collection of Solid
29 Waste should be made in a manner consistent with the protection of public health and
30 safety; and
31

32 WHEREAS, the County and the Contractor are mindful of the provisions of the laws
33 governing the safe Collection, Transport, Recycling, and Disposal of Solid Waste,
34 including AB 939 and the Resource Conservation and Recovery Act 42 U.S.C. 9601 et
35 seq.; and
36

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

WHEREAS, Contractor has provided similar services within the Franchise Service Area covered by this Agreement; and

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

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

WHEREAS, the County and the Contractor previously entered into a Solid Waste Franchise Agreement; and

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

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

WHEREAS, SB 1383 Regulations require County to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, County has chosen to delegate some of its responsibilities to the Contractor, acting as the County's designee, through this Agreement. Pursuant to SB 1383 Regulations (14 CCR Section 18981.2(c)), the County remains ultimately responsible for compliance with the SB 1383 regulations; and

WHEREAS, these regulations require the County to provide expanded services; and

80 WHEREAS, both County and Contractor wish to amend the Solid Waste Franchise
81 Agreement to account for these expanded services; and

82 WHEREAS, both County and Contractor wish for this Agreement to supersede all
83 previous amendments to the Solid Waste Franchise Agreements; and

84 NOW, THEREFORE, in consideration of the promises above stated and the terms,
85 conditions, covenants, and agreements contained herein, the Parties do hereby agree as
86 follows:

87 **DEFINITIONS**

88 For purposes of this Agreement, unless a different meaning is clearly required, the words
89 and phrases in this Article shall have the following meanings respectively ascribed to
90 them by this Article and shall be capitalized throughout this Agreement.

91 **AB 341**

92 "AB 341" means the Assembly Bill approved by the Governor of the State of California on
93 October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800,
94 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and
95 Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added
96 and repealed Section 41780.02 of, the Public Resources Code, relating to Solid Waste.

97 **AB 876**

98 "AB 876" means the Assembly Bill approved by the Governor of the State of California on
99 October 8, 2015, which added Section 418214 to the Public Resources Code, relating to
100 Solid Waste.

101 **AB 901**

102 "AB 901" means Assembly Bill approved by the Governor of the State of California on
103 October 10, 2015, which amended Section 41821.5 of, amended, renumbered, and
104 added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public
105 Resources Code, relating to Solid Waste.

106 **AB 939**

107 "AB 939" means the California Integrated Waste Management Act of 1989 (California
108 Public Resources Code Section 40000, et seq.).

109 **AB 1594**

110 "AB 1594" means the Assembly Bill approved by the Governor of the State of California
111 on September 28, 2014, which amended Sections 40507 and 41781.3 of the Public
112 Resources Code, relating to Solid Waste.

AB 1826

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

Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships, and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management and shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor, and/or a business that is also owned, controlled, or managed by any business or individual that has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that: (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater. Affiliate includes Subsidiaries.

Agreement

"Agreement" means this Exclusive Franchise Agreement between County and Franchisee for Collection, Transportation, Processing, Recycling, and Disposal of Discarded Materials, and other services related to meeting the goals and requirements of AB 341, AB 876 AB 901, AB 939, AB 1594, AB 1826, and SB 1383, and corresponding regulations, including all appendices, exhibits, or other attachments, and any amendments thereto.

Alternative Daily Cover (ADC)

"Alternative Daily Cover" or "ADC" has the same meaning as in 27 CCR Section 20690.

Alternative Facility

"Alternative Facility" means any Facility approved by County for use pursuant to a sudden unforeseen closure of the Facility or other emergency condition(s).

Alternative Intermediate Cover (AIC)

"Alternative Intermediate Cover" or "AIC" has the same meaning as in 27 CCR Section 20700.

Applicable Law

"Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any

governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.

Approved C&D Processing Facility

“Approved C&D Processing Facility” means a C&D Processing Facility that was Contractor selected and County approved, as further described in Section 5.3.

Approved Facilities

“Approved Facility(ies)” means any one of or any combination of the: Approved C&D Processing Facility; Approved High Diversion Organic Waste Processing Facility; Approved Organic Waste Processing Facility; Approved Source Separated Recyclable Materials Processing Facility; and, Approved Transfer Facility, as further described in Section 5.3.

Approved Organic Waste Processing Facility

“Approved Organic Waste Processing Facility” means an Organic Waste Processing Facility that was Contractor selected and County approved, as further described in Section 5.3.

Approved Source Separated Recyclable Materials Processing Facility

“Approved Source Separated Recyclable Materials Processing Facility” means a Source Separated Recyclable Materials Processing Facility that was Contractor selected and County approved, as further described in Section 5.3.

Approved Transfer Facility

“Approved Transfer Facility” means a Transfer Facility that was Contractor selected and County approved, as further described in Section 5.3.

Back-Haul

“Back-Haul” means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, as defined in 14 CCR Section 18982(a)(66)(A).

Base Rate

“Base Rate” means the Rate charged for basic Collection Service of Solid Waste including Recyclable Materials in a specified area, as authorized by the County, absent any discounts offered by the Contractor.

Bin

“Bin” means a metal or plastic Container with hinged lid(s) and wheels serviced by a front-end loading Collection vehicle with a Container capacity of approximately one (1) to six (6) cubic yards, including Bins with compactors attached to increase the capacity of the Bin. Bins are also known as dumpsters.

192 **Blue Container**

193 "Blue Container" has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall
194 be used for the purpose of storage and Collection of Source Separated Recyclable
195 Materials or SSBCOW. Blue Containers shall have a lid and body that comply with one
196 of the following options:

- 197 a. Blue body with blue lid;
198 b. Blue body with gray lid; or,
199 c. Blue lid with any color body

200 **Board of Supervisors or Board**

201 "Board" means the Board of Supervisors of the County of Tulare.

202 **Bulky Items or Bulky Waste**

203 "Bulky Items" means large and small household appliances, furniture, mattresses, and
204 similar large items of Solid Waste which cannot be contained within a standard Container,
205 can be safely lifted by two people without the use of special equipment, or which does not
206 fit in or causes harm to collection Vehicles. Bulky Waste does not include any item
207 exceeding six (6) feet in length or weighing more than 200 pounds.

208 **Bureau of Labor Statistics**

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

211

212 **Business Day(s)**

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

215 **C&D**

216 "C&D" means Construction and Demolition Debris.

217 **C&D Collection Site**

218 "C&D Collection Site" means properties where construction and demolition work is
219 performed as evidenced by County issuance of a land clearing, building, or demolition
220 permit, or from a non-permitted municipal project or as otherwise stated in the Tulare
221 County Ordinance Code.

222 **California Code of Regulations (CCR)**

223 "California Code of Regulations" or "CCR" means the State of California Code of
224 Regulations. CCR references in this Agreement are preceded with a number that refers
225 to the relevant Title of the CCR (e.g., "14 CCR, Division 7, Chapter 12" refers to Title 14,
226 Division 7, Chapter 12 of the California Code of Regulations.

227 **CalRecycle**

228 "CalRecycle" means California's Department of Resources Recycling and Recovery,
229 which is the Department designated with responsibility for developing, implementing, and
230 enforcing SB 1383 Regulations on jurisdictions and other regulated entities.

231 **Cart**

232 "Cart" means a plastic Container with a hinged lid and wheels serviced by automated or
233 semi-automated Collection vehicles. A Cart has an approximate capacity of 96 gallons
234 (or similar volumes).

235 **Change in Law**

236 "Change in Law" means any of the following events or conditions which has a material
237 and adverse effect on the performance by the Contractor of the Collection Services
238 (except for payment obligations):
239

- 240 • The enactment, adoption, promulgation, issuance, modification, or written
241 change in administrative or judicial interpretation on or after the Agreement Date
242 of any Applicable Law; or
- 243 • The order or judgment of any Governmental Body, on or after the Agreement
244 Date. To the extent such order or judgment is not the result of willful or negligent
245 action, error or omission or lack of reasonable diligence of the County or of the
246 Contractor, whichever is asserting the occurrence of a Change in Law provided,
247 however, that the contesting in good faith or the failure in good faith to contest
248 any such order or judgment shall not constitute or be construed as such a willful
249 or negligent action, error or omission or lack of reasonable diligence.
250

251 **Collect or Collection**

252 "Collect" or "Collection" means the act of taking physical possession of Discarded
253 Materials at Single-Family, Multi-Family, or Commercial Premises within the County and
254 from County facilities, and Transporting the Discarded Materials to a Designated Facility
255 for Processing, Transfer, or Disposal.

256 **Commercial Business (Commercial)**

257 "Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-
258 stock company, corporation, or association, whether for-profit or nonprofit, strip mall,
259 industrial facility, or multifamily residential dwelling as defined in 14 CCR Section
260 18982(a)(6).

261 **Commercial Edible Food Generators**

262 "Commercial Edible Food Generators" includes Tier One Commercial Edible Food
263 Generators and Tier Two Commercial Edible Food Generators, as defined in 14 CCR
264 Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations
265 and Food Recovery Services are not Commercial Edible Food Generators.

266 **Community Composting**

267 "Community Composting" means any activity that composts green material, agricultural
268 material, food material, and vegetative food material, alone or in combination, and the

269 total amount of feedstock and Compost on-site at any one time does not exceed 100
270 cubic yards and 750 square feet (as specified in 14 CCR Section 17855(a)(4)), as defined
271 in 14 CCR Section 18982(a)(8).

272 **Compactor"**

273 "Compactor" means a mechanical apparatus that compresses materials together with
274 the Container that holds the compressed materials or the Container that holds the
275 compressed materials if it is detached from the mechanical compaction apparatus.
276 Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-
277 end loader Collection Vehicles and ten (10) to fifty (50) cubic yard Compactors serviced
278 by roll-off Collection Vehicles.

279

280 **Compost**

281 "Compost" has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as
282 of the Effective Date of this Agreement, that "Compost" means the product resulting from
283 the controlled biological decomposition of organic Solid Wastes that are Source
284 Separated from the municipal Solid Waste stream, or which are separated at a centralized
285 Facility.

286 **Compostable Plastics**

287 "Compostable Plastics" or "Compostable Plastic" means plastic materials that meet the
288 ASTM D6400 standard for compostability, as described in 14 CCR Section
289 18984.1(a)(1)(A) or 18984.2(a)(1)(C), as applicable.

290 **Contractor**

291 "Contractor" means the Party (other than the County) that executed this Exclusive
292 Franchise Agreement hereby known as Pena's Disposal, Inc., and its Affiliates, DBAs,
293 and Subcontractors that perform services on Contractor's behalf.

294 **Construction and Demolition Debris (C&D)**

295 "Construction and Demolition Debris" means the nonhazardous waste building material,
296 Inerts, soil, packaging, Yard Trimmings, rubble, and other used or Discarded Materials
297 resulting from construction, alteration, remodeling, repair or demolition operations,
298 excluding "Excluded Waste".

299 **Container(s)**

300 "Container(s)" means a receptacle for temporary storage of Discarded Materials.
301 Containers may include Bins, Carts, Roll-Off Boxes, compactors, or other storage
302 instruments to the extent such Containers are permitted by the County for use for
303 Collection services provided under the Agreement.

304 **County**

305 "County" means County of Tulare, a political subdivision of the State of California, and all
306 the unincorporated area within the boundaries of the County as presently existing, or as
307 such unincorporated area may be modified during the Term of this Agreement, acting
308 through its Board of Supervisors.

County Code

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

County Contract Manager

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

County Fees

"County Fees" shall mean those fees described in Article 9 of this Agreement.

Customer(s)

"Customer" means the Person who receives the Contractor's Collection services and to whom the Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premise. The Customer may be either the occupant, owner, or property manager of the Premises, as allowed under the County Code.

DBA

"DBA" means a fictitious name, assumed name, or trade name that is different from Contractor's legal name, which Contractor uses for "doing business as" to provide Collection services.

Designated Collection Location

"Designated Collection Location" refers to the location at each Collection Premises where Containers of Solid Waste and Recyclable Materials are customarily placed for collection, all in accordance with Section 7.6 herein.

Designated Disposal Facility

"Designated Disposal Facility" means the County-owned landfill(s) designated by the County Solid Waste Director to which the Contractor shall transport Solid Waste and Residual Waste.

Director

"Director" means the County Solid Waste Director or their designated representative.

Discarded Materials

"Discarded Materials" are a form of Solid Waste and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or, levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for handling services. As used herein, handling services include, without limitation, the Collection, removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded. For the purposes of this Agreement, Discarded Materials include Source

353 Separated Recyclable Materials, SSBCOW, SSGCOW, Food Waste, Gray Container
354 Waste, and C&D once the materials have been placed in Containers for Collection.

355 **Disposal**

356 "Disposal" or "Dispose" means the final disposition of any Solid Waste Collected by the
357 Contractor or Residue from Contractor's Processing activities at a permitted Landfill or
358 other permitted Solid Waste Facility.

359 **Diversion**

360 "Diversion (or any variation thereof including "Divert")" means activities which reduce or
361 eliminate Discarded Materials from Disposal, including, but not limited to, source
362 reduction, Reuse, salvage, Recycling, and composting.

363 **Dwelling Unit**

364 "Dwelling Unit" means an individual residential living unit.

365

366 **Edible Food**

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

373 **Effective Date**

374 "Effective Date" means the date on which the Agreement becomes binding upon the
375 Parties, which is the date when the latter of the Parties has executed this Agreement.

376 **Electronic Waste**

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

384

385 **Emergency Services**

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

390

391 **Environmental Laws**

392 "Environmental Laws" means all federal and State statutes and County ordinances
393 concerning public health, safety, and the environment including, by way of example and
394 not limitation, the Comprehensive Environmental Response, Compensation and Liability

Act of 1980, 42 USC Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; the Federal Clean Water Act, 33 USC Section 1251, et seq.; the Toxic Substance Control Act, 15 USC Section 2601, et seq.; the Occupational Safety and Health Act, 29 USC Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; all as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

Excluded Waste

"Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, Universal Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Contractor reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or County to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. For the purposes of this Agreement Excluded Waste includes used motor oil and filters, tires, plastic film, household batteries, Universal Wastes, Electronic Waste, carpet, textiles, and latex paint.

Facility(ies)

"Facility(ies)" means any plant, site, or operation used for the purpose of handling Discarded Materials, including, but not limited to, Disposal, Transfer, Recycling, composting, and Processing facilities or operations.

Food Recovery

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

Food Recovery Organization

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

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

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

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

442 **Food Recovery Service**

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

446 **Food Scraps**

447 "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry,
448 seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps
449 excludes fats, oils, and grease when such materials are Source Separated from other
450 Food Scraps.

451 **Food-Soiled Paper**

452 "Food-Soiled Paper" means compostable paper material that has come in contact with
453 food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups,
454 napkins, and pizza boxes.

455 **Food Waste**

456 "Food Waste" means Source Separated Food Scraps and Food-Soiled Paper. Food
457 Waste is a subset of SSGCOW. Edible Food separated for Food Recovery shall not be
458 considered Food Waste. Food Scraps includes any residentially or commercially
459 generated discards resulting from food preparation or left over after consumption which
460 may or may not be separated by the Generator.

461 **Franchise Fee**

462 "Franchise Fee" means the fee paid by Contractor to the County for the privilege to hold
463 the rights granted by this Agreement.

464

465 **Franchise Service Area**

466 "Franchise Service Area" means the specific geographic areas identified in this
467 Agreement which are numbered A through J, for which franchises have been issued to
468 different companies. This Franchise Agreement is exclusive to Franchise Service Area
469 B. Franchise Service Area(s) B are further described and depicted in Exhibit C.

470

471 **Franchised Materials**

472 "Franchised Materials" means Solid Waste, Organic Materials, and/or Recyclable
473 Materials. Franchised Materials specifically excludes Excluded Waste and those
474 materials identified in Section 1.3 of this Agreement.

475 **Generator**

476 "Generator" means any Person whose act first causes Discarded Materials to become
477 subject to regulation under federal, State, or local regulations.

478 **Gray Container**

479 "Gray Container" has the same meaning as in 14 CCR Section 18982(a)(28) and shall be
480 used for the purpose of storage and Collection of Gray Container Waste. A Gray
481 Container may have a black lid and/or body in accordance with 14 CCR Section
482 18982(a)(28). Solid Waste Containers shall have a lid and body that comply with one of
483 the following options:

- 484 a. Gray body with gray lid;
485 b. Gray lid with any color body

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

487 **Gray Container Waste**

488 "Gray Container Waste" means Solid Waste that is collected in a Gray Container that is
489 part of a three-Container Organic Waste Collection service that prohibits the placement
490 of Prohibited Container Contaminants in the Gray Container as specified in 14 CCR
491 Sections 18984.1(a) and (b). For the purposes of this Agreement, Gray Container Waste
492 includes carpet and textiles.

493 **Green Container**

494 "Green Container" has the same meaning as in 14 CCR Section 18982(a)(29) and shall
495 be used for the purpose of storage and Collection of SSGCOW. Green Containers shall
496 have a lid and body that comply with one of the following options:

- 497 a. Green body with green lid;
498 b. Green body with gray lid; or,
499 c. Green lid with any color body

500 **Gross Receipts**

501 "Gross Receipts" shall mean total cash receipts actually collected from Customers by
502 the Contractor for the provision of services pursuant to this Agreement, without any
503 deductions. Gross Receipts do not include revenues from the sale of Recyclable
504 Materials.

506 **Hauler Route**

507 "Hauler Route" means the designated itinerary or sequence of stops for each segment of
508 the County's Collection service area, as defined in 14 CCR Section 18982(a)(31.5).

509 **Hazardous Substance**

510 "Hazardous Substance" shall mean any of the following: (a) any substance defined,
511 regulated or listed (directly or by reference) as "hazardous substances", "hazardous
512 materials", "hazardous wastes", "toxic waste", "pollutant" or "toxic substances" or similarly
513 identified as hazardous to human health or the environment, in or pursuant to (i) the
514 Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42
515 USC Section 9601, et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC

Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25115-25117, 25141, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; (b) any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic, or any other words of similar import regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl ("PCBs"), petroleum or petroleum products and their derivatives, radioactive materials, natural gas and synthetic fuel products, and by-products.

Hazardous Waste

"Hazardous Waste" or "Hazardous Wastes" means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; as defined in 14 CCR Section 17402(a)(7). Hazardous Waste includes hazardous wood waste (which means wood that falls within the definition of "treated wood" or "treated wood waste" in 22 CCR Section 67386.4) as defined in 14 CCR Section 18982(a)(30.5).

Incompatible Materials

"Incompatible Material" or "Incompatibles" mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes organic waste for which the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined in 14 CCR Section 18983.1(b), as defined by 14 CCR Section 17402(a)(7.5).

Inerts

"Inerts" means materials such as concrete, soil, asphalt, and ceramics.

Infectious Waste

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

Insurance Requirements

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

Landfill

"Landfill" means a "Solid Waste Landfill" defined by Public Resources Code Section 40195.1.

Large Event

"Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

Large Venue

"Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

Line of Business

"Line of Business" means any of the following services provided by the Contractor: Residential Solid Waste, Residential Recycling, Commercial Solid Waste, Commercial Recycling.

Liquidated Damages

"Liquidated Damages" means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 12.8.

Liquid Waste

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

Low-Population Areas

"Low-Population Areas" means the certain regions of the County that have a valid low population waiver, granted by CalRecycle, in accordance with the criteria and process specified in 14 CCR Section 18984.12(a).

Medical Waste

"Medical Waste" means any Solid Waste that is generated or has been used in the diagnosis, treatment, or immunization of human beings or animals, or research pertaining thereto, and shall include, but not be limited to, biomedical, biohazardous and medical waste, or other Solid Waste resulting from medical activities or services as defined by the Tulare County Code, or any State or federal law or regulation, all as currently enacted or subsequently amended.

Multi-Family or Multi-Family Dwelling Unit

"Multi-Family" means of, from, or pertaining to residential Premises with five (5) or more Dwelling Units. For purposes of this Agreement, Multi-Family Premises are Commercial Customers. References to "Multi-Family Dwelling Unit" refer to an individual residential unit of the Multi-Family Premises.

Non-Compostable Paper

"Non-Compostable Paper" includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, as defined in 14 CCR Section 18982(a)(41).

Non-Organic Recyclables

"Non-Organic Recyclables" means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, as defined in 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated Recyclable Materials.

Operating Assets

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

Organic Waste

"Organic Waste" means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, Food Waste, Yard Trimmings, Paper Products, Printing and Writing Paper, Food-Soiled Paper, organic textiles and carpets, untreated lumber, untreated wood, manure, biosolids, digestate, and sludges, as defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively. For purposes of this Agreement, organic textiles and carpets shall be treated as Solid Waste. Further, Paper Products and Printing and Writing Paper shall be treated as Source Separated Recyclable Materials.

Paper Products

"Paper Products" include, but are not limited to, paper, janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; as defined in 14 CCR Section 18982(a)(51).

Party or Parties

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

Person

"Person" has the same meaning as in Public Resources Code Section 40170, which states, as of the Effective Date of this Agreement, that a Person includes an individual, firm, limited liability company, association, partnership, political subdivision, government

643 agency, municipality, industry, public or private corporation, or any other entity
644 whatsoever.

