

1           **AMENDED AND SUCCESSOR EXCLUSIVE SERVICE AREA AGREEMENT**  
2                           **FOR SOLID WASTE, RECYCLABLE MATERIALS, GREEN WASTE**  
3   **AND ORGANIC MATERIALS SERVICES**

4  
5           THIS AMENDED AND SUCCESSOR AGREEMENT ("Agreement") is made and  
6 entered into in Fresno, California, on this 31st day of October, 2017, between the  
7 County of Fresno, a political subdivision of the State of California, (hereinafter called  
8 "COUNTY"), and Tule Trash Company, LLC, a California limited liability company,  
9 (hereinafter called "CONTRACTOR"), with reference to the following facts.

10   **WITNESSETH:**

11           WHEREAS, the Legislature of the State of California, by enactment of the  
12 California Integrated Waste Management Act of 1989 (AB 939), set forth in Public  
13 Resources Code Sections 40000, et seq., declares that it is within the public interest to  
14 authorize and require local agencies to make adequate provision for Solid Waste  
15 handling within their jurisdiction; and

16           WHEREAS, AB 939, as amended, requires the COUNTY to reduce the amount  
17 of Solid Waste being landfilled by fifty percent (50%) by the year 2000; and

18           WHEREAS, the COUNTY in October of 2002 was issued an AB 939 Compliance  
19 Order from the California Integrated Waste Management Board (CIWMB) for failing to  
20 make a good faith effort to implement Solid Waste diversion programs to reach the fifty  
21 percent (50%) Solid Waste diversion mandate; and

22           WHEREAS, the COUNTY, through a Local Assistance Plan (LAP), was required  
23 to develop and implement a range of Solid Waste diversion programs to reach the 50%  
24 Solid Waste diversion mandate; and

25           WHEREAS, one of the seventeen (17) programs established by the COUNTY  
26 under the LAP was the Exclusive Service Area Program ("ESAP"); and

27           WHEREAS, as part of the ESAP, on August 30, 2005, COUNTY and Sequoia  
28 Disposal ("the original contractor") entered into an Exclusive Service Area Program

1 Agreement (Agreement No. 05-419, hereinafter “the Original Contract”), which provided  
2 for a twelve (12) year Base Term with the original contractor’s performance thereunder  
3 to commence on the operative date of February 27, 2006; and

4 WHEREAS, during the term of the Original Contract (Agreement No. 05-419  
5 between COUNTY and the original contractor) and pursuant to the provisions of Section  
6 11.5, the COUNTY’s Board of Supervisors on April 12, 2012 approved an assignment  
7 by Sequoia Disposal to CONTRACTOR of Agreement No. 05-419, pursuant to which  
8 CONTRACTOR assumed, in their entirety, all of the duties and obligations thereunder  
9 of the original contractor and assignor (Sequoia Disposal), throughout the Exclusive  
10 Service Area as designated pursuant thereto, which duties and obligations following the  
11 approval of such assignment were performed at all times by CONTRACTOR for the  
12 remainder of the Original Contract term, such that COUNTY and CONTRACTOR shall  
13 hereinafter be referred to collectively as “the Parties”; and

14 WHEREAS, the Original Contract by its terms provided that COUNTY may, in its  
15 discretion, approve one ten (10) year extension of its original Base Term; and

16 WHEREAS, CONTRACTOR has accepted COUNTY’s offer to extend their  
17 contractual relationship for such additional ten year term (“Extension Term”), and the  
18 Parties further have agreed to certain modifications to the terms and conditions of the  
19 Original Contract, all of which shall take effect as of the commencement of the ten-year  
20 Extension Term on February 28, 2018; and

21 WHEREAS, the COUNTY, in its LAP, is required to divert residential and  
22 commercial Solid Waste; and

23 WHEREAS, the CONTRACTOR is qualified and agrees to provide Solid Waste  
24 Collection Services pursuant to the terms and conditions stated in this Agreement; and

25 WHEREAS, the COUNTY of Fresno Board of Supervisors previously has  
26 determined, and by its approval and execution of this Agreement hereby reiterates, that  
27 the public health, safety and welfare of its residents require that certain Solid Waste  
28 Collection Services, as specified in this Agreement, be provided by an Exclusive