645 **Premises**

646 "Premises" means a tract of land with or without habitable buildings or appurtenant
647 structures.

648 **Printing and Writing Papers**

649 "Printing and Writing Papers" include, but are not limited to, copy, xerographic,
650 watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes,
651 manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated
652 writing papers, posters, index cards, calendars, brochures, reports, magazines, and
653 publications; as defined in 14 CCR Section 18982(a)(54).

654 **Process, Processed, or Processing**

655 "Process," "Processed," or "Processing" means the controlled separation, recovery,
656 volume reduction, conversion, or Recycling of Solid Waste including, but not limited to,
657 organized, manual, automated, or mechanical sorting, the use of vehicles for spreading
658 of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting
659 lines, or volume reduction equipment, as defined in 14 CCR Section 17402(a)(20).

660 **Prohibited Container Contaminants**

661 "Prohibited Container Contaminants" means the following: (i) Discarded Materials placed
662 in the Blue Container that are not identified as acceptable Source Separated Recyclable
663 Materials for the County's Blue Container; (ii) Discarded Materials placed in the Green
664 Container that are not identified as acceptable SSGCOW for the County's Green
665 Container; (iii) Discarded Materials placed in the Gray Container that are acceptable
666 Source Separated Recyclable Materials and/or SSGCOW to be placed in County's Green
667 Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

668 **Property Owner**

669 "Property Owner" means the owner of real property, as defined in 14 CCR Section
670 18982(a)(57).

671 **Public Resources Code (PRC)**

672 "Public Resources Code" or "PRC" means the California Public Resources Code.

673 **Putrescible Waste**

674 "Putrescible Waste" means wastes that are capable of being decomposed by micro-
675 organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other
676 offensive conditions, and includes materials such as, but not limited to Food Waste, offal,
677 and dead animals; as defined in 14 CCR Section 17402(a)(21).

678 **Rate**

679 "Rate" means the maximum amount, expressed as a dollar unit, approved by the County
680 that the Contractor may bill a Customer for providing specified services under this
681 Agreement. A Rate has been established for each individual Service Level and the initial
682 Rates for Rate Period One. The Rates approved by County are the maximum Rate that

683 Contractor may charge a Customer for a particular Service Level and Contractor may, in
684 its sole discretion, charge any amount up to and including the maximum Rate approved
685 by the County.

686 **Rate Adjustment Factor**

687 "Rate Adjustment Factor" shall mean the amount, expressed as a percentage, by which
688 each of the operating, disposal, processing, and fee components of each Rate are
689 adjusted. The Rate Adjustment Factor for each component shall be calculated
690 separately.

691
692 **Rate Period**

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

695
696 **Recycle/Recycling**

697 "Recycle" or "Recycling" means the process of Collecting, sorting, cleansing, treating, and
698 reconfiguring materials for the purpose of returning them to the economic mainstream in
699 the form of raw material for new, Reused, or reconstituted products that meet the quality
700 standards necessary to be used in the marketplace. Recycling includes processes
701 deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7,
702 Chapter 12, Article 2. Recycling does not include gasification or transformation as defined
703 in Public Resources Code Section 40201.

704 **Recycling Plan**

705 "Recycling Plan" is the Contractor's recycling plan which must be reviewed and
706 approved by the County Contract Manager.

707
708 **Renewal Natural Gas (RNG)**

709 "Renewable Natural Gas" or "RNG" means gas derived from Organic Waste that has
710 been diverted from a Landfill and Processed at an in-vessel digestion facility that is
711 permitted or otherwise authorized by 14 CCR to recover Organic Waste, as defined in
712 14 CCR Section 18982(a)(62).

713
714 **Residential**

715 "Residential" shall mean of, from, or pertaining to a Single-Unit Dwelling Premises or
716 Multi-Unit Dwelling Premises including Single-Family homes, apartments,
717 condominiums, townhouse complexes, mobile home parks, and cooperative
718 apartments.

719
720 **Residual (or Residue)**

721 "Residual" or "Residue" means the Solid Waste destined for Disposal, further
722 transfer/processing, or transformation which remains after Processing has taken place
723 and is calculated in percent as the weight of Residual divided by the total incoming weight
724 of materials.

725 **Reusable Items**

726 "Reusable Items" means items that are capable of being Reused after minimal
727 Processing. Reusable Items may be Collected Source Separated or recovered through a
728 Processing Facility. Reusable Items may include, but are not limited to, clothing, furniture,
729 and/or sporting equipment.

730 **Reuse**

731 "Reuse" or any variation thereof, means the use, in the same, or similar, form as it was
732 produced, of a material which might otherwise be discarded, as defined in 14 CCR
733 Section 17402.5(b)(2).

734 **Roll-Off Box**

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

738 **Routing and Collection System**

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

742
743 **Salvageable Material (or Salvaged Material)**

744 "Salvageable Material" or "Salvaged Material" means an object or material that results
745 from salvaging, where salvaging means the controlled separation of Solid Waste material
746 which do not require further processing for Reuse or Recycling prior to Transfer activities,
747 as defined in 14 CCR Section 17402(a)(24).

748 **SB 1383**

749 "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19,
750 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and
751 Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of
752 Division 30 of the Public Resources Code, establishing methane emissions reduction
753 targets in a statewide effort to reduce emissions of short-lived climate pollutants.

754 **SB 1383 Regulations**

755 "SB 138 Regulations" or "SB 1383 Regulatory" refers to the Short-Lived Climate
756 Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and
757 adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of
758 regulations of 14 CCR and 27 CCR.

759 **Self-Hauler (or Self-Haul)**

760 "Self-Hauler" or "Self-Haul" means a Person who hauls Solid Waste, Source Separated
761 Recyclable Materials, Organic Waste, or recovered material they have generated to
762 another Person, as defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a
763 Person who Back-Hauls waste.

764 **Service Level**

765 "Service Level" refers to the number and size of a Customer's Container(s) and the
766 frequency of Collection service, as well as ancillary services such as lock/unlock service,
767 Container push/pull service, etc.

768 **Single-Family or Single-Family Dwelling (SFD)**

769 "Single-Family" or "Single-Family Dwelling" or "SFD" means any residential Premises with
770 less than five (5) units.

771 **Solid Waste**

772 "Solid Waste" has the same meaning as defined in PRC Section 40191, which defines
773 Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes,
774 including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and
775 construction wastes, abandoned vehicles and parts thereof, discarded home and
776 industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not
777 hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other
778 discarded solid and semisolid wastes, with the exception that Solid Waste does not
779 include any of the following wastes:

780 (1) Hazardous waste, as defined in PRC Section 40141.

781 (2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8
782 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety
783 Code).

784 (3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14,
785 commencing with Section 117600, of Division 104 of the Health and Safety Code).
786 Untreated medical waste shall not be disposed of in a solid waste Landfill, as defined
787 in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid
788 Waste shall be regulated pursuant to PRC, Division 30.

789 For purposes of this Agreement, Solid Waste does not include Excluded Waste.

790 **Source Separated**

791 "Source Separated" means materials, including commingled Recyclable Materials, that
792 have been separated or kept separate from the Solid Waste stream, at the point of
793 generation, for the purpose of additional sorting or Processing those materials for
794 Recycling or Reuse in order to return them to the economic mainstream in the form of
795 raw material for new, reused, or reconstituted products which meet the quality standards
796 necessary to be used in the marketplace, as defined in 14 CCR Section 17402.5(b)(4).
797 For the purposes of the Agreement, Source Separated shall include separation of
798 materials by the Generator, Property Owner, Property Owner's employee, property
799 manager, or property manager's employee into different Containers for the purpose of
800 Collection such that Source Separated materials are separated from Gray Container
801 Waste and other Solid Waste for the purposes of Collection and Processing.

Source Separated Blue Container Organic Waste (SSBCOW)

"Source Separated Blue Container Organic Waste" or "SSBCOW" means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes as described in 14 CCR 18984.1(a)(2) and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); as defined by 14 CCR Section 17402(a)(26.7). The accepted types of SSBCOW are Paper Products, Printing and Writing Paper, and Non-Compostable Paper Products. The process for modifying the accepted types of SSBCOW are specified in this Agreement. SSBCOW is a subset of Source Separated Recyclable Materials. SSBCOW excludes Excluded Waste.

Source Separated Green Container Organic Waste (SSGCOW)

"Source Separated Green Container Organic Waste" or "SSGCOW" means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding Excluded Waste, SSBCOW, carpets, textiles, and compostable plastics. SSGCOW is a subset of Organic Waste.

Source Separated Recyclable Materials

"Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and SSBCOW. The accepted types of Source Separated Recyclable Materials and process for modifying the accepted types of Source Separated Recyclable Materials are specified in this Agreement.

Special Circumstance

"Special Circumstance" means the circumstances detailed under Section 10.3 which, when occurring, permits, but does not require the Contractor or the County to seek an adjustment in the Rates for Service, and which then requires County Contract Manager to review such application and make a recommendation to the County Board of Supervisors as to whether the Base Rate should be adjusted up or down, or remain unchanged. The continuing need for any and all previously-approved Special Circumstance Rate adjustments shall be reviewed at the time of each subsequent Rate adjustment.

Special Service

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

SRRE

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

State

"State" means the State of California.

847 **Subcontractor**

848 "Subcontractor" means any Person, firm, or entity hired by Contractor to carry out any of
849 Contractor's duties under this Agreement.

850 **Subsidiary**

851 "Subsidiary" means an Affiliate with thirty-three percent (33%) or more of its ownership
852 controlled by Contractor.

853 **Term**

854 "Term" means the duration of this Agreement, including extension periods if granted, as
855 provided for in Section 3.1.

856 **Tier One Commercial Edible Food Generators**

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

- 859 A. Supermarket.
- 860 B. Grocery Store with a total facility size equal to or greater than 10,000 square
861 feet.
- 862 C. Food Service Provider.
- 863 D. Food Distributor.
- 864 E. Wholesale Food Vendor.

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

868 **Tier Two Commercial Edible Food Generators**

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

- 871 A. Restaurant with 250 or more seats, or a total facility size equal to or greater
872 than 5,000 square feet.
- 873 B. Hotel with an on-site food facility and 200 or more rooms.
- 874 C. Health facility with an on-site food facility and 100 or more beds.
- 875 D. Large Venue.
- 876 E. Large Event.
- 877 F. A State agency with a cafeteria with 250 or more seats or a total cafeteria
878 facility size equal to or greater than 5,000 square feet.
- 879 G. A local education agency with an on-site food facility.

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

883 **Tipping Fee**

884 "Tipping Fee" shall mean the Rate or Tipping Fee charged for each Ton or unit of
885 material delivered to the Designated Disposal Facility or the Approved Recyclable

Materials Processing Facility. The Parties acknowledge that the timing of changes to the Tipping Fees that are not owned or operated by Contractor or their subcontractor may not align with the review and adjustment of Rates under this Agreement. In the event that the Contractor begins to pay new Tipping Fees at another facility approved by the County, other than one owned and operated by Contractor or their Subcontractor, prior to the adjustment of Rates under this Agreement, the adjustment to the Rate Adjustment Factor shall consider that period. Alternatively, the County reserves the right to adjust Rates at any time during the year in order to address changes in Tipping Fees alone without adjusting any other component of Rates. The "current approved" Tipping Fees shall be the Tipping Fees in place on March 1 immediately preceding the submission of the Rate Application. In addition, if a change in the Tipping Fee is anticipated or expected subsequent to the February immediately preceding the date of the rate adjustment through the subsequent Rate Year, that change shall be considered on a pro rata basis.

Ton

"Ton" or "Tonnage" or "Tons" means a unit of weight equal to 2,000 pounds (907.18474 kg).

Total Contractor's Compensation

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

Transfer

"Transfer" means the act of transferring Discarded Materials Collected by Contractor from Contractor's Collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials. Transfer allows for removal of materials excluded or prohibited from handling at the Transfer Facility (e.g., removal of Hazardous Waste).

Transportation or Transport

"Transportation" or "Transport" means the act of conveying Collected materials from one location to another.

Uncontrollable Circumstance

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

- A. An act of God (but not including reasonably anticipated ordinary weather conditions for the County), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, pandemic or epidemic, government-mandated quarantines, or the threat of same.
- B. A Change in Law (as defined herein).
- C. Preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Operating Assets.
- D. The first fifteen (15) days of a strike, work stoppage, or other labor dispute or disturbance occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Collection Services, provided the Contractor has implemented a Contingency Plan in accordance with Section 12.6 of this Agreement.
- E. Strikes, labor unrest or labor disturbances not related to the Operating Assets or the Collection Services or not directed at Contractor.
- F. Embargoes or delays in transportation.

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

- A. General economic conditions, interest or inflation rates, currency fluctuations or changes in the cost or availability of fuel, commodities, supplies, or equipment;
- B. Changes in the financial condition of the Contractor, or any of its Affiliates, or any Subcontractor affecting their ability to perform their obligations;
- C. The consequences of errors, neglect, or omission by the Contractor, any of its Affiliates, or any Subcontractor of any tier in the performance of the Collection Services;
- D. The failure of the Contractor to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;
- E. Union work rules, requirements, or demands which have the effect of increasing the number of employees employed in connection with the Operating Assets, or otherwise increase the cost to the Contractor of operating and maintaining the Operating Assets or providing the Collection Services;
- F. Any strikes, work stoppages, or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Collection Services and which last beyond fifteen (15) days unless Contractor has implemented a Contingency Plan in accordance with Section 12.6 of this Agreement;
- G. Any failure of any Subcontractor to furnish labor, materials, service, or equipment for any reason within its reasonable control;

- 976 H. Vehicle or equipment failure resulting from any reason within Contractor's
977 reasonable control; or
978 I. Any impact of prevailing wage law, customs, or practices on the Contractor's
979 construction or operating costs.
980

981 **Universal Waste (or U-Waste)**

982 "Universal Waste" or "U-Waste" means all wastes defined by 22 CCR Subsections
983 66273.1 through 66273.9. These include, but are not limited to, batteries, fluorescent light
984 bulbs, mercury switches, and Electronic Waste.

985 **Work Days**

986 "Work Days" or "Working Days" means days on which the Contractor is required to
987 provide regularly scheduled Collection services under this Agreement.

988 **Yard Trimmings**

989 "Yard Trimmings" means types of SSGCOW resulting from normal yard and landscaping
990 installation, maintenance, or removal that the Generators Source Separate and set out in
991 Green Containers for Collection for the purpose of Processing by the Contractor. The
992 accepted types of Yard Trimmings for this Agreement includes but is not limited to, grass,
993 lawn clippings, shrubs, plants, weeds, small branches. Yard Trimmings are a subset of
994 SSGCOW.

ARTICLE 1: GRANT AND ACCEPTANCE OF AGREEMENT

1.1 GRANT AND ACCEPTANCE OF FRANCHISE

By the signing of this Agreement, the County grants to Contractor and Contractor accepts an exclusive franchise within the limits of Franchise Service Area B Subject to the limitations described in the County Code, the franchise granted to Contractor shall be the exclusive right to collect, transport, handle, process, recycle, and, dispose of all Franchised Materials generated by Residential and Commercial Premises in Franchise Service Area B, as particularly set out in this Agreement and subject to the limitations described in Section 1.3 and except where otherwise precluded by Federal, State, and local laws and regulations.

1.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The effectiveness of this Agreement is subject to Contractor's satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by the County:

- A. The representation and warranties made by Contractor in its Application for Franchise are true and correct on and as of the Effective Date.
- B. There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- C. Contractor has furnished evidence of the Insurance required by Section 11.2 of this Agreement.

1.3 LIMITATIONS OF SCOPE OF FRANCHISE

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

- A. **Recyclable Materials.** Recyclable Materials that are either donated or sold, by the generator of the materials, to a party other than Contractor. A mere discount or reduction in price of Contractor's charges for the handling of such materials is not a sale or donation within the meaning of this Agreement. The materials shall be deemed "solid waste" within the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such, whether or not they may be potentially recyclable, in either of the following instances: (a) the material is mixed or commingled with other types of solid waste, or (b) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any

1036 person or combination of persons in exchange for collection, removal,
1037 transportation, storage, processing, handling, consulting, container rental or
1038 disposal services ("fee for service" recycling), whether or not arranged by or
1039 through a subcontractor, broker, agent, consultant, or affiliate of the provider of
1040 such service;
1041

1042 B. **Self-Hauled Materials.** A Commercial business Owner or Resident may Dispose
1043 of materials generated in or on their own Premises using their own vehicles and
1044 equipment, and, with respect to a commercial business, its own employees;
1045

1046 C. **Donated Materials.** Any items which are donated by the Generator to youth,
1047 civic, or charitable organizations;
1048

1049 D. **Beverage Containers.** Containers delivered for Recycling under the California
1050 Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq.
1051 California Public Resources Code;
1052

1053 E. **Materials Removed by Customer's Contractor as Incidental Part of**
1054 **Services.** Gray Container Waste, Yard Trimmings, and/or Recyclable Materials
1055 removed from a Premises by a contractor (e.g., gardener, landscaper, tree-
1056 trimming service, construction contractor), using its own employees, vehicles,
1057 and equipment as an incidental part of the service being performed and such
1058 contractor is providing a service which is not included in the scope of this
1059 Agreement;
1060

1061 F. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains
1062 from slaughterhouse or butcher shops, grease, or used cooking oil;
1063

1064 G. **Sewage Treatment By-Product.** By-products of sewage treatment, including
1065 sludge, sludge ash, grit, and screenings;
1066

1067 H. **Excluded Waste.** Excluded Waste regardless of its source;
1068

1069 I. **Materials Generated by State Facilities.** Materials generated by State facilities
1070 located in the County;
1071

1072 J. **Construction and Demolition Debris.** C&D hauled by any Person or company
1073 licensed, permitted, franchised, or otherwise authorized by the State or the
1074 County to perform construction, alteration, remodeling, repair or demolition
1075 operations, or when such authorized Person or Company hauls C&D, utilizing its
1076 own equipment and staff, as a service, whether as standalone service or in
1077 conjunction with a County project, for the County;
1078

1079 K. **Edible Food.** Edible Food that is collected from a Generator by other Person(s),
1080 such as a Person from a Food Recovery Organization or Food Recovery Service,
1081 for the purposes of Food Recovery; or that is transported by the Generator to

1082 another location(s), such as the location of a Food Recovery Organization, for the
1083 purposes of Food Recovery, regardless of whether the Generator donates, sells,
1084 or pays a fee to the other Person(s) to collect or receive the Edible Food from the
1085 Generator;

1086 **L. Food and Beverage Byproducts.** The hauling of byproducts from the processing
1087 of food or beverages and use of such material as animal feed if the byproducts
1088 originate from agricultural or industrial sources, do not include animal (including
1089 fish) processing byproducts, are Source Separated by the Generator of the
1090 byproducts, and are not discarded; and, if the use as animal feed is in accordance
1091 with 14 CCR Section 18983.1(b)(7). This limitation shall not apply to Organic
1092 Waste collected by Contractor pursuant to this Agreement;

1093 **M. On-Site or Community Composting.** Organic Waste that is composted or
1094 otherwise legally managed at the site where it is generated or self-hauled to and
1095 composted at a Community Composting site; and,

1096 **N. Other Wastes.** The Parties acknowledge that this Agreement is granted only
1097 with respect to the Collection Services and does not include the Collection,
1098 Transportation, Processing, or Disposal of Excluded Waste. If the Contractor
1099 elects to provide any such services with respect to Excluded Waste, such
1100 services shall be performed by a separate legal entity separately insured and
1101 liable, and according to Applicable Law unless otherwise approved in writing by
1102 the County's Risk Manager. The Parties further acknowledge that the provision
1103 by the Contractor of any services not specifically included within the Agreement
1104 are excluded from the protection of this Agreement and may be the subject of
1105 competition among any and all legally authorized haulers.
1106

1107 Contractor acknowledges and agrees that the County may permit other Persons
1108 besides the Contractor to Collect any and all types of materials excluded from the scope
1109 of this Franchise, as set forth above, without seeking or obtaining approval of
1110 Contractor. If Contractor can produce evidence that other Persons are servicing
1111 Collection Containers or are Collecting and Transporting Franchised Materials in a
1112 manner that is not consistent with this Agreement or the County Code, it shall report the
1113 location, the name and phone number of the Person or company, as available to
1114 Contractor, to the County Contract Manager along with Contractor's evidence. In such
1115 case, the County may notify the Generator and Person providing service of Contractor's
1116 rights under this Agreement. County shall reasonably cooperate with Contractor in
1117 enforcing Contractor's exclusive franchise rights granted under this Agreement.
1118
1119

ARTICLE 2: REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

2.1 COUNTY CODE

Contractor's performance of its obligations hereunder shall conform to the requirements of the Tulare County Code, which is incorporated herein by reference. The Parties acknowledge and agree that this Agreement was the result of arm's length negotiations, based on the County Code as it exists as of the Effective Date, or as it may be amended as agreed to by the Parties in connection with entering into the Agreement. If the County Code is amended such that the scope of services or Contractor's operations require modification to comply with such changes, Contractor shall be entitled to additional compensation in accordance with Section 10.3 as a County Directed Change in Scope under Section 4.9.