1 Service Area contract.

2 NOW, THEREFORE, in consideration of the foregoing premises and the mutual  
3 promises herein, the COUNTY and the CONTRACTOR agree as follows:

4 **ARTICLE 1**

5 **DEFINITIONS**

6 For purposes of this Agreement the following words or phrases shall have the  
7 following meanings unless any such word is otherwise specifically defined herein or  
8 unless it is obvious from the context hereof that another meaning is necessarily  
9 intended. To the extent of any inconsistency between the definitions of the following  
10 terms provided in this Article and the use or definition of those terms that may appear in  
11 related COUNTY ordinances or regulations, the following definitions shall be used in the  
12 interpretation of this Agreement.

13 **“AB32”** means the California Global Warming Solutions Act of 2006, (Chapter 488,  
14 Statutes of 2006), which requires California to reduce its greenhouse gas emissions to  
15 1990 levels by 2020.

16 **“AB 341”** means the California legislation (Stats. 2006, Ch. 476), as it may be  
17 amended from time to time, that, among other things, added Chapter 12.8 of Part 3 of  
18 Division 30 of the Public Resources Code (commencing with section 42649) imposing  
19 mandatory commercial recycling requirements and mandating that each jurisdiction  
20 implement an outreach and education program and monitor compliance with the  
21 mandatory commercial recycling requirements.

22 **“AB 939”** means the California Integrated Waste Management Act of 1989 (California  
23 Public Resources Code, Division 30, commencing with Section 40000), as amended,  
24 supplemented, superseded, and replaced from time to time.

25 **“AB 939 Service Fee”** means the portion of Rate Revenues specified in Section 3.5  
26 and due and payable to the COUNTY from Rate Revenues.

27 **“AB 1826”** means Chapter 727, Statutes of 2014 [Chesbro, AB 1826], commonly  
28 referred to as “AB 1826”, as amended, supplemented, superseded, and replaced from

1 time to time, that, among other things, added Chapter 12.9 (commencing with Section  
2 42649.8) to Part 3 of Division 30 of the Public Resources Code imposing requirements  
3 that each jurisdiction implement an organic waste recycling program and provide for  
4 education, outreach and monitoring of businesses subject to the requirements.

5 **“Agreement”** means this Amended and Successor Agreement between the COUNTY  
6 and CONTRACTOR for the provision of the Collection Services as specified herein,  
7 including all exhibits and future amendments.

8 **“Applicable Law”** means all Federal, State and local laws, ordinances, regulations,  
9 rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of  
10 requirement imposed by any governmental agency having jurisdiction over the  
11 collection and disposition of Solid Waste, Recyclable Materials, Green Waste and  
12 Organic Materials, including those that are in force and effective as of the Effective  
13 Date, as well as such additions and changes thereto as become effective by means of  
14 their enactment, amendment, issuance or promulgation at any time after the Effective  
15 Date and during the Term of this Agreement.

16 **“Base Term”** means the initial twelve (12)-year Term of the Original Contract, pursuant  
17 to which CONTRACTOR’s performance thereunder commenced on its operative date of  
18 February 27, 2006.

19 **“Best Efforts”** as used in this Agreement with regard to performance of  
20 CONTRACTOR’s obligations to Divert materials, shall mean at a minimum to  
21 competently undertake each of the programs for which materials Diversion is required  
22 hereunder and to perform materials Diversion activities for the program in a manner  
23 which is equal to or exceeds industry standards within California for communities which  
24 are in compliance with AB 939, AB341 and AB1826 diversion requirements.

25 **“Bin”** means a receptacle for Solid Waste provided by the CONTRACTOR unless  
26 owned by the Customer, having a capacity less than ten (10) cubic yards and that  
27 generally has wheels, a handle for ease of movement and a tight-fitting, attached lid,  
28 and is designed to be dumped mechanically into a front-loading or rear-loading

1 Collection vehicle.

2 **“Bin Service”** means the provision of Collection Services using Bins.

3 **“Board of Supervisors”** means the governing legislative body of the County of Fresno.