2.2 REPRESENTATIONS AND WARRANTIES

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

- A. **Existence and Powers.** The Parties are duly organized and validly existing under the laws of the State of California, with full legal right, power, and authority to enter into and perform their obligations under this Agreement.
- B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance with its terms, except insofar as such enforcements may be affected by bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally.
- C. **No Conflict.** Neither the execution nor the performance by the Parties of their obligations under this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, franchise, agreement (including, without limitation, the certificate of incorporation of the Contractor), or instrument to which the Contractor or any Affiliate or any of their properties or assets are bound, or constitutes a default under any such judgment, decree, agreement, or instrument. The Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflicts of interest for public officers and employees. Contractor represents it is unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement.
- D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending,

or to the Parties' best knowledge, threatened against either Party which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by either Party in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by that Party of its obligations hereunder or by the Contractor under any such other agreement or instrument.

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

F. **Contractor's Statements.** The Contractor's statements and any other supplementary information submitted to the County, which the County has relied on in awarding and entering this Agreement, do not: (i) contain any untrue or misleading statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made.

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

H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to manage, Collect, Transport, Process, and Dispose of the Franchised Materials; and Contractor possesses the equipment, facility, and employee resources required to perform this Agreement.

I. **Voluntary Use of Designated Disposal Facility.** The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Designated Disposal Facility for the purposes of Disposing of all Solid Waste Collected in the County. Contractor further agrees to use the Designated Disposal Facility for the purposes of Disposing of all Residual Waste resulting from Processing activities performed by Contractor or Subcontractor under this Agreement. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

J. **Representative of the Parties.** Contractor represents and warrants to County that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind Contractor to its terms. Contractor acknowledges that County has relied upon this representation and warranty in entering into this Agreement.

1208

ARTICLE 3: TERM OF AGREEMENT

1209

3.1 EFFECTIVE DATE AND TERM OF AGREEMENT

1210 This Agreement shall become effective as of January 1, 2025, and shall expire at 11:59
1211 PM on June 30, 2039, unless terminated as provided in this Agreement. This
1212 Agreement may be extended or terminated pursuant to the corresponding provisions
1213 contained herein.

1214

3.2 TERMINATION FOR FAILURE TO IMPLEMENT SERVICES

1215 The Contractor has agreed herein, through either its own labor, equipment, and facilities
1216 or facilities provided by others, to implement various programs in order provide service
1217 to Customers under this Agreement. Failure to implement the services described in this
1218 Agreement upon the commencement of this Agreement, for any reason, shall constitute
1219 an Event of Default in accordance with 12.1 hereof.

1220

ARTICLE 4: SCOPE OF SERVICES

1221

4.1 GENERAL

1222 Contractor shall provide a three-Container Collection program for the separate
1223 Collection of Source Separated Recyclable Materials, Source Separated Green
1224 Container Organic Waste (SSGCOW), and Gray Container Waste as specified herein,
1225 using Containers that comply with the requirements of Section 7.7. Once Discarded
1226 Materials are placed in a Container for collection, ownership of such Discarded
1227 Materials shall transfer to Contractor, subject to the terms of this Agreement and by
1228 operation of law. Contractor is hereby granted the right to retain, Recycle, Compost,
1229 Dispose of, and otherwise use such Discarded Materials, or any part thereof, in any
1230 lawful fashion or for any lawful purpose desired by Contractor. Contractor shall not
1231 knowingly Collect Containers that include Prohibited Container Contaminants have the
1232 right to retain any benefit or profit resulting therefrom.
1233

1234 The scope of services to be performed by Contractor pursuant to this Agreement shall
1235 include the furnishing of all labor, supervision, equipment, materials, supplies, and all
1236 other items necessary to perform all requirements of the Agreement. The enumeration of,
1237 and specification of requirements for, particular items of labor or equipment shall not
1238 relieve the Contractor of the duty to furnish all others, as may be required to perform
1239 Contractor's obligations under this Agreement. Failure to specifically require an act

1240 necessary to perform the services detailed in this Agreement does not relieve Contractor
1241 of its obligation to perform such act.

1242 Contractor must, at all times, provide reliable, courteous, and high-quality Collection
1243 services and other services as described in this Agreement.

1244 This Agreement and scope of this franchise shall be interpreted to be consistent with
1245 Applicable Law now and during the Term of the Agreement. If future judicial
1246 interpretations of current law or new laws, regulations, or judicial interpretations limit the
1247 ability of the County to lawfully contract for the scope of services in the manner and
1248 consistent with all provisions as specifically set forth herein, Contractor agrees that the
1249 scope of the Agreement will be limited to those services and materials which may be
1250 lawfully included herein. To the extent that Contractor can demonstrate lost revenue or
1251 increased costs arising out of such future limitations to the scope or provisions of the
1252 Agreement set forth herein, Contractor shall receive a Rate adjustment in accordance
1253 with Section 10.3.
1254

1255 **4.2 RESIDENTIAL**

1256 No later than ninety (90) days from the Effective Date, Contractor shall provide the
1257 services described in this Section to any Single-Family Customer within the County who
1258 subscribes with Contractor for such service. Residential Customers are required to
1259 subscribe for and pay for Collection services under County Code, including, without
1260 limitation, County Code Section 04-03-1150 and 04-03-1635.

1261 **A. Gray Container Waste Collection.** Contractor shall Collect Gray Container Waste
1262 in Contractor-provided Gray Containers from Residential Customers and
1263 Transport all Gray Container Waste to the Designated Disposal Facility or the
1264 Approved Transfer Facility for Transfer and Transport to Designated Disposal
1265 Facility. Contractor may allow carpets and textiles to be placed in the Gray
1266 Containers.

1267	Containers:	Carts
1268	Container Sizes:	96-gallons (or similar size) and 65 gallons (or similar size);
1269		1 cubic yard Bins
1270	Service Frequency:	One (1) time per week
1271	Service Location:	Curbside
1272	Acceptable Materials:	Gray Container Waste
1273	Prohibited Materials:	Source Separated Recyclable Materials, SSGCOW,
1274		Excluded Waste
1275	Additional Service:	Contractor shall provide additional Gray Cart upon request
1276		and may charge the "Additional Solid Waste Cart" Rate in
1277		Exhibit B.
1278		
1279		

1280 **B. Blue Container Source Separated Recyclable Materials Collection.** Contractor
1281 shall Collect Source Separated Recyclable Materials in Contractor-provided Blue

1282 Containers from Residential Customers in "Valley Floor" areas and Transport all
 1283 Source Separated Recyclable Materials to the Approved Recyclable Materials
 1284 Processing Facility for Processing or the Approved Transfer Facility for Transfer
 1285 and Transport to Approved Recyclable Materials Processing Facility for
 1286 Processing.
 1287 **Containers:** Carts
 1288 **Container Sizes:** 96-gallons (or similar size)
 1289 **Service Frequency:** One (1) time per week in "Valley Floor" areas and one (1)
 1290 time every other week in "Foothill" areas; on the same day
 1291 as Solid Waste Collection
 1292 **Service Location:** Curbside
 1293 **Acceptable Materials:** Source Separated Recyclable Materials
 1294 **Prohibited Materials:** Gray Container Waste, SSGCOW, Excluded Waste
 1295 **Additional Service:** Contractor shall provide additional Recyclable Materials
 1296 Cart to "Valley Floor" Residential Customers at the
 1297 "Additional Recyclable Materials Cart" Rate in Exhibit B.
 1298 During the first two (2) Collection Days of each year for each
 1299 Residential Customer, Contractor shall Collect up to an
 1300 additional five (5) bags of Recyclables set out curbside at
 1301 no additional cost to the Customer to accommodate
 1302 additional Recyclables generated during the Holidays.

1303 **C. Green Container Waste (SSGCOW) Collection.** Contractor shall collect
 1304 SSGCOW in Contractor-provided Green Containers from Residential Customers
 1305 and Transport all waste to the Approved SSGCOW Processing Facility or the
 1306 Approved Transfer Facility for Transfer and Transport to Approved Organic Waste
 1307 Processing Facility for Processing.

1308 **Containers:** Carts
 1309 **Container Sizes:** 96-gallons (or similar size)
 1310 **Service Frequency:** One (1) time per week in "Valley Floor" areas and one (1)
 1311 time every other week in "Foothill" areas; on the same day
 1312 as Solid Waste Collection, unless the services have been
 1313 waived through a Low Population Waiver Request per
 1314 Section 6.5 of this Agreement. In Low Population waived
 1315 areas, Customer will be charged "Limited Services" per the
 1316 County approved Rates.
 1317 **Service Location:** Curbside
 1318 **Acceptable Materials:** SSGCOW in "Valley Floor" areas and Yard Trimmings in
 1319 "Foothill" areas.
 1320 **Prohibited Materials:** Gray Container Waste, Recyclable Materials, Excluded
 1321 Waste in "Valley Floor" areas and Food Waste in "Foothill"
 1322 areas.
 1323 **Additional Service:** Contractor shall provide one (1) additional Green Cart to
 1324 "Foothill" Residential Customers upon request at no
 1325 additional charge, and to "Valley Floor" Residential
 1326 Customers at the "Additional SSGCOW Cart" Rate in Exhibit
 1327 B.
 1328
 1329

1330 **4.3 COMMERCIAL**

1331 No later than ninety (90) days from the Effective Date, Contractor shall provide the
 1332 services described in this Section to Commercial Customers within the County. The
 1333 Commercial sector includes Multi-Family Customers. Commercial Customers, including
 1334 Multi-Family Customers, are required to subscribe for and pay for Collection services
 1335 under County Code, including, without limitation, County Code Section 04-03-1150 and
 1336 04-03-1640.

1337 A. **Gray Container Waste Collection.** Contractor shall collect Gray Container Waste
 1338 in Contractor-provided Gray Containers not less than one (1) time per week from
 1339 Commercial Customers and Transport all Gray Container Waste to the Designated
 1340 Disposal Facility for Disposal or the Approved Transfer Facility for Transfer and
 1341 Transport to Designated Disposal Facility.

1342	Containers:	Carts, Bins, Roll-off Boxes, Compactors
1343	Container Sizes:	96-gallon Carts;
1344		1-, 1.5-, 2-, 3-, 4-, and 6- cubic yard Bins; and,
1345		Roll-off Boxes or Compactors (as requested by Customer)
1346	Service Frequency:	Customers in "Foothill" areas may be limited to three (3)
1347		service days per week, all other Customers may receive
1348		service up to six (6) days per week. All service shall be
1349		provided at the frequency requested by the Customer.
1350	Service Location:	Curbside; or other Customer-selected service location at the
1351		Commercial Premises.
1352	Acceptable Materials:	Gray Container Waste
1353	Prohibited Materials:	Recyclable Materials, SSGCOW, Excluded Waste
1354	Additional Service:	Upon Customer request and to accommodate periodic
1355		additional service needs, Contractor shall provide Collection
1356		service at a greater frequency than the Customer's regularly
1357		scheduled service, up to the maximum Service Frequency
1358		and Contractor may charge the appropriate Rate for the
1359		higher Service Frequency.
1360		Contractor shall provide a Bin exchange to any Commercial
1361		Customer for cleaning and maintenance once (1) each year,
1362		upon Customer request.
1363	Other Requirements:	Contractor shall, at Customer's request and for an additional
1364		charge, open and close gates, push and/or pull Containers,
1365		lock and unlock Containers, or perform other services as
1366		reasonably necessary to access and empty Containers.

1367 B. **Recyclable Materials Collection.** Contractor shall Collect Source Separated
 1368 Recyclable Materials in Contractor-provided Blue Containers from Commercial
 1369 Customers and Transport all Source Separated Recyclable Materials to the Approved
 1370 Recyclable Materials Processing Facility for Processing or the Approved Transfer
 1371 Facility for Transfer and Transport to Approved Recyclable Materials Processing
 1372 Facility for Processing.

1373 Contractor shall provide a default service level of one (1) 96-gallon Cart one (1) time
 1374 per week for all Customers subscribing to weekly Solid Waste service at no charge.
 1375 Customers may request Recyclable Materials Collection service in excess of the
 1376 default service at the Commercial Recycling Container rates approved by the County.

1377	Containers:	Carts, Bins, Roll-off Boxes, Compactors
1378	Container Sizes:	96-gallon Carts; 3-- cubic yard Bins; and,
1379		Roll-off Boxes or Compactors (as requested by Customer)
1380	Service Frequency:	Up to three (3) times per week but not less than one (1) time
1381		every week, as requested by Customer
1382	Service Location:	Curbside or other Customer-selected service location at the
1383		Premises
1384	Acceptable Materials:	Source Separated Recyclable Materials
1385	Prohibited Materials:	Gray Container Waste, SSGCOW, Excluded Waste
1386	Additional Service:	Upon request from Customer or County, Contractor shall
1387		provide Recyclable Materials Collection service to
1388		Customers up to the equivalent volume of Solid Waste
1389		Collection service subscribed by Customer at no additional
1390		charge to Customer. In the event a Customer requests
1391		Recyclable Materials Collection service in excess of their
1392		subscribed level of Solid Waste Collection service,
1393		Contractor may charge Customer up to fifty percent (50%)
1394		of the Rate for the equivalent level of Solid Waste Collection
1395		service approved under this Agreement after adjusting the
1396		service level to allow for the amount of service that must be
1397		provided at no charge.
1398	Other Requirements:	Contractor shall, at Customer's request and for an additional
1399		charge, open and close gates, push and/or pull Containers,
1400		lock and unlock Containers, or perform other services as
1401		reasonably necessary to access and empty Containers.
1402		

1403 **C. Organic Materials Collection.** Contractor shall collect SSGCOW in Contractor-
 1404 provided Green Containers from Commercial Customers and Transport all waste to
 1405 the Approved SSGCOW Processing Facility or the Approved Transfer Facility for
 1406 Transfer and Transport to Approved Organic Waste Processing Facility for
 1407 Processing.

1408 Contractor shall provide a default service level of one (1) 96-gallon Cart one (1) time
 1409 per week for all Customers subscribing to weekly Solid Waste service at no charge.
 1410 Customers may request SSGCOW Collection service in excess of the default service
 1411 at the Commercial Green Container rates approved by the County

1412	Containers:	Carts, Bins, Compactors
1413	Container Sizes:	96-gallon Carts; 3-- cubic yard Bins; and,
1414		Roll-off Boxes or Compactors (as requested by Customer)
1415	Service Frequency:	Up to three (3) times per week but not less than one (1) time
1416		every week, as requested by Customer
1417	Service Location:	Curbside or other Customer-selected service location at the
1418		Premises
1419	Acceptable Materials:	SSGCOW

1420	Prohibited Materials:	Solid Waste, Recyclable Materials, Excluded Waste
1421	Additional Service:	Upon Customer request and to accommodate periodic
1422		additional service needs, Contractor shall provide Collection
1423		service at a greater frequency than the Customer's regularly
1424		scheduled service, up to the maximum Service Frequency
1425		and Contractor may charge the appropriate Rate for the
1426		higher Service Frequency.
1427		Contractor shall provide a Bin exchange to any Commercial
1428		Customer for cleaning and maintenance once (1) each year,
1429		upon Customer request.
1430		

1431 **4.4 COUNTY FACILITIES**

Contractor shall Collect Solid Waste, SSGCOW, and Recyclable Materials from County facilities in the same manner as those services are provided to Commercial Customers. Contractor shall provide service to all County facilities, excluding detention facilities, located within Franchise Service Area B, as well as any future facilities owned and operated by the County; provided that Contractor shall be entitled to a rate adjustment in accordance with Section 10.3 for such increased services. Provision of such services to County facilities specifically excludes any County-owned Solid Waste transfer station(s) within Service Area B. Contractor shall provide Solid Waste, SSGCOW, and Recyclable Materials services to County-sponsored public events held within Franchise Service Area B, which shall include, at a minimum, Carts for the collection of both Solid Waste, SSGCOW, and Recyclable Materials and staffing sufficient to ensure that such Carts are serviced frequently enough to prevent overflowing or spillage. Contractor shall provide these services at no cost to the County.

1447 **4.5 SPECIAL EVENTS**

1448
1449 A. **General.** Contractor shall provide Source Separated Recyclable Materials,
1450 SSGCOW, and Gray Container Waste services at special events, in accordance with
1451 this Section 4.5. Ninety (90) days prior to any such special event, County shall notify
1452 Contractor of its desire to hold a special event. Contractor and County shall meet and
1453 confer to determine the scope of services Contractor will provide at such special event.

1454 **B. Event Collection Stations.** Contractor shall provide and set-up event Collection
1455 stations for Collection of Source Separated Recyclable Materials, SSGCOW, and
1456 Gray Container Waste. Each event Collection station shall include a separate Cart for
1457 each of Source Separated Recyclable Materials, SSGCOW, and Gray Container
1458 Waste, as appropriate. Contractor shall provide a sufficient number of event Collection
1459 stations of sufficient capacity to meet the needs of the event as determined by
1460 Contractor in cooperation with the event organizer.

1461 C. **Collection Station Monitors.** Upon request, Contractor shall provide Collection
1462 station monitors who shall be present for the duration of each special event.

1463 Contractor shall require Collection station monitors to monitor event Collection
1464 stations and educate event attendees and vendors about what materials are
1465 acceptable in each Collection station Cart.

1466 D. **Consolidation Containers.** Upon request, Contractor shall provide Containers for the
1467 aggregation of material removed from event Collection stations during the course of
1468 the event. Contractor shall provide Containers in sufficient number of appropriate
1469 type(s) for the needs of the event as determined by Contractor in cooperation with the
1470 event organizer. Contractor shall service Containers, as agreed-upon with the event
1471 organizer, and deliver Collected materials to the appropriate Approved Facility for
1472 Processing and/or the Designated Disposal Facility.

1473 E. **Public Education Booth.** Upon request of either the County Contract Manager or the
1474 event organizer, Contractor shall staff a booth or exhibit at the event for the purpose
1475 of educating the public about the services and programs provided by Contractor under
1476 this Agreement and the benefits of source reduction, reuse, Recycling, and
1477 Composting. Contractor shall comply with the non-English language requirements for
1478 the public education materials provided, in accordance with Section 6.2.

1479 F. **Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor
1480 shall submit a report to the County Contract Manager and event organizer. The report
1481 should include, at a minimum: the number of event collection stations deployed at the
1482 event, the number of Collection station monitors, the Tonnage of each material type
1483 (i.e., Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste)
1484 Collected, and a description of the public education provided at the event.

1485 G. **Service to Special Events.** Contractor shall provide the above-described special
1486 event services at the request of the event organizer and may negotiate the charges
1487 for such services with the event organizer based on the specific needs of the event.

1488

1489 4.6 OTHER SERVICES

1490 A. **Clean-up Events.** Contractor shall offer Bulky Waste drop-off events to
1491 Residential and Multiple-Unit Dwelling Customers three (3) times per year at no
1492 additional charge to Customers. Contractor shall make reasonable efforts to
1493 schedule the events during the County's half-price disposal week and to rotate
1494 events annually throughout Contractor's service area. Contractor shall Collect
1495 Bulky Waste from Customers and may Transport the Bulky Waste to a charitable
1496 or thrift organization for re-use, otherwise all Bulky Waste shall be delivered to the
1497 Designated Disposal Facility.

1498
1499 **Containers:** Up to two (2) 40 cu. yd. Roll-Off boxes per event or
1500 equivalent volume of Bins, provided that accommodations
1501 are made by Contractor for either separate collection or
1502 post-collection sorting of each acceptable material type.

1526 **C. Special Service.** Customers may request, and County may from time to time
1527 require, Special Service(s). For purposes of this Agreement, Special Service shall be
1528 defined as services beyond the normal scope of service pursuant to this Agreement,
1529 which shall include, but is not limited to: (a) use of specialized (i.e. wildlife-proof)
1530 Containers; (b) alternative Service Levels, (c) alternative Service Frequencies; and/or
1531 (d) alternative Service Location(s).

1539 4.7 C&D COLLECTION

1540 Contractor shall Collect C&D materials from C&D Collection Sites from Customers that
1541 subscribe to its C&D Collection services and Transport the C&D to (i) the Approved C&D
1542 Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to an
1543 Approved C&D Processing Facility, as specified in Article 5. Contractor shall charge
1544 Customers for C&D Collection services at Rates agreed upon by Generators and
1545 Contractor and consistent with the requirements of Article 10.

4.8 EMERGENCY SERVICES

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

4.9 COUNTY-DIRECTED CHANGE IN SCOPE

Pursuant to the County Code, the County may modify the scope of services performed by the Contractor pursuant to this Agreement. The County shall provide written notice of any requested modification to the scope of services provided by Contractor pursuant to this Agreement, and the Contractor shall provide the County with any information reasonably requested by the County in connection with the proposed changes including potential change in costs and subsequent rate adjustments. The County reserves the right to withdraw its request for a change in scope for any reason prior to a written agreement of the parties to implement such change. The Contractor shall, within sixty (60) days after receipt of such notice by the County, respond to the County's request. Contractor shall be entitled to a rate adjustment in accordance with Section 10.3 for all such new or modified services or obligations under this Agreement.

4.10 SUBCONTRACTING

The Contractor shall not utilize any Affiliates or Subcontractors for the performance of the Collection Services except with the consent of the County Contract Manager, which may be withheld or delayed if the County Contract Manager reasonably determines, in their sole discretion, that such consent is not in the best interest of the public health, safety, or general welfare. In the event Subcontractors are utilized, the Contractor shall provide the County with direct access to a designated representative from the Subcontractor, such designation not to be changed without prior approval of the County Contract Manager, except in cases of termination of the employee. The Parties acknowledge the County's direct contact with any Subcontractors in no way eliminates the Contractor's responsibility to fulfill its obligations under this Agreement.

Contractor may use Subcontractors for the provision of contamination monitoring services and education activities.

ARTICLE 5: TRANSFER, PROCESSING, AND DISPOSAL

5.1 APPROVAL AND/OR DESIGNATION OF FACILITIES

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

- A. The County determines that such arrangements threaten public health or safety;
- B. The County determines that the County is not adequately protected from liability for the activities of the Processing or Transfer entities; or
- C. The County determines that the diversion levels of the particular facility causes the County to be substantially out of compliance with AB 939, AB1826, SB 1383 or any other regulations regarding Solid Waste and Recyclable Materials management, as determined, for example and not by way of limitation, by CalRecycle compliance order or failure to achieve minimum standards established by a regulatory agency, following notice and reasonable opportunity to cure where such opportunity to cure may include providing replacement programs which would result in compliance; and/or, the Contractor is Disposing of Recovered Materials.

Contractor agrees that the Board of Supervisors may, upon making a finding of public health, safety, well-being, or benefit, direct Contractor to deliver any or all Source Separated Recyclable Materials, SSGCOW, and/or Gray Container Waste Collected within the County to any type of Designated Facility, as County may designate. Such a change shall be considered a County-directed change in scope and handled in accordance with provisions in Section 4.9. The Residue remaining after Processing, or recovery of Source Separated Recyclable Materials, SSGCOW, and C&D shall be subject to the Board's authority to direct Disposal at a Disposal Facility designated by the Board. County shall reserve the right to direct such Residue in accordance with the Board's direction in any agreement with the Facility operator of any Transfer Facility or Processing Facility where Contractor delivers Source Separated Recyclable Materials, SSGCOW, or Gray Container Waste. Contractor agrees to Transport Discarded Materials to the Designated Facility(ies) designated by the Board, commencing no later than thirty (30) days from receipt of notice from the County Contract Manager; provided that any such

direction by County shall be considered a County Directed Change in Scope and addressed in accordance with the provisions in Section 4.9.

5.2 TRANSFER, PROCESSING, AND DISPOSAL

A. Contractor shall Transport all Discarded Materials to the Approved and Designated Facility(ies). Facilities shall comply with the following requirements:

1. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste Collected in accordance with this Agreement.

2. **Approved Source Separated Recyclable Materials Processing Facility (Blue Containers).** Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.

3. **Approved Organic Waste Processing Facility (Green Containers).** Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial SSGCOW to recover Source Separated Organic Waste.

4. **Designated Disposal Facility (Gray Containers).** County-owned landfill(s) designated by the County Contract Manager to which the Contractor shall transport Solid Waste and Residual Waste.

B. **Guaranteed Capacity and Facility Standards.** Contractor shall guarantee Transfer, and Processing, capacity at the Approved Facility(ies) to receive all Discarded Materials Collected by the Contractor throughout the Term of the Agreement. Assuming Contractor utilizes third-party Approved Facility(ies), Contractor will use best efforts to enter into agreement(s) with relevant Subcontractors to ensure compliance with the terms of this Agreement.

C. **Transportation and Facility Costs.** Contractor shall pay all costs for the Transport, Transfer, Processing, and/or Disposal of Discarded Materials Collected in accordance with this Agreement. Contractor's compensation for such services is included in the Rates charged to Customers.

D. **Subcontractor.** If the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the owner or operator of such Approved Facility(ies). Requirements or obligations related to indemnification (Section 11.1) and insurance (Section 11.2) shall apply to Subcontractors, as well as any other Subcontractor requirements or obligations stated

1659 in other Sections of this Agreement. County shall not be deemed a “subcontractor” for
1660 purposes of this Section.

1661 E. **Transportation to Non-Approved Facilities Prohibited.** If Contractor Transports
1662 Discarded Materials to a Facility other than the Approved/Designated Facility(ies),
1663 Liquidated Damages may be assessed pursuant to Section 12.8.

1664 F. **Records and Investigations.** Contractor shall maintain accurate records of the
1665 quantities of Discarded Materials Transported to and Accepted at the
1666 Approved/Designated Facility(ies) and shall cooperate with County and any regulatory
1667 authority in any audits or investigations of such quantities by providing records and
1668 information it is required to maintain under this Agreement upon request.

1669

1670 **5.3 PROCESSING, TRANSFER, AND DISPOSAL SERVICES**
1671 **FACILITY STANDARDS**

1672 Contractor shall arrange for Discarded Materials to be Transported to Approved Facilities
1673 for Transfer and Processing in accordance with this Article. The Approved Facilities shall
1674 comply with the standards specified herein. If the Contractor does not own or operate one
1675 or more of the Approved Facilities, Contractor shall use best efforts to enter into a
1676 subcontract agreement with the owner or Facility operator of such Approved Facility(ies).
1677 Requirements regarding processing, transfer, and/or disposal services and facilities
1678 contained in this Agreement shall pertain to any such Subcontractor(s).

1679 Note that Contractor, by definition, includes Affiliates, DBAs, and Subcontractors. As a
1680 result, requirements shall pertain to Affiliate(s) and Subcontractors providing Facility-
1681 related services.

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1685 **5.3.1 General Requirements**

1686 A. **Overview.** Contractor agrees to Transport Discarded Materials it Collects in the
1687 County to an appropriate Approved Facility(ies) for Transfer and Processing, as
1688 applicable for each type of Discarded Material. As of the Commencement Date of this

1689 Agreement, the Approved Facilities, which were selected by Contractor and reviewed
 1690 and approved by the County Contract Manager, are listed in the table below.

1691 **Approved Facilities**

Material Type	Approved Transfer Facility (if applicable)	Approved Facility (Processing and/or Disposal Facility)	Description of Processing Methodology
Source Separated Recyclable Materials	Pena's Material Recovery Facility / Transfer Station (54-AA-0034) Owner/Operator: Pena's Disposal Inc. 12094 Ave 408, Cutler, CA 93615		
Yard Trimmings	Transferred from Pena's MRF / TS (54-AA-0034) to: Green Valley Recycling (10-AA-0199) Owner/Operator: Kochergen Farms Composting 2365 East North Avenue, Fresno, CA 93725		
SSGCOW	Transferred from Pena's MRF / TS (54-AA-0034) to: Green Valley Recycling (10-AA-0199) Owner/Operator: Kochergen Farms Composting 2365 East North Avenue, Fresno, CA 93725		
C&D	Pena's Material Recovery Facility / Transfer Station (54-AA-0034) Owner/Operator: Pena's Disposal Inc. 12094 Ave 408, Cutler, CA 93615		

1692

- B. **Facility Capacity Guarantee.** With respect only to those Approved Facility(ies) that are owned or operated by Contractor or its Subcontractor, Contractor shall guarantee sufficient capacity over the Term of this Agreement to Transfer (if applicable), Transport, and Process all Source Separated Recyclable Materials, Yard Trimmings, SSGCOW, and C&D and to Transfer (if applicable) and Transport all Gray Container Waste Collected under this Agreement in accordance with this Section. Contractor shall provide the County, upon request, with documentation demonstrating the availability of such Transfer (if applicable), Transport, and Processing capacity for Approved Facility(ies) that are owned or operated by Contractor or its Subcontractor.
- C. **Facility Permits.** Contractor or Facility operator shall keep all existing permits and approvals necessary for use of the Approved Facility(ies), in full regulatory compliance. Contractor, or Facility operator, shall, upon request, provide copies of permits or other approvals and/or notices of violation of permits to the County.
- D. **Contractor-Initiated Change in Facility(ies).** Contractor may change its selection of one or more of the Approved Facility(ies) following County Contract Manager's written approval which shall not be unreasonably withheld. Contractor shall submit a written request for approval to the Contact Manager thirty (30) days prior to the desired date to use the Facility.
- E. **Notification of Emergency Conditions.** The Contractor shall notify the County Contract Manager of any unforeseen operational restrictions that have been imposed upon the Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Approved Facility from Processing the Discarded Materials Collected for more than forty-eight (48) hours under this Agreement.
- F. **Approved Facility Unavailable/Use of Alternative Facility.** If Contractor is unable to use an Approved Facility due to a sudden unforeseen closure of the Facility or other emergency condition(s), Contractor shall comply with those procedures described in Section 6.5 of this Agreement.
- G. **Compliance with Applicable Law.** Contractor, with respect to Approved Facilities that it owns or operates, warrants throughout the Term that the Approved Facilities are respectively authorized and permitted to accept Discarded Materials in accordance with Applicable Law and are in full compliance with Applicable Law.

5.3.2 Processing Standards

- A. **Recovery Required.** Contractor agrees to Transport and deliver all Source Separated Recyclable Materials, SSBCOW, SSGCOW, and C&D Collected under this Agreement to an Approved Facility for Processing as applicable for each material type. Contractor shall conduct Processing activities for all Source Separated Recyclable

Materials, SSBCOW, SSGCOW, and C&D to recover Recyclable materials and Organic Waste to reduce Disposal. The Processing shall be performed in a manner that minimizes Disposal to the greatest extent commercially practicable and complies with Applicable Law, including SB 1383 Regulations. Contractor may Dispose of Organic Waste from homeless encampments and illegal disposal sites and quarantined Organic Waste rather than Process such materials.

- B. **Handling Requirements.** Pursuant to 14 CCR Section 17409.5.6(a)(1), Remnant Organic Material separated from the Gray Container Waste for recovery can be combined with Organic Waste removed from the SSGCOW for recovery once the material from the SSGCOW has gone through the Organic Waste recovery measurement protocol described in 14 CCR Sections 17409.5.4 and 17409.5.5.
- C. **Residue Disposal.** With respect to any Approved Facility(ies) owned or operated by Contractor or its Subcontractor, Contractor shall be responsible for Disposal of Residue from Processing activities at its own expense and shall deliver any such Residue to the Designated Disposal Facility(ies), to the extent the Approved Processing Facility(ies) are located within Tulare County.
- D. **Processing Facility Residue Guarantees.** Upon request of the County Contract Manager, Contractor shall provide a certified statement from the Facility operator of any Approved Facility(ies) owned or operated by Contractor or its Subcontractor documenting its Residue level.
- E. **Source Separated Recyclable Materials Processing Standards.** Contractor shall arrange for Processing of all Source Separated Recyclable Materials at a Facility that recovers materials designated for Collection in the Blue Container and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).
- F. **SSGCOW Processing Standards**
 - 1. Contractor shall arrange for Processing of all SSGCOW at a Facility that recovers Source Separated Organic Waste and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).
 - 2. Contractor shall arrange for SSGCOW Processing at an Approved Organic Waste Processing Facility that complies with Applicable Law.
 - 3. Measurement. Contractor shall measure the actual levels of Incompatible Materials at Approved Facility(ies) owned or operated by Contractor or its

Subcontractor in accordance with procedures described in 14 CCR Section 17409.5.8(b), 14 CCR Section 17409.5.9, or Applicable Law.

G. C&D Program Standards

1. With respect to Approved Facility(ies) owned or operated by Contractor, Contractor shall comply with the County's Construction and Demolition materials Recycling program requirements pursuant to Sections 4-03-1500 through 4-03-1550 of the Tulare County Code.
2. Contractor shall deliver mixed C&D loads to an Approved C&D Processing Facility for Recycling.
3. Contractor shall deliver Source Separated C&D to an Approved C&D Processing Facility or other Facility authorized for Recycling C&D, and shall deliver Salvageable Materials to a party for Reuse or salvage.
4. To the extent commercially reasonable, Contractor shall arrange for Processing of Organic Waste in C&D at a Facility that recovers Organic Waste from C&D and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).

H. **Marketing.** Upon request, Contractor shall provide proof to the Jurisdiction that all Source Separated Recyclable Materials, SSGCOW and C&D Collected by Contractor were Processed and recovered materials were marketed for recovery, salvage, or Reuse or as organics products in such a manner that materials are not deemed Landfill Disposal pursuant to 14 CCR Section 18983.1(a) and in a manner that materials are deemed Diversion pursuant to AB 939. All Residue from the Recycling and Processing activities that is not marketed shall be reported to the County Contract Manager as Residue and accounted for as Disposal Tonnage at the Designated Disposal Facility.

I. **Disposal of Source Separated Recyclable Materials, SSGCOW, and C&D Prohibited.** Except as otherwise provided in this Agreement, Source Separated Recyclable Materials, SSGCOW, and C&D Collected under this Agreement may not be Disposed of in lieu of Recycling, Processing, or marketing the material, without the expressed written approval of the County Contract Manager.

If for reasons beyond its reasonable control, Contractor believes that it cannot avoid Disposal of the Source Separated Recyclable Materials, SSGCOW or C&D Collected in the County, then it shall prepare a written request for County approval to Dispose of such material. Such request shall contain the basis for Contractor's belief (including,

but not limited to, supporting documentation), describe the Contractor's efforts to arrange for the Processing of such material, the period required for such Disposal, and any additional information supporting the Contractor's request.

In addition, the request shall describe the Contractor's proposed interim plans for implementation while the County is evaluating its request. If the County objects to the interim plans, the County shall provide written notice to the Contractor and request an alternative arrangement. The County shall consider the Contractor's request and inform Contractor in writing of its decision within thirty (30) days.

5.3.3 Gray Container Waste Disposal Standards

- A. **Disposal of Gray Container Waste Collected.** Contractor shall Transport all Gray Container Waste Collected under this Agreement to the Designated Disposal Facility.

5.3.4 Rejection of Excluded Waste

- A. **Inspection.** Contractor and its subcontractors will use standard industry practices to detect and reject Excluded Waste in a uniform and non-discriminatory manner and will not knowingly accept Excluded Waste at Approved Facility(ies). With respect to Approved Facility(ies) owned or operated by Contractor or its Subcontractor, Contractor will comply, and will include compliance measures in its third-party contracts, to ensure that third-party Approved Facilities comply with the inspection procedure contained in its permit requirements. Contractor will promptly modify that procedure to reflect any changes in permits or Applicable Law.
- B. **Excluded Waste Handling and Costs.** Contractor will arrange for or provide handling, Transportation, and delivery to a Recycling, incineration, or a Disposal facility permitted in accordance with Applicable Law of all Excluded Waste detected at the Approved Facility(ies) owned or operated by Contractor or its Subcontractor. Contractor is solely responsible for making those arrangements or provisions and all costs thereof. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Excluded Wastes that Contractor inadvertently accepts in a

lawful manner and of arranging for the disposition of that Excluded Waste in accordance with Applicable Law.

ARTICLE 6: OTHER SERVICES

6.1 CONTAMINATION MONITORING

6.1.1 Contamination Monitoring Procedures

A. **General.** This Section presents inspection method(s) for Prohibited Container Contaminants. Contractor must use one or more of the following methods to conduct contamination monitoring:

1. **Physical Container Inspections.** When Contractor's Hauler Route personnel dismounts from Collection vehicles to empty a Container, such personnel may lift the Container lid and observe the contents. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth below;
2. **Visual Inspections via On-Board Monitoring System.** For Collection vehicles with automated Collection service, the Collection vehicle hopper may be equipped with a video camera and monitoring system. The Contractor's Hauler Route personnel will observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle (observation of hopper video may be done remotely). Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth below;

OR

3. **Visual Inspection via Remote Monitoring.** Contractor may install camera equipment in Containers and use a cloud-based software that will enable Contractor and/or County to monitor and examine the contents of Containers using digital photographic images obtained from the cameras installed in the Containers. The digital images will be maintained and accessible for examination through the Contractor's cloud-based software platform. Contractor will perform regular and frequent remote monitoring of each Container, automatically, manually, or in combination using the remote monitoring system.

If this method is utilized, Contractor shall capture no less than one (1) digital pictures per Container per day.

6.1.2 Contamination Monitoring Options

A. General

Commencing on or before the Effective Date of this Agreement, the Contractor shall, at its sole expense, conduct either Hauler Route reviews or Waste Evaluations for Prohibited Container Contaminants in Collection Containers. Contractor shall develop a review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b)-(c).

During the Term of this Agreement, Contractor may, subject to written County Contract Manager approval, use an alternate, enumerated Contamination Monitoring Option. Contractor must submit its request to utilize an alternate Contamination Monitoring Option thirty (30) days prior to January 1 of each calendar year.

1. Route Reviews

Hauler Route reviews shall be conducted in a manner that is deemed safe by the Contractor; is approved by the County; and, is conducted in a manner that results in all Hauler Routes being reviewed annually. The Contractor shall conduct Hauler Route reviews that include inspection of the contents of Customers' Collection Containers for Prohibited Container Contaminants in a manner such that a minimum of five percent (5%) of Containers on each and every Hauler Route are inspected annually.

Contractor shall submit its proposed Hauler Route review methodology for the coming year to the County no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Hauler Route's annual review. Contractor's proposed Hauler Route review methodology shall include not only its plan for Container inspections but shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. County and/or CalRecycle will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval.

If the County and/or CalRecycle notifies the Contractor that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the methodology and, after obtaining County or CalRecycle approval, conduct additional Hauler Route reviews, increased Container inspections, or implement other changes using the revised procedure. If the Contractor's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the County, the Contractor shall, at the expense of the County, revise the methodology and implement the necessary changes using the revised procedure.

If Contractor utilizes the physical container inspection method detailed above, the County's Contract Manager may request, and Contractor shall accept, modifications to the schedule to permit observation of the Hauler Route reviews by the County; provided that any such request does not impede Contractor's ordinary business operations. In

addition, Contractor shall provide an email notice to the County's Contract Manager no less than ten (10) Working Days prior to each scheduled Hauler Route review that includes the specific time(s), which shall be within the County's normal business hours, and location(s).

2. Waste Evaluations

Contractor shall, no later than January 15 of each calendar year, provide the County Contract Manager with a proposed waste evaluation methodology and a schedule of waste evaluations for the calendar year for review and approval by County Contract Manager. The Contractor shall conduct waste evaluations for Prohibited Container Contaminants by sampling the contents of Containers on Hauler Routes in the following manner:

1. The Contractor shall conduct waste evaluations at least twice per year and the studies shall occur in two distinct seasons of the year.
2. The Contractor's waste evaluations shall include samples of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste.
3. The waste evaluations shall include samples from each Container type served by the Contractor and shall include samples taken from different areas in the Franchise Service Area that are representative of the Franchise Service Area's waste stream.
4. The waste evaluations shall include at least the following minimum number of samples from all the Hauler Routes included in the studies:
 - a. For Hauler Routes with less than 1,500 Generators, the study shall include a minimum of 25 samples;
 - b. For Hauler Routes with 1,500-3,999 Generators, the study shall include a minimum of 30 samples;
 - c. For Hauler Routes with 4,000-6,999 Generators, the study shall include a minimum of 35 samples; and,
 - d. For Hauler Routes with 7,000 or more Generators, the study shall include a minimum of 40 samples.
5. The Contractor shall Transport all of the material Collected for sampling to a sorting area at an Approved Facility, where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:
 - a. The Contractor shall take one sample of at least 200 pounds from the

- material Collected from each material stream for sampling. For example, Contractor shall take a 200-pound sample taken from the combined contents of the SSGCOW Container samples.
- b. The 200-pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.
 - c. For each 200-pound sample, the Contractor shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.
 - d. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.
 - e. All weights shall be recorded in pounds.
6. The Contractor shall Transport all of the material Collected for sampling to a sorting area at an Approved Facility, where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:
- a. The Contractor shall take one sample of at least a 200 pounds from the material Collected from each material stream for sampling. For example, Contractor shall take a 200-pound sample taken from the combined contents of the SSGCOW Container samples.
 - b. The 200-pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.
 - c. For each 200-pound sample, the Contractor shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.
 - d. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.
 - e. All weights shall be recorded in pounds.
7. If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Contractor must either:
- a. Within fifteen (15) Working Days of the waste evaluation, notify all Generators

on the sampled Hauler Route of their requirement to properly separate materials into the appropriate Containers. The Contractor may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, email, or electronic message to the Generators. The format of the warning notice shall be approved by the County Contract Manager;

or

b. Within fifteen (15) Working Days of the waste evaluation, perform a targeted Hauler Route review of Containers on the Hauler Route sampled for waste evaluations to determine the sources of contamination and notify those Generators of their obligation to properly separate materials. The Contractor may provide this information to these Generators by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, e-mail, or electronic message to the applicable Generators. The format of the warning notice shall be approved by the County Contract Manager.

B. Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols which include protocols for non-Collection and Disposal of contaminated materials in accordance with Section 6.1.3.

C. Annual Reporting Requirements.

Contractor shall maintain records and report to the County on an annual basis on contamination monitoring activities and actions taken.