4 **“Bulky Items”** means all discarded household waste matter that is too large to be  
5 placed in a Cart, including large household appliances, appliances containing  
6 chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require  
7 special handling due to their size, and which typically will be discarded by Customers in  
8 connection with Community Clean-Up Services. Bulky Items shall not include Excluded  
9 Waste.

10 **“Cart”** means wheeled Containers of approximate thirty (30)-, sixty (60)-, and ninety  
11 (90)-gallon capacity provided by CONTRACTOR to Customers for Collection of Solid  
12 Waste, Recyclables, Green Waste and Organic Materials.

13 **“Cart Service”** means provision of Collection Services using Carts, and charged at a  
14 Rate based on Solid Waste Cart size.

15 **“CERCLA”** means the Comprehensive Environmental Responsibility Compensation  
16 and Liability Act, 42 United States Code Section 9601, et seq., as amended or  
17 superseded, and the regulations promulgated thereunder.

18 **“Change in Law”** means the following events or conditions that have a material and  
19 adverse effect on the performance by CONTRACTOR of its obligations (other than its  
20 remittance obligations) under this Agreement:

- 21 1. Enactment, adoption, promulgation, issuance, modification, or written  
22 change in administrative or judicial interpretation of any Applicable Law  
23 occurring on or after the Effective Date; or
- 24 2. Order or judgment of any governmental body, issued on or after the  
25 Effective Date, to the extent such order or judgment is not the result of  
26 willful or negligent action, error or omission or lack of reasonable diligence  
27 of COUNTY or of CONTRACTOR, whichever is asserting the occurrence  
28 of a Change in Law; provided, however, that the contesting in good faith or

1 the failure in good faith to contest any such order or judgment shall not  
2 constitute or be construed as such a willful or negligent action, error, or  
3 omission or lack of reasonable diligence.

4 **“Change in Scope”** is a significant change in the type or level of Collection Services for  
5 which CONTRACTOR may be compensated under Article 7, as provided in Section 5.6.

6 **“Collection” (and “Collect,” “Collected,” and “Collecting”)** means the pickup and  
7 removal by CONTRACTOR from its Customers’ premises of Solid Waste, Recyclable  
8 Materials, Green Waste, Organic Materials or other material specified in this Agreement  
9 and transportation of such material to a Disposal or Transfer Facility, Green Waste or  
10 Organic Materials Processing Facility, or a Recycling Facility, as appropriate and  
11 consistent with CONTRACTOR’s obligations hereunder.

12 **“Collection Materials”** means all Solid Waste, Recyclables, Green Waste, Organic  
13 Materials or other materials specified in this Agreement generated in the Exclusive  
14 Service Areas of the COUNTY and included within the scope of this Agreement as  
15 provided in Section 3.2. The term “Collection Materials” specifically does not include  
16 Hazardous Waste or any other type of Excluded Waste.

17 **“Collection Services”** means all of the duties and obligations of CONTRACTOR  
18 relating to its responsibilities for Collection as specified in this Agreement, and  
19 associated with this Agreement.

20 **“Community Clean-Up Services”** means the collection of non-Excluded Waste items  
21 for residential Cart Customers, separate from those gathered through weekly Collection  
22 Services. The amount and type of materials are specified in Exhibit A. CONTRACTOR  
23 shall charge Customers Rates, separate from and in addition to the Rate Revenues.

24 **“Compactor,” “Compactors,” “Compactor Service”** means any Bin or other similar  
25 Container incorporating a built-in mechanism to reduce waste volume by crushing  
26 action or other compacting method.

27 **“Construction and Demolition Debris”** means the debris from used construction  
28 materials, dredging, grubbing, and rubble resulting from constructing, remodeling,

1 repair, razing, renovation, demolition, excavation or construction clean-up activities at  
2 residential, commercial or governmental buildings, and any other structure or pavement.

3 **“Consumer Price Index” or “CPI”** means the Consumer Price Index, All Urban  
4 Consumers for San Francisco-Oakland-San Jose, CA, Standard Metropolitan Statistical  
5 Area as published by the United States Department of Labor, Bureau of Labor  
6 Statistics, or any successor index.

7 **“Containers”** means Bins and Carts used to provide Solid Waste, Recyclables, Green  
8 Waste or Organic Materials Services.