6.1.3 Actions upon Identification of Prohibited Container Contaminants.

A. **Record Keeping.** The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log, tablet, or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation if the on-board computer system did not automatically update the Customer's account record.

B. **Identification of Excluded Waste.** If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall issue a non-

Collection notice and shall not Collect the Discarded Materials that contain Excluded Waste. Contractor's personnel shall record that observation in accordance with the requirements described herein, and immediately inform their route supervisor. The route supervisor shall investigate and initiate applicable action within one (1) Business Day or sooner if the Excluded Waste may cause immediate danger.

- C. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor may provide the Customer a courtesy pick-up notice. Courtesy pick-up notifications shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that Contractor may issue a non-Collection notice or assess a contamination fee; and, (v) may include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or may deliver the notice by mail, e-mail, text message, or other electronic message.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with Gray Container Waste and Transport the contaminated materials to the appropriate Designated Facility for Disposal.

D. **Contamination Notices.**

1. **Residential Contamination Notices.** On the third and subsequent instances of identification of Prohibited Container Contaminants or Excluded Waste in a Residential Container within any twelve (12) month period, Contractor shall provide a Contamination notice to the Residential Customer. The notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-Collection; (ii) include the date and time the notice was left or issued. The non-Collection notice may include photographic evidence of the violation(s). Contractor may issue a contamination fee to the Customer in the amount set forth in Exhibit B.

The Contractor's notice of non-Collection shall be left attached to or adhered to the Customer's Container, or at the Premises' door or gate at the time the violation occurs, or shall be delivered by mail, e-mail, text message, or other electronic message.

Contractor shall submit a sample of its contamination notice to the County Contract Manager for approval prior to implementing use of it with Customers.

2. **Commercial Contamination Notices.** On each instance of identification of Prohibited Container Contaminants or Excluded Waste in a Commercial Container, Contractor shall provide a Contamination notice to the Commercial Customer. The notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-Collection; (ii) include the date and time the notice was left or issued. The non-Collection notice may include photographic evidence of the violation(s). Contractor may issue a contamination fee to the Customer in the amount set forth in Exhibit B.

The Contractor's notice of non-Collection shall be left attached to or adhered to the Customer's Container, or at the Premises' door or gate at the time the violation occurs, or shall be delivered by mail, e-mail, text message, or other electronic message.

- E. **Communications with Customer.** Whenever a Container at the Premises of a Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the scheduled Collection Day by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected.
- F. **Contractor Return for Collection.** Upon request from Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of Customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable Rates in Exhibit B.
- G. **Disposal of Contaminated Materials.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container(s), Contractor may Dispose of the Container's contents, provided Contractor complies with the noticing requirements contained herein.

6.2 EDUCATION AND OUTREACH

- A. **General.** In order to promote public education, Contractor shall create all public education materials and conduct education programs and activities described in this Section at its expense.
- B. **Program Objectives.** Contractor's public education and outreach strategy shall focus on improving Generators' understanding of the benefits of and opportunities for source

reduction, Reuse, and Landfill Disposal reduction. In general, Contractor-provided public education and outreach, which shall include all content required by this Section, should: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, and reduction of Solid Waste Disposal; (ii) instruct Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Source Separated Recyclable Materials and SSGCOW; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with Recycled-content materials. The cumulative intended effect of these efforts is to reduce each Generator's reliance on Contractor-provided Gray Container Waste service and, ultimately, Disposal.

C. Contractor Cooperation and/or Support for County Educational Efforts.

Contractor acknowledges that they are part of a multi-party effort to operate and educate the public about the integrated waste management system. Contractor shall cooperate and coordinate with the County Contract Manager on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns.

Contractor shall obtain approval from the Contract Manager on all Contractor-provided public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. County shall have the right to request that Contractor include County identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. The County reserves the right to direct the Contractor to modify the education and outreach program at any time. The County will provide comments to all public education materials within ten (10) Business Days of Contractor's submittal.

D. Annual Education Plan. Annually, Contractor shall develop and submit an annual public education plan to promote the programs performed by Contractor under this Agreement. The annual public education plan shall present the education activities for the upcoming calendar year and shall be submitted with the Contractor's annual report in accordance with this Agreement. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be developed or updated, opportunities for expanded partnerships, a timeline for implementation, The County Contract Manager shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the County Contract Manager. Each plan's implementation success shall be measured according to the deadlines identified and products developed. At the County Contract Manager's request, Contractor shall meet

with the County Contract Manager to present and discuss the plan. County Contract Manager shall be allowed up to thirty (30) days after receipt to review and request modifications. The County Contract Manager may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the County Contract Manager. Any further delays may result in Liquidated Damages for failure to perform education and outreach activities.

E. Annual Education Requirements.

1. Annual Notice of Requirements. Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each customer a mailer that includes information specified in Section 6.2(H) Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.
2. Billing Inserts. Upon County Contract Manager's request, Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the County as inserts in Contractor's provided that County shall prepare, print, and deliver to Contractor any such inserts. Contractor shall be responsible for distribution of the materials provided. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the County as attachments to Customer invoices. Upon County Contract Manager's request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. County shall provide required bill inserts to Contractor at least fifteen (15) days in advance of the start of Contractor's next billing cycle. If applicable, Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use 100% post-consumer paper and procure printed materials from local businesses, assuming the costs of such practices are not unreasonable in relation to alternative procurement methods.
3. Minimum Website Requirements. Contractor shall develop and maintain a webpage (with a unique URL specific to the County) that is specifically dedicated to the County to provide Generators with detailed service information. The website or webpage shall be accessible by the public and shall include all education and outreach materials being provided, without requirement for login. Contractor shall update the website regularly so that information provided is current.
4. Instructional Service Guide. No later than ninety (90) days from the Effective Date, Contractor shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection

holidays and a Customer service phone number. No later than ninety (90) days from the Effective Date, the service guide shall be printed and delivered with each set of Containers distributed to a Customer and shall be delivered annually to all Customers. Contractor shall prepare different service guides for Single-Family, Multi-Family, and Commercial Customers, and shall make the service guide available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the instructional service guide rather than a printed version, if requested by the Customer.

5. Annual Multi-Family Dwelling Unit Discarded, Hazardous and toxic waste Notices. At least annually, commencing no later than ninety (90) days from the Effective Date, Contractor shall prepare and distribute notices to each Multi-Family Dwelling Unit at Multi-Family Premises serviced by Contractor. The annual notices shall include information on regulations governing Discarded Materials, Hazardous Waste, and toxic waste; County and State requirements to properly separate Discarded Materials (such as requirements of the County Code and of State statutes and corresponding regulations, including, but not limited to, AB 341, AB 1826, and SB 1383); instructions on properly separating materials; waste prevention; services available; and any other information required by the County or by State regulations (including SB 1383 Regulatory requirements for education, pursuant to 14 CCR, Division 7, Chapter 12, Article 4). Contractor shall make notices available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the notices rather than a printed version, if requested by the Customer.
6. Education Materials for Property and Business Owners and Tenants Contractor shall annually provide Property Owners and Commercial Business owners public education materials for the Property Owners' and Commercial Business owners' to distribute to all employees, contractors, tenants, and Customers of the properties and businesses. The Contractor's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials and shall reflect content requirements described below. A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial Business or Multi-Family Property Owner may request delivery of materials by contacting the Contractor's customer service department not later than two (2) weeks in advance of the date that the materials are needed.

- F. **Minimum Content Requirements.** No later than ninety (90) days from the Effective Date; the Contractor shall include the following education and outreach content to Customers by incorporation of this content into the public education materials

described herein.

1. Collection system description
 - a. Information on the Generator's requirements to properly separate Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste and place such materials in appropriate Containers pursuant to this Agreement, SB 1383 Regulations, and all other Applicable Law.
2. Information on methods for the prevention of Source Separated Recyclable Materials and SSGCOW generation; managing SSGCOW on Generator's Premises through composting or other Landfill Disposal reduction activities allowed under 14 CCR Sections 18983.1(b).
3. Information regarding the methane reduction benefits of reducing the Disposal of SSGCOW, and the method(s) that the Contractor uses to recover SSGCOW.
4. Information regarding how to recover Source Separated Recyclable Materials, SSBCOW, and SSGCOW.
5. Information related to the public health and safety and environmental impacts associated with the Disposal of SSGCOW and SSBCOW.
6. Information regarding programs for donation of Edible Food.
7. For Commercial Customers, information about the County's Edible Food Recovery Collection program; Tier One Commercial Edible Food Generators and Tier Two Edible Food Generators requirements specified in 14 CCR, Division 7, Chapter 12, Article 10; Food Recovery Organizations and Food Recovery Services operating within the County, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste. County shall provide Contractor such list of Food Recovery Organizations and Food Recovery Services to provide to Commercial Customers in accordance with this Section.

G. Non-English Language Requirements

The Contractor shall make all public education and outreach materials required by this Section available in English and Spanish.

6.3 BILLING

A. General Billing Requirements

1. **Contractor Responsible.** Contractor shall bill all Customers and be solely responsible for collecting payment from Customers. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the Ownership of property. Individual contracts between Contractor and a Customer for services provided under this Agreement shall be prohibited unless otherwise approved in writing by the County Contract Manager on a case-by-case basis.
 2. **Frequency.** Contractor shall bill all Single-Family Customers quarterly in advance of services provided. Contractor shall bill all Residential Customers in advance, and all Commercial and Multi-Family Customers for scheduled and regularly recurring services on a monthly basis in advance of services provided. Contractor shall bill Customers for any on-call and/or non-recurring services no more frequently than monthly and shall only bill for services provided during the previous billing period. Contractor shall remit invoices to Customers no earlier than the twentieth (20th) day of the month preceding the period for which service is being billed. Quarterly billing shall be on the calendar quarter (January-March, April-June, July-September, and October-December).
 3. **Bill Format.** Contractor shall bill Customers electronically using paperless invoices; however, Contractor shall bill Customers who decline or are otherwise unable to provide email contact information by standard mail, using standard (paper) invoices. Contractor shall permit Customers the ability to pay their bills through an electronic check or credit card and include the ability for Customer billings to be automatically charged on a recurring basis. Contractor shall prepare and mail bills and collect payments from Customers who decline to use such internet-based billing system. Contractor shall make arrangements to allow such Customers to pay bills by cash, check, electronic check, money order, and credit card.
 4. **Bill Inserts.** Contractor shall include bill inserts in accordance with Section 6.2.
 5. **Records.** Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and verification by the County Contract Manager at any reasonable time, but in no case more than thirty (30) calendar days after receiving a request to do so.
- C. **Application of Contamination Surcharges.** Contractor may assess contamination Processing fees as identified in Exhibit B (Rates) on Customers with repeated occurrences of excess Prohibited Container Contaminants in accordance with Section 6.1. Any contamination Processing fees to be assessed for a Customer shall be included and itemized on the Customer's invoice for the billing period in which the

Contractor notified the Customer of the assessment of the contamination Processing fee.

- D. **Delinquent Accounts.** Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, telephone requests for payments, and assistance from collection agencies.

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

6.4 GENERATOR WAIVER PROGRAM

A. Types of Generator Waivers

1. **General.** County may grant waivers described in this Section to Generators that impact the scope of Contractor's provision of service for those Customers. Waivers issued shall be subject to compliance with SB 1383 Regulatory requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the County.

2. **De Minimis Waivers.** The County may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials and SSGCOW requirements set forth in this Agreement, SB 1383 Regulations, and Section 4-03-1645 of the County Code if the Multi-Family, Commercial Business, or its Property Owner provides documentation or the County has evidence demonstrating one of the following de minimis conditions:
 - a. The Multi-Family's or Commercial Business' total Solid Waste Collection service is two (2) cubic yards or more per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste; or,
 - b. The Multi-Family's or Commercial Business' total Solid Waste Collection service is less than two (2) cubic yards per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than ten (10) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste.
3. **Physical Space Waivers.** The County may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials or SSGCOW Collection service requirements set forth in this Agreement, SB 1383 Regulations, and County Code Section 4-03-1645 if the Multi-Family, Commercial Business, or its Property Owner provides documentation, or the County has evidence from its staff, the Contractor, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for Blue Containers and/or Green Containers.
4. **Frequency Waivers.** County may allow the Contractor to provide Collection of Blue Containers, Gray Containers, or both once every fourteen (14) days, rather than once per week, for Customers that have been granted a Collection frequency waiver from the County.

B. Change in Customers' Service Levels. When the County grants a waiver to a Customer, the County shall notify the Contractor within seven (7) days of the waiver approval with information on the Customer and any changes to the Service Level or Collection service requirements for the Customer. Contractor shall have seven (7) days to modify the Customer's Service Level and billing statement, as needed.

C. Waiver Reverification. It shall be the responsibility of the County to verify that the Customers with de minimis, or physical space constraint waivers continue to meet the waiver requirements set forth in this Section. County shall conduct such reverifications of waivers through review of applicable records at least once every five (5) years for de minimis and physical space constraint waivers. County shall maintain a record of each

waiver verification.

6.5 SERVICE WAIVER PROGRAM

A. Low Population Area Waivers

As of the Commencement Date, Exhibit C will specify area census tracts of the County designated as Low-Population Areas. Residential SSGCOW collection service requirements are waived for the Low-Population Areas. Only Yard Trimmings will be collected in the Green Container. Low-population waivers granted by CalRecycle are only valid for a period of up to five (5) years; therefore, the qualifying areas identified in Exhibit C are subject to change. If, during the Term of this Agreement, the County is granted a waiver that expands the Low-Population Areas, or if the County's waiver(s) are no longer valid, resulting in a reduction in the number of the Low-Population Areas, any resulting Collection service changes shall be addressed as a change in scope in accordance with Section 4.9.

B. Processing Facility Temporary Equipment or Operational Failure Waiver

1. **Notification to the County.** The Contractor, or their Subcontractor (such as a Facility operator), shall notify the County of any unforeseen operational restrictions that have been imposed upon an Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent an Approved Facility from Processing and recovering Source Separated Recyclable Materials, or SSGCOW. The Contractor or Subcontractor shall notify the County as soon as possible and no later than two (2) days from the time of the incident. The notification shall include the following: (i) name of Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved/ Facility; (iii) date the Approved Facility became unable to Process Source Separated Recyclable Materials, or SSGCOW; (iv) description of the operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Approved Facility to Process Source Separated Recyclable Materials, or SSGCOW; (vi) Contractor's proposed action plan to deliver materials to an Alternative Facility for Processing or Contractor's request for waiver to deliver Source Separated Recyclable Materials, or SSGCOW to the Designated Disposal Facility.
2. **Use of Alternative Facility or Waiver for Disposal of Materials.** Upon notification by Contractor or Subcontractor of an Approved Facility's inability to Process materials, County shall evaluate the notification and determine if County

shall require Contractor to use an Alternative Facility or allow the Contractor to Transport the Source Separated Recyclable Materials, or SSGCOW to the Designated Disposal Facility for Disposal on a temporary basis for a time period specified by the County. Upon County's decision, the County shall notify the Contractor of its requirement to use an Alternative Facility for Processing or to use the Designated Disposal Facility for Disposal, and the period of time that the County will allow the Source Separated Recyclable Materials, or SSGCOW, to be redirected to the Alternative Facility or Designated Disposal Facility. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days from the date the Designated Facility's Processing restriction or failure commenced. In such case, the Contractor must receive written permission from the County Contract Manager prior to depositing any Discarded Material in a Landfill.

3. **Record Keeping and Reporting.** Contractor shall maintain a record of any Approved/Designated Facility incidents and report this information to the County. C.

Disaster Waivers. In the event of a disaster, the County shall grant Contractor a waiver of some or all Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Collection requirements shall be addressed as a County Directed Change in Scope in accordance with Section 4.9 of this Agreement.

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

Contractor shall maintain records and submit reports regarding compliance agreements for quarantined SSGCOW that are Disposed of pursuant to this subsection.

6.6 INSPECTION AND ENFORCEMENT

A. Annual Compliance Reviews

1. **General.** Contractor shall perform compliance reviews described in this Section no later than ninety (90) days from the Effective Date, and at least annually thereafter, unless otherwise noted.
2. **Commercial Generator Compliance Reviews.** The Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Generator requirements under the County's Discarded Materials Collection program; and, (ii) if applicable for the

Generator, Self-Hauling requirements pursuant to 14 CCR Section 18988.3 and Section 4-03-1665 of the County Code, including whether a Multi-Family or Commercial Business is complying through Back-Hauling SSGCOW. The compliance review shall mean a “desk” review of records maintained by Contractor in accordance with this Agreement to determine Customers’ compliance with the above requirements and does not necessarily require on-site observation of service.

B. Compliance Review Process

1. **Number of Reviews.** The Contractor shall conduct a sufficient number of compliance reviews, Hauler Route reviews, and inspections of Customers, to adequately determine the Generators’ overall compliance with SB 1383 Regulations, AB 1826, AB 341, and Chapter 3 of the County Code. The number of reviews shall be no less than two (2) in total for each review type and timeframe. County reserves the right to require additional inspections, if the County determines that the amount of inspections conducted by the Contractor is insufficient. County may require the Contractor to prioritize inspections of entities that the County determines are more likely to be out of compliance.
2. **Non-Compliant Entities.** For one (1) year following the Effective Date of this Agreement, when compliance reviews are performed by Contractor pursuant to Section 6.9A, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers within seven (7) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler Route review. Contractor shall document the non-compliant Customers and the date and type of education materials provided, and shall report such information to the County. In addition to providing the education materials described in this subsection, Contractor shall document non-compliant Customers determined through Contractor’s compliance reviews pursuant to Section 6.9A, and shall report all Customers with violations of SB 1383 Regulations to the County. The County shall be responsible for subsequent enforcement action against the Customers.

6.7 SERVICE COMPLAINTS

A. Documentation of Complaints.

1. **General.** The Contractor agrees to maintain a computer database log of all oral and written complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor agrees to document and maintain for a period of at least twelve (12) months on a form

or log all Complaints registered by Customers and Persons, in accordance with this Section. Contractor shall record complaints received related to SB 1383 Regulatory non-compliance in its log in a manner further described in Section 8.

2. SB 1383 Regulatory Non-Compliance Complaints.

For complaints received in which the Person alleges that an entity is in violation of SB 1383 Regulations, Contractor shall document all information required under this Agreement. Contractor shall provide this information in a brief complaint report to the County for each SB 1383 Regulatory non-compliance complaint in its quarterly report of SB 1383 Regulatory non-compliance complaints.

B. Investigation of SB 1383 Regulatory Non-Compliance Complaints.

1. **Investigation.** Contractor shall commence an investigation, within ninety (90) days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 Regulations and if County determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon County request to investigate a complaint received by County, in which County determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate complaints against Customers, but not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383 Regulations.

Contractor shall investigate the complaint using one or more of the methods:

- a. Reviewing the Service Level of the entity that may not be compliant with SB 1383 Regulations;
- b. Reviewing the waiver list to determine if the entity has a valid de minimis, physical space constraint, or Collection frequency waiver;
- c. Determining if the entity is located in a "Foothill" area that is subject to the Low-Population Area Waiver;
- d. Inspecting Premises of the entity identified by the complainant, if warranted; and/or,
- e. Contacting the entity to gather more information, if warranted.

6.8 RECYCLING PLAN

Contractor shall develop a Recycling Plan to be reviewed and, subject to changes required by the County Contract Manager, approved by the County Contract Manager. In the event that the State of California diversion, recycling or disposal reduction requirements or goals in existence at the time this Agreement is effective are increased, revised, or the methods for obtaining or measuring compliance with existing requirements or goals are changed, the Contractor will be obligated to amend the Recycling Plan to the extent necessary to comply with diversion requirements, including estimated costs of implementation and targeted diversion rates by program. In the event the County's SRRE is revised in response to the increased requirements, the Contractor will, at the request of the County Contract Manager, develop and submit for the County's approval suggested revisions to the Recycling Plan designed to enable the County to meet the revised requirements, including estimated costs of implementation and targeted diversion rates. After approval by the County Contract Manager, the Recycling Plan will be revised, and the Contractor will implement such revised Recycling Plan. County acknowledges that the Contractor shall nonetheless be entitled to recover, through the Maximum Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the Contractor incurred as the result of implementation of the revised Recycling Plan whether prepared by Contractor to address increased diversion goals or changes in methodologies or methods of measurement, or in response to a revision to the County's SRRE.

The Contractor's initial Recycling Plan shall be submitted to the County Contract Manager within ninety (90) days of the effective date of this Agreement. Any amendment to the Recycling Plan must be approved by the County Contract Manager.

ARTICLE 7: STANDARDS OF PERFORMANCE

7.1 GENERAL

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

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

7.2 OPERATING ASSETS

General. The Contractor shall acquire and maintain at its own cost and expense, Operating Assets which in number, nature, and capacity shall be sufficient to enable the Contractor to provide the Collection Services in accordance with the terms hereof and such assets shall be subject to inspection upon two (2) Business Days' notice by the County Contract Manager.

The Contractor, at its cost and expense, shall at all times:

1. Operate the Operating Assets properly and in a safe manner;
2. Maintain, preserve, and keep the Operating Assets in good repair, working order, and condition;
3. Staff the Operating Assets with the appropriate number of licensed employees consistent with good management practice; and
4. Contractor shall maintain the safety of the Operating Assets at a level consistent with Applicable Law, the Insurance Requirements, and prudent Solid Waste management practices.

7.3 OPERATING HOURS AND SCHEDULES

The Contractor shall, at all times during the term of this Agreement, be available to Customers between the hours of 8:00 a.m. and 4:00 p.m. no less than five (5) days per week to receive service requests, provide education regarding acceptable and prohibited items for each Collection service provided, and to receive Customer complaints and requests for corrective service. At a minimum, Contractor shall provide a local or toll-free telephone number to all Customers. Contractor shall provide for a telephone system and customer service staffing capable of ensuring that any caller may reach a live person to provide service within two (2) minutes. Contractor shall also provide an after-hours voicemail system on the same telephone number and reply to Customers regarding any after-hours requests by noon the next Business Day.

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

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

- B. **Office Hours.** The Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 4:00 p.m. daily except Saturdays, Sundays, and holidays. These hours may be altered with the approval of the County Contract Manager.
- C. **Office Facilities.** The Contractor shall establish and maintain an office accessible by means of a local or toll-free telephone number through which the Contractor's representatives may be contacted, and where customers can obtain customer services (e.g., change services, missed pickups, etc.).
- D. **Emergency Telephone Number.** The Contractor shall provide the County with an emergency telephone number for use by the County Contract Manager outside normal business hours. The Contractor shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during all hours other than normal office hours.
- E. **Holidays.** Collection of Solid Waste and Recyclable Materials shall not be required on the following legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, except in case of emergency or as otherwise required by the County Contract Manager. Whenever a regular Collection falls on such a holiday, the Collection shall be made on the following working day, and Collections throughout the County shall become current within one (1) week thereafter. Written notice of this policy shall be provided to Customers no more than thirty (30) days prior to such alternative service day. Collection shall not be rescheduled when the holiday falls on a Saturday or Sunday, unless otherwise agreed to by the County and the Contractor.

7.4 COLLECTION STANDARDS

- A. **Clean Up: Avoiding Damage to Property.** The Contractor shall use due care to prevent spills or leaks of material placed for Collection. If any materials are spilled or leaked during Collection or Transportation, the Contractor shall clean up all spills or leaks before leaving the site. The Contractor shall close all gates after making Collections and shall not do damage to or trespass upon private or public property.
- B. **Improper Loading of Containers.** The Contractor may decline to Collect any Franchised Materials that have been loaded or left for Collection in any manner which would prohibit its safe Collection.
- C. **Record of Non-Collection.** When any Franchised Materials placed for Collection are not Collected by the Contractor, the Contractor shall leave a tag or provide notice via other electronic means, including email or text message, listing the

reasons for such non-Collection and a telephone number at which the Customer may contact the Contractor. This information shall either be in writing or by means of a checked box on a form. The Contractor shall maintain, at its place of business, a report, which may be electronic, listing all such circumstances in which Collection is denied. The report shall contain the names and/or addresses of the Collection Premises involved, the date of such notice, the reason for non-Collection, and the date and manner of disposition of each case. The report shall be kept so that it may be conveniently inspected by the County Contract Manager upon request. The log relating to any particular notice shall be retained for a period of one (1) year following such tagging.

- D. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or Subcontractor employed by it, to request, solicit, or demand either directly or indirectly, compensation for the Collection of Franchised Materials or other Collection Services, except such compensation as is specifically provided for herein as approved by the County. Contractor shall instruct all such parties that they may not accept any such compensation.
- E. **Noise Levels.** The Contractor shall perform the Collection Services in compliance with Applicable Law and the County Code.
- F. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a manner as to protect the public health and safety. The Contractor agrees to establish procedures and educate its employees regarding proper methods for the protection of the general public.
- G. **Other Requirements.** Contractor shall, at Customer's request and for an additional charge in accordance with Exhibit B (Rates), open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers.

7.5 COLLECTION VEHICLE REQUIREMENTS

General. All such Vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. Contractor specifically acknowledges that the County is within an "Extreme Non-Attainment Area" for criteria pollutants that are associated with, among other things, the operation of heavy duty vehicle fleets. All such Vehicles shall comply with all Federal, State, and local laws and regulations including, without limitation, safety and emissions. Contractor has represented to the County that Contractor's fleet is compliant with all such Applicable Laws at the date of the execution of this Agreement. Contractor may not seek additional compensation from County or through the Rates charged to Customers to come into compliance with any Applicable Law in effect as of the date of the execution of this Agreement; provided, however, that County and Contractor agree that Contractor's obligations and/or scope of services under this Agreement exclude any existing requirements regarding the future conversion of fleets, or any part thereof, to Zero-emissions (ZEV) or Near-zero-emissions (NZEV) vehicle(s)

or the future acquisition, hiring or use of ZEVs or NZEVs under Applicable Law, including without limitation Sections 2015 et seq. of Title 13 of the California Code of Regulations. Should such existing Applicable Law apply to any of Contractor's vehicles used in the provision of services under this Agreement during the Term, then the County and Contractor agree to meet and confer in good faith to amend this Agreement to incorporate provisions and obligations reasonably necessary to comply with such Applicable Law, and Contractor may be entitled to a rate adjustment in accordance with Section 10.3.

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

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

Vehicle Specifications, Maintenance, and Appearance. All Vehicles shall be properly registered with the Department of Motor Vehicles of the State of California, shall be properly insured, shall be of a type approved by the County, shall be kept clean and in good repair, and shall be continuously maintained in a watertight condition. Vehicles used to Collect or Transport Solid Waste shall keep materials covered at all times except when such material is actually being loaded or unloaded, or when the Vehicles are moving along a Collection route in the course of Collection. All Vehicles shall carry a broom, shovel, and operable fire extinguisher. Solid Waste Collection Vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to maintain a clean appearance. All Vehicles must be made available for inspection upon two (2) Business Days' notice by the County Contract Manager.

Spillage. Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall, or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload during transit, the Contractor shall immediately arrange for the clean-up and Transportation of the payload to the appropriate facility at the Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties, or damages resulting therefrom, and shall indemnify and hold harmless the County from all loss-and-expense resulting therefrom.

7.6 COLLECTION LOCATIONS

- A. **General.** The Contractor shall be responsible for the Collection of all Franchised Materials placed for Collection in a legal manner. The Contractor shall immediately notify the County Contract Manager of any condition at or near any Designated Collection Location which creates a safety hazard or accessibility problem. Upon authorization by the County Contract Manager, the Contractor shall discontinue Collection for any such location until the safety hazard or accessibility problem is corrected.
- B. **Enclosures.** Where the Designated Collection Location is within an enclosure constructed pursuant to the requirements of any public agency having jurisdiction over the design, construction, and location of such enclosures, the Contractor shall be responsible for the removal and replacement of all Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or improvements. The Contractor shall promptly repair, at its own expense, any such enclosure or adjacent facilities or improvements damaged by the Contractor. The County shall resolve any disputes relating to such damage, and the Contractor agrees to abide by such decision.
- C. **Overfilling of Containers.** Where Contractor identifies instances of overfilling of containers by Customers, it will document the overfilling through the use of film or digital photography. Contractor may charge an overage fee in the amount on Exhibit B for cleaning up the container area and placing overfilled material into the collection vehicle. In addition, Contractor will present evidence of the overfilling to both the County and the Customer. Where such evidence was presented to the Customer, and Contractor documents another instance of overfilling within a twelve (12) month rolling period of such presentation, Contractor is authorized to charge an overage fee, deliver the next larger-sized container to the Customer, and/or adjust the service rate to the rate then in effect for the next larger-sized container. Contractor will provide the County Contract Manager written notification prior to delivering the next larger-sized container and adjusting the service rate.

7.7 CONTAINER REQUIREMENTS

- A. **County Regulations.** The County Contract Manager has approved the number, type, size, and other specific physical requirements for Containers as set forth in this Agreement. The Contractor shall not be required to Collect Franchised Materials from Containers which have not been approved by the County.
- B. **General Requirements.** Contractor shall supply the Containers for each Customer free of charge upon inception of Collection Services. After emptying any Container, the Contractor shall replace the Container in an upright position at the place where such Container was placed for Collection. The Contractor shall handle Containers in

a manner so as to prevent damage or spillage, and shall not throw, drop, or otherwise mishandle Containers during or after emptying them. The Contractor shall repair or replace, at its own expense and within five (5) days, any Container which is damaged by the Contractor and which is no longer serviceable (e.g. broken wheels, cracked lid, broken axle, cracked or leaking body, etc.).

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

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

E. **Containers Color Standards**

1. **General**

No later than January 1, 2036, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. If an existing

Container breaks or is otherwise rendered non-functional on or after the Effective Date of this Agreement, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to the Effective Date of this Agreement, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

2. **C&D Bins and Roll-Off Boxes.** Bins and Roll-Off Boxes for Collection of C&D may be in any color, provided that the colors do not conflict with the Container color requirements of this Section and provided that the C&D Container colors are consistent for all C&D Containers. The C&D Container color shall be reviewed and approved by the County Contract Manager.

F. Labeling Requirements

Labels on New Containers or New Lids

No later than ninety (90) days from the Effective Date, Contractor shall place a label on each new Container body or lid that includes language or graphic images, or both, or shall imprint new Container bodies or lids with text or graphic images that, or both that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the County Contract Manager for approval.

7.8 PERSONNEL

- A. Compliance with Applicable Law.** Contractor shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to Contractor's employees, Contractor shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment. The Contractor shall keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and shall make such records available for inspection by the County Contract Manager upon request.
- B. Employment Practices.** The Contractor shall at all times maintain and follow employment practices in accordance with all state and federal laws and

regulations, and shall indemnify the County for any Legal Proceeding relating to its noncompliance with such laws or regulations.

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

- C. Non-Discrimination.** In the performance of the terms of this Agreement, the Contractor agrees that it will not engage in nor permit such Subcontractors as it may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as a qualified individual with a disability. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship, and any other action or inaction pertaining to employment matters.
- D. Uniform.** The Contractor shall take all steps necessary to ensure that its employees performing Collection Services conduct themselves in a safe, proper, and workmanlike manner. All such employees shall at all times of employment be dressed in uniforms with suitable identification.
- E. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- F. Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection Vehicles or equipment. Contractor shall train its employees involved in Collection to identify, and not to Collect, Excluded Waste.

7.9 ASSURANCES OF NON-DISCRIMINATION

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

It is recognized that both the Contractor and the County have the responsibility to protect County employees, Customers, and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to any County facility pursuant to this Agreement where County is reasonably concerned that its employees or clients may have

been or may be the subjects of discrimination or harassment by such Contractor employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.

7.10 HAZARDOUS WASTE INSPECTION AND HANDLING

The Contractor acknowledges its obligation to arrange for the Disposal of Hazardous Waste that inadvertently comes into its possession or control. Contractor shall develop a load inspection program to be implemented during Collection. If Contractor finds Hazardous Waste in a Container or Collection area and believes it could possibly result in imminent danger to people or property, Contractor shall immediately notify the Fire Department.

ARTICLE 8: RECORD KEEPING AND REPORTING

8.1 GENERAL

Contractor shall maintain such accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the reports required by this Agreement or County Code. Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Discarded Materials Collection, Processing, and Disposal program management needs of the County. At the written direction or approval of County Contract Manager, the records and reports to be maintained and provided by Contractor may be adjusted in number, format, and frequency, if required to comply with State or federal regulatory or reporting requirements; provided that Contract shall be entitled to a rate adjustment for such adjustments as a County Directed Change in Scope, in accordance with Section 10.3.

8.2 RECORD KEEPING

- A. **General.** Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records and corresponding documentation as required herein, such that the Contractor is able to produce accurate quarterly and annual reports, and is able to provide records to verify such reports.
- B. **Record Retention and Security.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. County reserves the right to require the Contractor to maintain the records required herein through the use of a

County-selected web-based software platform. Unless otherwise required, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination.

Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and records shall be protected and backed-up. To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a quarterly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

- C. **Compilation of Information for State Law Purposes.** Contractor shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved/Designated Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to the County any record or documentation necessary for the County to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, federal, or State statutes and regulations, as amended.

8.3 AUDITS AND INSPECTION BY JURISDICTION

At a mutually agreed upon time during normal business hours, but within five (5) Work Days of a written request, Contractor shall make available to the County, for examination at reasonable locations within the County, the Contractor's data and records with respect to the matters covered by this Agreement and the County Code. Contractor shall permit the County Contract Manager to audit, examine and make excerpts or transcripts from such data and records, and make audits of all data and records relating to all matters covered by this Agreement and the County Code; provided, however, that the County shall not make excerpts or transcripts of Contractor's Intellectual Property (as defined in Section 8.5). County shall maintain the confidentiality of the Contractor's Customer list and all other confidential or proprietary information, to the extent allowed by law.

8.4 REPORTING

8.4.1 General

- A. **General Purpose.** Reports are intended to compile recorded data into useful forms of information that can be used by the County. All reports shall be adequate to meet

County's current and future reporting requirements to CalRecycle, including AB 939, AB 341, AB 1826, and SB 1383 statutes and corresponding regulations, or any other State or federal agency statutes and regulations throughout the Term of this Agreement.

- B. Failure to Report.** Failure of Contractor to comply with the reporting requirements as set forth in this Section may result in an assessment of Liquidated Damages in accordance with the Liquidated Damages provision in Section 12.8 of this Agreement. Contractor's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default and may result in the termination of the Agreement at the discretion of the County Contract Manager, in accordance with Article 12 of this Agreement. Notwithstanding the foregoing, in the even that the County reasonably believes that a report submitted by Contractor includes an error, the County shall notify the Contractor of such, and the parties will meet and confer within ten (10) Business Days to discuss and resolve the issue.
- C. Submittal Process.** All reports shall be submitted to the County Contract Manager. Reports shall be submitted electronically via email. County reserves the right to require the Contractor to maintain records and submit the reports required herein through use of a County-selected web-based software platform.

Quarterly reports shall be submitted within fifteen (15) days after the end of the reporting month; and annual reports shall be submitted within forty-five (45) days after the end of the reporting year.

8.4.2 Quarterly Reports

Quarterly reports shall include the following information pertaining to the most recently completed quarter. In addition, each quarterly report shall include a year-to-date summary page that includes the data submitted from the quarterly report(s) submitted in the calendar year prior to the submittal of the current quarterly report. Contractor shall report the information included in the following subsections.

A. Tonnage Report

1. Contractor shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Contractor, all of which shall be based on actual certified scale weights for each load. Tonnage shall be reported separately by:
 - a. Material type, which shall include, at a minimum, separate reporting of Source Separated Recyclable Materials, SSGCOW, Gray Container Waste, and any other type of Discarded Material separately Collected by Contractor (including, but not limited to: Bulky Items, mixed C&D, dirt, rock, metals, cardboard, wood waste, Reusable Items, Salvageable Materials, etc.);

- b. Customer/sector type (Single-Family, Multi-family, Commercial, Roll-off, C&D); and,
 - c. Approved Facility and Facility type.
- 2. Report Residue level and Tonnage for all Discarded Materials processed, listed separately by material type Collected and Approved Facility(ies) used.
- 3. Source Separated Recyclable Materials Tonnage Marketed, by commodity, and including average commodity value for each, and Processing Residue Tonnage Disposed, listed separately by Approved Facility(ies) used.
- 4. Documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.
- 5. Tonnage Collected by quarter separately for each Approved C&D Project Site and other data as it relates to the C&D services.
- 6. A summary of abandoned materials incidents, including: total number of incidents, and the address of each incident.

B. Collection and Subscription Report

- 1. Number of Containers at each Service Level by Customer Type and program, including:
 - a. A summary of the total gallons of Cart service, cubic yards of Bin service, and pulls; and cubic yards or Tons of Drop Box (Roll Off Box) and Compactor service by Customer Type.
 - b. Calculation of the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
- 2. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Cart, Bin, and Roll-Off Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.
- 3. List of all Commercial and Multi-Family Customers with a Gray Container Waste Service Level of two (2) cubic yards of service capacity per week or more. Such list shall include each such Customer's service address and Gray Container Waste, Source Separated Recyclable Materials, and SSGCOW Service Levels.
- 4. Bulky Item Collection Event data: Approximate number of Customers at each event; Quantity by material type collected; Where the material was processed or disposed.

C. Contamination Monitoring Report

Pursuant to Section 6.1 of this Agreement, Contractor may opt to monitor for Prohibited Container Contaminants via either Hauler Route Reviews or Waste Evaluations. Associated reporting requirements for each method are as follows:

Hauler Route reviews:

1. The number of Hauler Route reviews conducted;
2. A description of the Contractor's process for determining the level of contamination;
3. Summary report of non-Collection notices, courtesy Collection notices, and/or contamination processing fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address.
4. A record of each inspection and contamination incident, which shall include, at a minimum:
 - a. Name of the Customer
 - b. Address of the Customer
 - c. The date the contaminated Container was observed
 - d. The staff who conducted the inspection
 - e. The total number of violations found and a description of what action was taken for each
 - f. Copies of all notices issued to Generators with Prohibited Container Contaminants
 - g. Any photographic documentation or supporting evidence.
5. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants.
6. A list of all Customers assessed contamination Processing fees, pursuant to Section 6.3 of this Agreement, reported separately by Single-Family, Multi-Family, and Commercial Customers and including the Customer name, Customer address, and reason for the assessment of the contamination Processing fee, and the total number of instances contamination Processing fees were assessed in the month and the total amount of fees collected in the month.
7. Any other information reasonably requested by the Jurisdiction or specified in contamination monitoring provisions of this Agreement.

Waste Evaluations:

1. A description of the Contractor's process for conducting waste evaluations.

2. Documentation of the results of the waste evaluation studies, including information on and the number of targeted Hauler Route reviews conducted as a result of the waste evaluations. The documentation shall at a minimum include: dates of the studies; the location of the Facility where the study was performed; Hauler Routes from which samples were collected, and number of Generators on those Hauler Routes; the source sector (Customer type) of the material (Single-Family, Multi-Family, or Commercial); number of samples collected; total sample size (in pounds); weight of Prohibited Container Contaminants (in pounds); ratio of Prohibited Container Contaminants to total sample size; and, any photographic documentation taken or other physical evidence gathered during the process
3. Copies of all notices issued to Generators with Prohibited Container Contaminants.
4. Documentation of the number of loads or Containers where the contents were Disposed due to observation of Prohibited Container Contaminants, including the total weight of material disposed at the Designated Disposal or Approved Facility.
5. Any other information reasonably requested by the Jurisdiction, or specified in contamination monitoring provisions of this Agreement.

D. Customer Service Report

1. Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for service information, Rate information, etc.). For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.). These complaints and inquiries shall be documented and reported separately from SB 1383 Regulatory non-compliance complaints or other regulatory non-compliance complaints.
2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities, presented in a graph format, which compares total missed Collections during the current report period to total missed Collections in past reporting periods.
3. Number of new service requests for each Customer type and requested service(s).
4. Contractor shall maintain a record of all SB 1383 Regulatory non-compliance complaints and responses pursuant to Section 6.7 of this Agreement and submit the following information:
 - a. Total number of complaints received and total number of complaints investigated
 - b. Copies of documentation recorded for each complaint received, which shall at a minimum include the following information:
 - i. The complaint as received;
 - ii. The name and contact information of the complainant, if the complaint is not submitted anonymously;

- ii. The identity of the alleged violator, if known;
 - iii. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
 - iv. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint; and,
 - v. The identity of any witnesses, if known.
- c. Copies of all complaint reports submitted to the County, pursuant to Section 6.7.A of this Agreement.
- d. Copies of all investigation reports submitted to the County pursuant to Section 6.7.B.2 of this Agreement, which shall include at a minimum:
 - i. The complaint as received;
 - ii. The date the Contractor investigated the complaint;
 - iii. Documentation of the findings of the investigation;
 - iv. Any photographic or other evidence collected during the investigation; and,
 - v. Contractor's recommendation to the Jurisdiction on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Contractor's investigation.

8.4.3 Annual Reports

In addition to the quarterly reporting requirements in this Section the Contractor shall provide an Annual Report, covering the most recently completed calendar year, in accordance with the format and submittal requirements of this Section. The Annual Report shall include the information in the following subsections.

A. Collection and Subscription Report

1. A summary of all data provided in the Tonnage report, including quarterly and annual totals and averages.
2. The type(s) of Collection service(s) provided, a list of all Hauler Routes serviced, and a record of the addresses served on each Hauler Route.
3. A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Contractor for service, listed separately by service level and Container type (Cart, Bin, and Roll-Off service), separately by Single-Family, Multi-Family, and Commercial Customers, and separately for each type of Discarded Material; and data concerning Bulky Items Collection Events.
4. A detailed list of Single-Family, Multi-Family, and Commercial Customer information, including Gray Container Waste, Source Separated Recyclable

Materials, and SSGCOW Service Levels, and Customer type, and Customer service addresses reflecting Customer Service Levels as of December 1 (for the year in which the report is submitted)

5. The number of C&D Collection Sites served and Tonnage Collected, Tonnage Diverted, and Diversion level for each C&D Collection Sites based on County's C&D Ordinance

B. Processing Facility Report

1. Temporary Equipment or Operations Failure: If the Contractor is granted a processing facility temporary equipment or operational failure waiver, in accordance with Section 6.5 of the Agreement, the Contractor shall include the following documents and information:
 - a. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
 - b. Copies of any notifications sent to the County pursuant to Section 6.5 of the Agreement, and copies of County notices to Contractor pursuant to Section 6.5 of the Agreement;
 - c. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
 - d. A record of the tons of Organic Waste, Source Separated Recyclable Materials, SSGCOW, Mixed Waste, and/or Gray Container Waste redirected to an Alternative Facility or Disposed at an Approved Disposal Facility as a result of the waiver, recorded by Collection vehicle or transfer vehicle number/load, date, and weight.
2. Homeless Encampments and Illegal Disposal Sites: The total Tonnage amount of Discarded Materials, listed separately by Discarded Material type, removed from homeless encampments and illegal disposal sites as part of an abatement activity, listing each Collection event separately by date, location, and Tonnage Collected.
3. Quarantined Organic Waste: A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a Landfill.

C. Public Education and Outreach Report

1. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 6.2 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.

2. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
3. For any mass distribution through mailings or bill inserts, the Contractor shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
4. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
5. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
6. The annual public education plan required by Section 6.2 of the Agreement for the upcoming then-current calendar year. For example, Contractor submittal of a 2021 annual report in February 2022 shall include Contractor submittal of the annual public education plan for calendar year 2022.
7. A copy of all special event reports submitted to the Jurisdiction in accordance with Section 4.5. of this Agreement.

D. Compliance Monitoring and Enforcement Report

1. A summary of the total number of SB 1383 Regulatory non-compliance complaints that were received and investigated, and the number of Notices of Violation issued based on investigation of those complaints, in accordance with Section 6.7 of the Agreement.
2. The total number of Hauler Route reviews conducted pursuant to Section 6.1 of the Agreement.
3. A copy of written and/or electronic records and documentation for all audits, studies, compliance reviews, and all other inspections conducted pursuant to Section 6.7 of the Agreement.
4. The number of Commercial Businesses that were included in a compliance review performed by the Contractor, and the number of violations found and corrected through compliance reviews, including a list with each Generator's name or account name, address, and Generator type.
5. The total number of Notices of Violation issued, categorized by type of Generator.
6. The number of violations that were resolved, categorized by type of Generator.
7. Copies of all Notices of Violation and educational materials issued to non-compliant Generators.

E. Vehicle and Equipment Inventory

1. A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage as of December 31.
2. If applicable, the name, physical location, and contact information of each entity, operation, or facility from whom the RNG was procured.
3. If applicable, the total amount of RNG procured by the Contractor for use in Contractor vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation evidencing procurement. In addition to the amount procured, Contractor shall include the total amount actually used in Contractor vehicles in the calendar year, if these values are different.

F. Customer Revenue and Jurisdiction Fee Payment Report

Provide a statement detailing gross receipts from all operations conducted or permitted pursuant to this Agreement and report of all County fees paid in accordance with Article 9 of this Agreement.

G. Education Program Report

The status of activities identified in the annual public education plan described in Section 6.2 of this Agreement.

8.4.4 Additional Reports

- A. **Upon Incident Reporting.** Jurisdiction reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the County. The Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the County Contract Manager, which shall not to exceed ten (10) days.
- B. **AB 901 Reporting.** At County's option, County may require that Contractor provide the County copies of Contractor's AB 901 reports on a regular basis (such as quarterly or annually) or within ten (10) Business Days of the request.
- C. **CALGreen Code Compliance.** Contractor shall maintain records of any information or documentation required to demonstrate compliance with the California Green Building Standards Code (CALGreen Code), as adopted by County Code Sections 4-03-1505 and 7-15-2710 et seq. County may request that this information be included in the quarterly or annual report(s), as it pertains to the services provided under this Agreement. County shall notify the Contractor of this request within ten (10) Business

Days prior to the submittal deadline of the annual report where the information is to be included.

- D. **Buy-Recycled Policy Report.** Contractor shall maintain records evidencing compliance with any applicable County recycled materials procurement requirements, such as those contained in Section 6.2. Contractor shall submit a copy these records and/or a summary report to the County, upon County request.
- E. **Facility Capacity Planning Information.** County may require Contractor to provide County with information of available Organic Waste Processing capacity for any Approved Processing Facilities, where available capacity may include identification of monthly Tons of additional Organic Waste such Approved Facilities have the ability to receive within permitted limits. Contractor shall respond to Jurisdiction within sixty (60) days of County's request for information regarding available new or expanded capacity, and, at County's option, may be required to submit reports on a more regular basis (such as quarterly or annually). If Contractor uses a Subcontractor to perform some or all of the Facility-related services required by this Agreement, Contractor shall secure any County-requested Facility capacity planning information from its Subcontractor(s). The annual Facility capacity planning report shall comply with the following:
1. Include reports of current throughput and permitted capacity and available capacity for SSBCOW and SSGCOW Processing for any Facility in the Jurisdiction that processes SSBCOW and/or SSGCOW. Existing capacity may include identification of monthly Tons of additional Source Separated Recyclable Materials, SSGCOW, and SSBCOW capacity such Facility has the ability to receive within permitted limits.
 2. Include description of potential new or expanded Processing capacity at those Facilities, operations, and activities for Processing of SSBCOW and/or Organic Materials, including information about throughput and permitted capacity necessary for planning purposes.
 3. Be submitted using a form or format approved by the County Contract Manager.
- F. **Customized Reports.** County reserves the right to request Contractor to prepare and provide customized reports from records Contractor is required to maintain.

8.5 ACCOUNTING AND RECORDS

A. Maintenance and Audit of Financial Records

The Contractor shall maintain in its principal office in the County full and complete financial statements, accounting records, and other records related to operations under this Agreement. Contractor shall account for revenues received and expenses incurred as a result of this Agreement separate from the accounting for other operations

performed by Contractor or its affiliates. Contractor shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, Contractor shall make such records available within Tulare County to the County Contract Manager and to his agents and representatives, for the sole purpose of verifying the performance of Contractor's obligations hereunder, for a period of five (5) years from the date of final payment under this Agreement.

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

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

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

B. Confidentiality

Contractor understands that although all materials received by the County in connection with this Agreement are intended for the use of the County, they are potentially subject to disclosure under the provisions of the Public Records Act. The County agrees to hold financial statements delivered pursuant to this Section as confidential and shall not disclose the same unless and to the extent disclosure is required pursuant to Applicable

Law. In the event any intellectual property of Contractor, including, without limitation, any confidential information, copyrighted material, proprietary information, trade secrets or trademark/service mark, as well as any and all such documents or reports containing such information (together, "Contractor's Intellectual Property") or financial statements are requested by any party, County shall notify Contractor of the request and shall thereafter disclose the requested information unless Contractor, within ten (10) Business Days of receiving notice of the disclosure request: a) requests nondisclosure; b) provides County a legally sound basis for the nondisclosure; and, c) agrees to indemnify, defend, and hold the County harmless in any/all actions brought to require disclosure. Contractor may also seek and obtain, at Contractor's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the records. The County shall not be liable to the Contractor in the event County inadvertently fails to notify Contractor of any such disclosure request. This provision shall not be construed to create any legal right or claim that does not exist under the operation of state law.

C. Reporting

The Contractor shall maintain on file at its business premises documentation setting forth its Routing and Collection System, a list of all Collection Premises in the County, organized alphabetically or by address, and the identification of all services each receives. This information shall be updated and provided at no additional cost to the County along with Contractor's annual report to the County and any time upon request of the County Contract Manager. The Contractor shall cooperate with the County to periodically monitor the average volume of each type of Franchised Materials generated from each Collection Premises. Customer-specific records are subject to inspection and copying by the County during regular business hours with reasonable advance notice. Contractor agrees that by virtue of the exclusive rights conferred herein, Customer-specific information does not represent proprietary information or a trade secret.

D. Integrated Waste Management Act Compliance

The Contractor shall provide, upon request, all necessary reporting data requested by the County relating to the County's compliance requirements pertaining to AB 939, SB 1016, AB 341, AB 1826 or SB 1383 as it affects the County's Integrated Waste Management Plan and the County's SRRE. Such report shall be provided to the County within thirty (30) days of such a request. The Contractor shall cooperate in activities requested by the County to measure diversion of Solid Waste from landfills including, but not limited to, providing a location for conducting waste sorting at the Contractor's facility, re-routing trucks on a temporary basis to facilitate composition analysis. Such report shall include throughput, recovery rates per material type, residue, costs, Recyclable Material commodity values, and final disposition of Recyclable Materials. The Contractor shall also supply any other information reasonably requested by the County to meet State or Federal regulatory requirements and the reporting requirements of the County's SRRE, as those requirements may be amended from time to time.

8.6 COMPUTER SYSTEM COMPATIBILITY

The Contractor shall maintain records and data in an electronic format compatible with the versions of Microsoft Word and Excel currently in use by the County as of the date of execution of this Agreement. The Contractor will, at its cost and expense, if requested by the County Contract Manager, provide any reports or data required by this Agreement via email or through other electronic format. Raw or printed data may not be submitted as a substitute to the Contractor's obligation to provide various reports under this Agreement.

ARTICLE 9: COUNTY FEES

9.1 COUNTY FEES

- A. **Franchise Fees.** In consideration of the exclusive rights provided Contractor herein, Contractor agrees to pay the negotiated amount of Franchise Fees to the County each quarter equal to five percent (5%) of Gross Receipts for all services performed under this Agreement. Contractor and County agree that this is a fair and appropriate sum for the commercial entitlements provided to Contractor herein.
- B. **Other Fees.** The County shall reserve the right to set other fees as it deems necessary, subject to County Board of Supervisors approval. The time and method of payment shall be consistent with those for the Franchise Fee, and the fee adjustment process shall be consistent with that specified in Article 10. Any new or modified fee imposed by County shall be considered a County-directed change under Section 4.9 and Contractor shall be entitled to a Rate adjustment in accordance with Section 10.3 to compensate for such new or modified fees.

9.2 ADJUSTMENT TO FEES

The County may adjust the fees established in this Article from time to time during the Term of this Agreement and such adjustments shall be included in the adjustment of Maximum Rates as a pass-through cost that Contractor may include as an itemized cost on its invoices to Customers. The amounts of the fees for subsequent Rate Periods shall be adjusted annually in accordance with the adjustment method described herein, or shall be the amount specified by the County. The County acknowledges that the Contractor shall be entitled to recover, through the Maximum Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the Contractor incurred due to the adjustment in the fees.

9.3 PAYMENT SCHEDULE AND LATE FEES

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

If such remittance is not paid to County on or before the thirtieth (30th) day following the end of a calendar quarter, all fees due shall be subject to a delinquency penalty of one percent (1%), which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional three percent (3%) and applied to both the original amount due as well as any delinquency penalties previously applied for each additional month the payment remains delinquent. For example, if the amount of the original fees owed equals one hundred thousand dollars (\$100,000) the initial delinquency amount applied on the first day of delinquency will be three thousand dollars (\$1,000) bringing the total amount to one hundred three thousand dollars (\$101,000). If that amount becomes past due for an additional month, the additional delinquency penalty shall be applied to the one hundred three thousand dollars (\$101,000).

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

The County Contract Manager may, at any time during the Term or within three years following the expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment of fees. Contractor shall fully cooperate with the County Contract Manager in any such audit. Should the County or its agent perform this review and identify billing errors or other errors in payment of fees resulting in an overbilling to customers or an underpayment of fees of: i) fifty thousand dollars (\$50,000); or, ii) two (2%) percent or more of Gross Receipts, Contractor shall, in addition to compensating the County for lost fees and applicable delinquency penalties, reimburse the County's cost of the review within one hundred eighty (180) days of Contractor's receipt of an invoice from County. Notwithstanding the foregoing, Contractor shall be obligated to reimburse only the County's actual costs incurred in conducting such an audit and review under this Section for an amount not to exceed \$10,000 in any (5) year period.

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

ARTICLE 10: COMPENSATION AND RATE REGULATION

10.1 GENERAL

The Contractor's compensation for performance of all its obligations under this Agreement shall be Gross Receipts. Contractor's compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing and Disposal fees, fees due to the County, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Except as expressly provided in this Agreement (including Section 9.3), nothing in this Section 10.1 shall obligate the County to provide any compensation to Contractor beyond Gross Receipts.

If Contractor's actual costs, including fees due to the County, are more than Gross Receipts, Contractor shall not be compensated for the difference in actual costs and actual Gross Receipts, except in the events considered under Section 10.3 of this Agreement. If Contractor's actual costs, including fees due to the County, are less than the actual Gross Receipts, Contractor shall retain the difference.

Under this Agreement, Contractor shall have the right to charge and collect from Customers, Maximum Rates that are authorized by the County pursuant to the County Code for provision of services to Customers. The rates authorized by the County are maximum Rates and Contractor may, in its sole discretion, charge Customers any amount up to and including the approved maximum Rate for a given level of service.

Revenues received for the sale of Recyclable Materials including California Redemption Value revenues have been considered in the establishment of Maximum Rates for services provided under this Agreement. Neither Contractor nor the Approved

Recyclable Materials Processing Facility are entitled to grant funds available from CalRecycle through its "County/County Payment Program" pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction Act.

10.2 RATES AND ANNUAL ADJUSTMENTS

- A. **General.** The County Board of Supervisors, through a resolution, shall be responsible for approving adjustments to the Maximum Rates as described in this Article. If at any time during the Term of the Agreement, the Contractor determines the need for a Rate that does not appear on the County-approved Rate schedule, Contractor shall immediately notify the County Contract Manager and request establishment of such Rate. For example, if a Customer requires Collection of Recyclable Materials in a fifteen (15) cubic yard Compactor five (5) times per week and the County-approved Rate schedule does not include this level of service, the Contractor must request that the County Board of Supervisors approve a Rate for this level of service. Contractor may provide services to the public which are not within Contractor's exclusive rights under this Agreement and Contractor's charges or rates for those services shall not require approval by the County.
- B. **Maximum Rates for Rate Period One.** Maximum Rates for Rate Period One were determined by Contractor and were approved by the County with the execution of this Agreement. The maximum Rates for Rate Period One shall be effective from April 1, 2025 of this Agreement through June 30, 2025.
- C. **Rates for Subsequent Rate Periods.** Maximum Rates for subsequent Rate Periods shall be adjusted annually in accordance with Exhibit A of this Agreement. The multi-index based adjustment involves use of various cost adjustment factors (such as the percentage change in the Consumer Price Index, and percentage change in the Designated Disposal Facility Tipping Fees) to calculate adjusted Rates. Such rate adjustment calculations shall be performed in strict conformance to the procedures described in this Agreement.
- D. **Rate Structure.** The County and Contractor shall meet and confer to change the relationship of individual rates in comparison with other rates. Any such changes would occur in conjunction with the annual Maximum Rate adjustment process described in Section 10.2. or in conjunction with a Maximum Rate adjustment resulting from an extraordinary rate adjustment in accordance with Section 10.3. Changes to the rates charged under the new structure shall be calculated in such a way that the revised Maximum Rate structure generates at least the same amount of total revenue when the number of accounts at each Service Level are multiplied by the rates charged for each Service Level and the resulting revenue for all Service Levels are summed.

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

10.3 SPECIAL CIRCUMSTANCES RATE ADJUSTMENTS

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

- A. A Change in Law;
- B. A change in services or obligations of Contractor under this Agreement requested by the County, including, without limitation, increased or modified Franchise Fees, additional or new reporting requirements, changes in service frequency, or any change in County's designation of a Facility utilized by Contractor (a "County Directed Change in Scope");
- C. An increase or decrease in direct per ton surcharges, disposal or processing fees, and other taxes, fees, charges, or surcharges assessed on the collection, transportation, processing or disposal of Franchised Materials by Federal, State or local regulatory agencies after the Effective Date of the Agreement (a "Surcharge");
- D. Those types of Uncontrollable Circumstances detailed in subsection A of the definition of Uncontrollable Circumstances under this Agreement; or
- E. A positive or negative change in the market value of Recyclable Materials of more than twenty five percent (25%) on the average annual market value as demonstrated by a recognized third-party index tracking such values where such percentage change is calculated from either the date of execution of this Agreement or the date of a prior adjustment for the same reason (a "Change in Market Value").

Contractor or County Contract Manager may petition the County Board of Supervisors for an adjustment to the Maximum Rates (either increasing or decreasing the rates) calculated in accordance with Section 10.2. The request shall be prepared in a form acceptable to the County Contract Manager with support for all assumptions made by Contractor in preparing the estimate. Notwithstanding the foregoing, with respect to a request by Contractor for a rate adjustment arising from a County-directed change in scope or a County-directed change to an out of County Designated Disposal Facility or

in the event that there is only one operating County Disposal Facility at any given time), the rates shall be increased (or decreased) to fully reflect the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the County's directive.

Contractor shall prepare an application for the Special Circumstance Rate adjustment calculating the effect on its operations (both increases and decreases of costs) resulting from the Special Circumstances, clearly identifying all assumptions related to such calculations and providing the underlying documentation supporting the assumptions.

County Contract Manager shall evaluate the application for reasonableness. As part of that review, the County Contract Manager may request access to the financial statements and accounting records required to be maintained by the Contractor in order to determine the reasonableness of the Contractor's application. Should the Contractor not grant such access, then the County may rely on other information available to it as the basis for making reasonable assumptions regarding the reasonableness of the Contractor's application. In the event that Contractor requests the Special Circumstance Rate adjustment, Contractor shall pay all reasonable costs incurred by the County, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested Rate adjustment. In the event of such an application for Special Circumstances Rate adjustment, it is understood that the Party requesting the adjustment, shall have the burden of demonstrating the reasonableness of the requested adjustment. The Contractor may appeal the County Contract Manager's reasonableness determination to the County Board of Supervisors.

With respect to a Special Circumstance Rate adjustment the County Board of Supervisors shall make the final determination as to whether an adjustment to the Maximum Rates will be made, and if a rate adjustment is permitted, the amount of the rate adjustment. The approval of an adjustment to the Maximum Rates shall not be unreasonably withheld if the adjustment is a result of a request relating to items (A)–(E) above.

10.4 PUBLICATION OF RATES

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

ARTICLE 11: INDEMNITY, INSURANCE, AND PERFORMANCE BOND

11.1 INDEMNIFICATION OF COUNTY

- A. **General.** Contractor shall indemnify, hold harmless (to the full extent permitted by law), and defend with counsel acceptable to County (which acceptance shall not be unreasonably withheld), County and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the active negligence or willful misconduct of the County.
- B. **Excluded Waste.** Nothing in this Agreement requires Contractor to take title to, or possession of, Excluded Waste. In the event that Contractor inadvertently takes possession of Excluded waste, Contractor shall not store, Transport, use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws. Contractor shall not negligently or willfully mishandle Excluded Waste, and shall, at its sole expense, promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall first obtain the County Contract Manager's approval of any proposed investigatory or remedial action. Should Contractor fail at any time to promptly take such action, the County may undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse the County for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provisions contained herein. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

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

- C. **Obligation to Provide Service and Allocation of Risk** County and Contractor agree, as more fully set forth in the Recitals to this Agreement, that proper collection, processing, diversion, and Disposal of Franchised Materials is fundamental to the

protection of the public health, safety and the well-being of County's residents, businesses. County's responsibility for ensuring the adequacy of these services in part provides the justification for the granting of a Franchise to Contractor. This Franchise creates an obligation that such services continue to be provided to the extent practicable even under difficult, adverse, or unforeseeable circumstances, such as but not limited to any period where legal actions, future judicial interpretations of current law, or new laws or regulations impact the effectiveness of portions of this Agreement.

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

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

1. Should a court of competent County or other regulatory agency set aside, invalidate or stay all or a portion of the Maximum Rates approved by County, Contractor agrees to continue to perform its obligations as otherwise set forth herein, and County and/or Contractor may take such urgency actions necessary to facilitate Contractor's continuation of Collection Services.
2. Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but not limited to, Articles XIII C and D of the California Constitution which impacts the Maximum Rates for the Collection Services established in accordance with this Agreement, Contractor agrees to meet and confer with County to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.
3. If, as a result of a legal action, Contractor is unable to include Franchise Fees, other County fees or expenses, governmental fees or charges in the rates it charges Customers for its services, then Contractor agrees, upon direction from County, to reduce its rates in an amount corresponding to the disallowed fee or

charge, and shall thereafter not be required to remit the amount of the disallowed fee or charge, provided it is not collected from Customers.

- a. Nothing herein is intended to imply that California Constitution Articles XIII(C) or (D) apply to the Maximum Rates established for services provided under this Agreement. The foregoing paragraphs are merely intended as a contractual allocation of risks between the Parties.
- b. This Section shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by County to contribution or indemnity from third parties.
- c. This provision is intended to be consistent with and limited by California Public Resources Code Section 40059.2.

Subject to the process set forth in Section 10.1 regarding reducing Contractor's services or obligations in the event a requested rate adjustment is not implemented for any reason, neither County nor Contractor shall have the right to obtain payment from the other Party for losses either may sustain due to a court of competent County or other regulatory agency invalidating, setting aside, or staying the collection of all or a portion of the Maximum Rates authorized hereunder, except to the extent caused by the negligence or willful misconduct of the other Party.

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

11.2 INSURANCE REQUIREMENTS

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

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

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

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

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

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

Employee Blanket Fidelity Bond or Commercial Crime insurance policy- \$500,000 per employee covering dishonesty, forgery, alteration, theft, disappearance, and destruction (inside or outside).

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

2. The County, its officers, agents, employees, and volunteers shall be named as additional insured on all but the workers' compensation and pollution liability coverages. Contractor can comply with this requirement using a blanket additional insured endorsement.
3. Said policies shall remain in force through the life of this Agreement and, with the exception of pollution liability coverage, shall be payable on a "per occurrence" basis unless the County's Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.
4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement. Any such increased aggregate limits shall entitle Contractor to a Rate adjustment as a County directed change under Sections 4.9 and 10.3.
5. The deductibles or self-insured retentions are for the account of Contractor and shall be the sole responsibility of the Contractor.

6. Contractor shall notify County Contract Manager in writing within thirty (30) calendar days of cancellation of any policy.
 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the County Risk Manager.
 8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees, and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.
 10. The Contractor shall waive all rights of subrogation against the County, its officers, employees, agents, and volunteers related to the performance of services under this Agreement.
- B. **Endorsements.** Prior to the effective date pursuant to this Agreement, Contractor shall furnish the County Contract Manager with certificates or original endorsements reflecting coverage required by this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences.
- C. **Renewals.** During the Term of this Agreement, Contractor shall furnish the County Contract Manager with certificates or original endorsements reflecting renewals, changes in insurance companies, and any other documents reflecting the maintenance of the required coverage throughout the entire Term of this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf.
- D. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by State law, and prior to the effective date pursuant to this Agreement, Contractor shall file the following statement with the County. "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement."

11.3 PERFORMANCE BOND

Within seven (7) calendar days of the County's notification to Contractor that the County has executed this Agreement, Contractor shall file with the County a bond, payable to

the County, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually if necessary, so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be the lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of Contractor's annual Gross Receipts under this Agreement. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the County. The bond shall be in the form required by this Agreement. The County shall accept an alternative form of surety, in a form approved by the County's Risk Manager, if desired by the Contractor (e.g. a letter of credit or certificate of deposit) and may require a higher surety amount in such case.

ARTICLE 12: DEFAULT AND REMEDIES

12.1 EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default:

- A. **Collection Program.** Contractor fails to implement a Collection program that complies with the requirements herein.
- B. **Processing Capacity.** Contractor fails to provide, either directly or through its subcontractors or affiliates, adequate Processing capacity in accordance with the requirements herein.
- C. **Processing Standards.** Contractor fails to achieve, either directly or through its subcontractor or affiliates, the Processing standards specified herein, including achievement of minimum Organic Waste recovery rates.
- D. **Assignment and Transfer.** Any transaction, without any requirement of notice or cure opportunity, not in compliance with the requirements of Section 13.5 hereof.
- E. **Delivery.** The failure by the Contractor, unless specifically excused in writing by the County Contract Manager, to deliver to the Designated Disposal Facility: i) Solid Waste Collected by the Contractor; and/or, ii) Residual Waste from Processing facilities receiving Franchised Materials.
- F. **Failure to Perform.** Failure or refusal of the Contractor to perform any material term, covenant, obligation or condition in this Agreement other than a failure or refusal described in items (A)-(E) above.

G. Cure Period. No such failure or refusal of Contractor to perform any obligation under this Agreement shall give the County the right to terminate this Agreement under this Section unless:

1. The County has given prior written notice to the Contractor, stating the existence of a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Contractor and which will, in the County's opinion, give the County a right to terminate this Agreement for cause under this Section unless such default is corrected within fifteen (15) days, and further provided that if a cure of the alleged default reasonably will take longer than fifteen days, Contractor shall not be deemed to be in default under this Agreement so long as Contractor begins to diligently prosecute within five (5) days, and completely cures the failure within a reasonable period of time; and
2. The Contractor has neither challenged in an appropriate forum the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within such fifteen (15) day period (or other such reasonable time if the alleged breach cannot reasonably be cured within fifteen (15) days from receipt of the notice given pursuant to the clause (i) of this subsection (but if the Contractor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Contractor is continuing to take such steps to correct such default in a timely manner).

H. Bankruptcy. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor or either Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Contractor or either Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Contractor's property or business, where such events cause a disruption in service, unless otherwise cured in accordance with this Agreement; or

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

I. Performance Bond. The failure of the Contractor to provide or maintain the Performance Bond required pursuant to Section 11.3 hereof, unless otherwise cured in accordance with this Agreement.

J. Operational Changes. Failure of the Contractor to timely implement the operational changes and adjusted maximum Rates resulting from the Change of Law or County-directed Change in Scope unless otherwise cured in accordance with this Agreement. The Contractor shall have 30 days, or such other time as the Parties may agree, after notice of breach from the County to implement the operational changes. Should the Contractor thereafter not implement the operational changes it shall be in default of the Agreement. In addition to being liable for all damages to the County resulting from such default, the County may terminate the Agreement.

K. Conformance with the Law. Any failure by the Contractor to comply with Applicable Law so as to materially prevent Contractor's performance of its obligations hereunder, where the time period for remedying non-compliance established by the agency is not achieved, without any requirement of notice or cure opportunity unless otherwise cured in accordance with this Agreement.

L. Other Requirements of SB 1383 Regulations. Contractor fails to comply with other requirements of the Agreement including public education, reporting, contamination monitoring, recordkeeping, or other obligations of this Agreement that delegate County's responsibility and/or authority under SB 1383 Regulations to Contractor unless otherwise cured in accordance with this Agreement.

12.2 DISPUTE RESOLUTION

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

12.3 RIGHT TO TERMINATE UPON DEFAULT

Upon a determination by the County Contract Manager that an Event of Default has occurred and after any applicable opportunities to cure under this Agreement, the County Board of Supervisors shall conduct a hearing upon no less than ten (10) days' notice to the Contractor to determine if an Event of Default has occurred, and if so, if termination

of the Agreement is in the best interests of the public health, safety, and general welfare of the citizens of the County. If the County Board of Supervisors makes such a determination, the Contractor shall be deemed to have waived any right it may have under Applicable Law to notice of termination in excess of those notice provisions explicitly set forth herein.

12.4 COUNTY'S REMEDIES CUMULATIVE: SPECIFIC PERFORMANCE

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

12.5 EXCUSE FROM PERFORMANCE

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

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

1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated duration" the estimated time during which the performance of such Party's obligations hereunder will be delayed;
3. Its estimated impact on the other obligations of such Party under this Agreement; and
4. Potential mitigating actions which might be taken by the Contractor or County and any areas where costs might be reduced and the approximate amount of such cost reductions. While the delay continues, the Contractor or County shall give daily notice to the other Party updating the information previously submitted.

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

- B. County's Right to Terminate.** The partial or complete interruption or discontinuance of the Contractor's services caused by one (1) or more of the events described in this Section shall not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing, however, if the Contractor is excused from performing its obligations hereunder because of any Uncontrollable Circumstance for a period of thirty (30) days or more, the County shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving sixty (60) days' notice. Such notice shall be revoked by County if, prior to the expiration of the sixty (60) day period, Contractor performs or causes the performance of the subject services.
- C. Work Stoppages Resulting in Failure to Perform.** Notwithstanding anything in this Agreement to the contrary, any strikes, work stoppages, lock-outs, or other labor disputes or disturbances occurring with respect to an activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Collection Services and which last beyond fifteen (15) Business Days and result in any failure to perform Contractor's obligations under this Agreement shall constitute an Event of Default under Section 12.1 and may result in termination, unless Contractor has provided a work stoppage contingency plan to the County (a "Contingency Plan") within such fifteen (15) Business Day period. In the event of any such failure to perform during a labor disturbance that is not otherwise in compliance with a Contingency Plan, the County Contract Manager shall notify Contractor of the potential Default and provide Contractor up to five (5) Business Days to perform or cause the performance of services under this Agreement (or the Contingency Plan, if applicable) prior to the County Board of Supervisors finding the Agreement in Default and terminating the Agreement. Contractor may request and the County Contract Manager or Board of Supervisors may, in their sole discretion, grant one or more extensions of not more than fifteen (15) additional days, until the default is cured to the satisfaction of County.

However, in the event of a work stoppage prevents or diminishes the ability of Contractor to Collect, Transport and Dispose of any or all the Franchised Materials which it is obligated under this Agreement to Collect, Transport or Dispose of for a period of more than seventy-two (72) hours and the County Contract Manager, in their reasonable discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then County shall have the right, upon twenty-four (24) hours' notice to Contractor, to find the Contractor in Default and to contract with any other third parties to Collect and Transport any and all Franchised Materials which Contractor would otherwise be obligated to Collect and Transport pursuant to this Agreement. Contractor agrees that in such event, it will fully cooperate with County

and its third- party contractor to affect such transfer of operations in as smooth and efficient a fashion as is practicable during the pendency of the event causing the work stoppage. All costs, fees, rates or other expenses incurred by County and/or its third-party contractor that exceed those that would have been incurred by County had no such emergency arisen shall be the responsibility of the Contractor and shall be paid to County within thirty (30) days of receipt of written notice to pay. This is intended to serve as a temporary service during the pendency of the event and not as a long-term replacement for Contractor's service. Nothing in this Section shall require Contractor to provide any of Contractor's Intellectual Property, confidential information, proprietary information, or trade secrets, to any such third-party contractor.

12.6 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

If the County believes in good faith that the Contractor's ability to perform under the Agreement has been placed in substantial jeopardy by one (1) of the events enumerated below, the County Contract Manager may, at his or her option and in addition to all other remedies the County may have, require that Contractor confirm in writing that Contractor is able to perform its obligations under this Agreement. The County Contract Manager may demand assurance of performance related to the following events:

- A.** Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out, picketing, or other concerted job action, subject to the terms of Section 12.6;
- B.** Contractor appears, in the reasonable judgment of the County, to be unable to regularly pay its bills as they become due; or
- C.** Contractor is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of Applicable Law. If the Contractor fails or refuses to provide to the County adequate information to establish its ability to perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of Section 12.1.

12.7 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

- A. General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by County as a result of a breach by Contractor of certain obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive

services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

- B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Collection services are of utmost importance to County and that County has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance and to support County's compliance with various State statutes and corresponding regulations including, but not limited to, AB 939, AB 341, AB 1826, and SB 1383. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, County and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which County will suffer. Therefore, without prejudice to County's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established herein and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Before assessing Liquidated Damages, County shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. County may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. County may, within ten (10) Business Days after issuing the notice, request a meeting with Contractor. County may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. County Contract Manager will provide Contractor with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section. Within ten (10) Business Days of receipt of such notice of intention to assess Liquidated Damages, Contractor may request that no Liquidated Damages may be imposed on Contractor until Contractor has been given a reasonable opportunity to respond to allegations and to meet and confer with the Director. Any subsequent appeals by Contractor shall be addressed in accordance with the procedures delineated in this Agreement.

C. Amount. Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth herein. County may assess Liquidated Damages for each

calendar day or event, in accordance with this Section 12.8(D), that Contractor is determined to be liable in accordance with this Agreement in the amounts specified below.

1. Excessive complaints. When Contractor or the County Contract Manager receives unresolved, unaddressed complaints from more than three percent (3%) of its client base within a six (6) month period, Contractor will be assessed twenty-five (\$25) per complaint per occurrence during that period; and an additional twenty-five (\$25) each twenty-four (24) hours until the complaint is reasonably resolved. For purposes of this section, "complaints" shall mean substantive and credible Customer notifications to the Contractor or the County Contract Manager of missed pick-ups, property damage, missed commitments, employee misconduct or poor quality of service (e.g. litter on property or public right-of-way or misplacement of Containers).
2. Failure to provide access to Operating Assets or any other documents or information within fourteen (14) days of a request by the County Contract Manager: one hundred dollars (\$100) per day per occurrence.
3. Failure to charge a Customer at or below the maximum approved Rate, where the overcharge is not refunded on the next invoice: fifty dollars (\$50) per occurrence per Customer where the number of Customers overcharged is less than twenty-five (25); five hundred dollars (\$500) per occurrence per Customer where the number of Customers overcharged is twenty-five (25) or more. In addition, Contractor shall be responsible for refunding any amount overcharged to each Customer determined to be overcharged. Contractor shall not be entitled to any refund from the County for Franchise Fees or other fees paid on overcharged amounts.
4. Failure to implement any one of the strategies listed in the Recycling Plan: fifty dollars (\$50) per day for each day in excess of fifteen (15) days following Contractor's receipt of written notice from County.
5. Collection outside permitted hours: one hundred dollars (\$100) per occurrence.
6. Failure to provide Collection services on the scheduled service day to 99% of customers: ten dollars (\$10) per Container not served.
7. Failure to Collect a Container in response to a Customer complaint regarding a missed pick-up within one (1) Business Day: ten dollars (\$10) per Container.
8. Each individual occurrence of delivering Discarded Materials to a Facility other than an Approved Facility(ies), in the absence of an Uncontrollable

Circumstance, for each Discarded Material type under this agreement: fifty dollars (\$50) per Occurrence.

9. For each occurrence of failing to provide Customers with the three-Container system required by and complaint with this Agreement, excluding Generators and Customers granted valid waivers, and excluding Generators and Customers that demonstrate compliance with Recycling and Organic Waste Self-Hauling requirements pursuant to County Code Section 4-03-1665 and 14 CCR Division 7, Article 12, Article 7: ten dollars (\$10) per occurrence.
 10. Failure of the Approved Source Separated Recyclable Materials Processing Facility or Approved Organic Waste Processing Facility to meet SB 1383 Regulatory definition of a Designated Source Separated Organic Waste Processing Facility. For each Ton of Source Separated Recyclable Materials or SSGCOW received at the Facility(ies) in a quarterly reporting period when the quarterly average organic content recovery rate is lower than required by 14 CCR Section 18982(a)(14.5), one hundred dollars (\$100) / Ton in the quarterly reporting period when the failure occurred
 11. For each occurrence of Contractor's failure to comply with Container Labeling and color requirements pursuant to Section 7.7 of this Agreement: ten dollars (\$10) per occurrence.
 12. For each failure to perform any individual education and/or outreach activity as required and in the timeframe specified by this Agreement: one hundred dollars (\$100) per occurrence.
 13. Failure to Submit Reports or Allow Access to Records. For each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. Incomplete reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event the County reasonably determines a report to be incomplete more than ten (10) Business Days after submittal by Contractor, Contractor shall be given ten (10) Business Days to complete and correct and any pending Liquidated Damages shall be tolled during that period. For each such failure, one hundred dollars (\$100) per report per occurrence.
- D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by County within thirty (30) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the thirty (30) Business Day period, County may

proceed against the performance bond required by the Agreement, order the termination of the rights or "franchise" granted by this Agreement, or all of the above.

ARTICLE 13: OTHER AGREEMENTS OF THE PARTIES

13.1 RELATIONSHIP OF PARTIES

- A.** This Agreement is entered into by both parties with the express understanding that Contractor will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the Contractor or any of its agents, employees or officers as an agent, employee or officer of County.
- B.** Contractor agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of County. Subject to any performance criteria contained in this Agreement, Contractor shall be solely responsible for determining the means and methods of performing the specified services and County shall have no right to control or exercise any supervision over Contractor as to how the services will be performed. As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular, County will not:
 - 1. Withhold FICA (Social Security) from Contractor's payments.
 - 2. Make state or federal unemployment insurance contributions on Contractor's behalf.
 - 3. Withhold state or federal income tax from payments to Contractor.
 - 4. Make disability insurance contributions on behalf of Contractor.
 - 5. Obtain unemployment compensation insurance on behalf of Contractor.
- c.** Notwithstanding this independent contractor relationship, County shall have the right to monitor and evaluate the performance of Contractor to assure compliance with this Agreement.

13.2 COMPLIANCE WITH LAW

Contractor must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to Contractor's employees, Contractor must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment. Contractor further agrees to comply with any and all laws related to handling of Excluded Waste.

13.3 GOVERNING LAW

The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

13.4 JURISDICTION

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

13.5 ASSIGNMENT, TRANSFER AND SUBCONTRACTING

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

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

an Affiliate on the date of execution of this Agreement, (ii) between Contractor or members of their immediate family, (iii) between members of the same immediate family, or (iv) to a trust, testamentary or otherwise does not require the prior written consent of the County and is not subject to any requirement herein for submittal of information, reimbursement of costs or the transfer fee.

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

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

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

D. Costs Related to Assignment. The County's approval of such an assignment shall be conditioned on the receipt of the transfer fee. Except with respect to an Assignment to an Affiliate of Contractor, if the Contractor requests the consent of the County for any transaction described in this Section, the proposed assignee, as a condition of assignment, shall reimburse the County for all costs and expenses incurred by the County in reviewing, examining, and analyzing the request, including all direct and indirect administrative expenses of the County and consultants and attorney's fees and expenses. The transfer fee shall not be refundable to the Contractor in the event that the County determines, in its sole discretion, that the proposed assignment is unacceptable. Such costs shall be supported with evidence of the expense or cost incurred.

Along with its written request for the review of the assignment, Contractor shall remit to County one hundred thousand dollars (\$100,000). The County shall deduct from this sum all reasonable costs incurred in reviewing the requested assignment. Any funds remaining following the deductions described in this Section shall be returned to the assignee. In the event that the County's total costs for the review of the assignment exceed one hundred thousand dollars (\$100,000) the assignee shall compensate the County for its actual and reasonable costs within thirty (30) days of receiving the County's invoice.

13.6 BINDING ON SUCCESSORS

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

13.7 WAIVER

The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

13.8 NOTICE

1. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Solid Waste Dept.
5955 S Mooney Blvd
Visalia, CA 93277
Phone No.: 559-624-7195
Fax No.: 559-624-1041

With a Copy to:

County Administrative Officer
2800 W. Burrel Ave.
Visalia, CA 93291
Phone No.: 559-636-5005
Fax No.: 559- 733-6318

CONTRACTOR:

Pena's Disposal, Inc
Art Peña - President
12094 Avenue 408
Cutler, CA 93615
Phone No.: (559) 528-3909
Fax No.: (559) 528-4030

2. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

ARTICLE 14: MISCELLANEOUS PROVISIONS

14.1 COUNTY CONTRACT MANAGER

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

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

County Contract Manager or their designate shall have the right to observe and review Contractor operations and Processing Facilities and enter Premises for the purposes of such observation and review, including review of Contractor's records, during

reasonable hours with reasonable notice. In no event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after receiving such a request.

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

14.2 INTERPRETATION

This Franchise Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Franchise Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

In this Agreement, unless the context otherwise requires:

- A. References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution of this Agreement.
- B. Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neutral genders.
- C. Construction:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.
- D. Headings.** The table of contents and Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
- E. Reference to Days.** All references to days herein are to calendar days, including Saturdays, Sundays, and holidays, except as otherwise specifically provided.

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

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

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

14.3 SEVERABILITY

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

- A.** Promptly meet and negotiate a substitute for such clause, provision, section, or article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein.
- B.** If necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement.
- C.** Negotiate such changes in, substitutions for or additions to, the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above, to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, section, or article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist; provided that Contractor shall be entitled to a Rate adjustment under Section 10.3 for any modified services or obligations as if it were a County Directed Change in Service under Section 4.9.

14.4 AMENDMENT

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

14.5 CONFLICTS OF INTEREST

Contractor agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee from making any decision on behalf of County in which such officer or employee has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any County decision which has the potential to confer any pecuniary benefit on Contractor or any business firm in which Contractor has an interest, with certain narrow exceptions.

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

14.6 COUNTERPARTS

The Parties may sign this Agreement in counterparts, each of which shall be deemed an original and all of which taken together form one and the same agreement. A signed copy or signed counterpart of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of a signed original or signed copy of this Agreement.

14.7 FURTHER ASSURANCES

Each party will execute any additional documents and perform any further acts that may be reasonably required to affect the purposes of this Agreement. The Parties agree to act reasonably in exercising any action, discretion, judgment, approval or extension of time that may be required to affect the purpose and intent of this Agreement. Whenever the approval or consent of a Party is required under this Agreement such consent shall not be unreasonably withheld or delayed.

14.8 ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY

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

SIGNATURES

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

Date: 12/3/2024

PENA'S DISPOSAL, INC

DocuSigned by:

By Art Pena

F02E68D2384047E...

Print Name Art Pena

Title Vice President

Date: 12/3/2024

DocuSigned by:

By Maria Pena

42B2E6E0474A435...

Print Name Maria Pena

Title Corporate Secretary

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: 12/17/2024

By

[Signature]

Chair, Board of Supervisors

ATTEST: JASON T. BRITT

County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By

[Signature]

Deputy Clerk



Approved as to Form

COUNTY COUNSEL

Signed by:

By

Patrick Buck

4C98AF4E0D95496...

Deputy

Matter # 2021761

EXHIBITS