9 **“CONTRACTOR”** means the Party identified as CONTRACTOR on page 1 of this  
10 Agreement.

11 **“COUNTY”** means the legal entity known as the COUNTY of Fresno, California, a  
12 political subdivision of the State of California.

13 **“County”** means the geographical area within the territorial boundaries of the County of  
14 Fresno, as it exists now or in the future.

15 **“COUNTY Representative”** means the Director of the Department of Public Works and  
16 Planning, or his/her designee, who may be a COUNTY official or an agent of COUNTY  
17 specifically designated to serve as the COUNTY Representative and authorized to  
18 enforce the terms of this Agreement on COUNTY’s behalf, as further set forth in Section  
19 11.15, below.

20 **“COUNTY Solid Waste Surcharges”** means the charges imposed by the COUNTY on  
21 all Solid Waste generated within the Southeast Regional Solid Waste Commission area  
22 for closure and post-closure maintenance of the closed COUNTY landfill(s) in the  
23 Southeast Regional Solid Waste Commission area and the charges imposed by the  
24 COUNTY on all Solid Waste generated and Collected in the County, including the  
25 fifteen (15) incorporated cities, for which the Solid Waste is Disposed in non-COUNTY  
26 operated facilities and used for Countywide Solid Waste management program  
27 activities.

28 **“CPI Adjustment Factor”** means 75 percent (75%) for Cart Rates and 65 percent

1 (65%) for Bin Rates, of one hundred percent (100%) of the percentage of CPI by which  
2 each Rate is adjusted annually.

3 **“Customer”** means the person or entities receiving Collection Services.

4 **“Debris Box Services”** means the collection, transportation, and disposal of materials  
5 placed in containers of ten (10) cubic yards or greater.

6 **“Delivery”** means a Customer’s deposit of Solid Waste, Recyclables, Green Waste or  
7 Organic Materials in a Container at a location designated for Collection consistent with  
8 COUNTY’s codes or ordinances.

9 **“Director”** means the Director of the Department of Public Works and Planning of  
10 Fresno County.

11 **“Disposal,” “Disposing,” “Dispose,” or “Disposed”** means the final disposition of  
12 Solid Waste Collected by CONTRACTOR at a Disposal or Transfer Facility.

13 **“Disposal or Transfer Facility”** means the fully permitted Disposal or Transfer  
14 facility(ies) designated by CONTRACTOR to which the CONTRACTOR will transport all  
15 Solid Waste required to be Collected by CONTRACTOR under this Agreement.

16 **“Disposal Tipping Fee Component”** means the component of each Rate related to  
17 the COUNTY’s Disposal tipping fee, as provided in Article 7.

18 **“Diversion,” “Divert”** means the tonnage or percentage of Collected Collection  
19 Materials that are not Disposed.

20 **“Effective Date”** means the date on which this Agreement is fully executed by the  
21 Parties, which shall be deemed to be the date of its approval on behalf of COUNTY by  
22 its Board of Supervisors, as reflected on page 1 of this Agreement. (Unless it is either  
23 expressly specified otherwise or the context clearly requires a different interpretation, all  
24 references herein to “Effective Date” will be to this Amended and Successor Agreement,  
25 and not to the Original Contract.)

26 **“Excluded Waste,”** means

- 27 • Hazardous Waste,
- 28 • Medical and Infectious Waste,

- 1 • Volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or
- 2 material,
- 3 • Household Hazardous Waste,
- 4 • Waste that CONTRACTOR reasonably believes would, as a result of or upon
- 5 disposal, be a violation of Federal, State, or local law, regulation or ordinance,
- 6 including land use restrictions or conditions,
- 7 • Waste that in CONTRACTOR's reasonable opinion would present a significant
- 8 risk to human health or the environment, cause a nuisance or otherwise create or
- 9 expose CONTRACTOR or COUNTY to potential liability, and
- 10 • Special Waste.

11 **“Exclusive Service Area”** means the territory within which the CONTRACTOR shall  
12 conduct Collection Services identified within COUNTY unincorporated area, as  
13 described in Exhibit C and as such limits may change from time to time due to  
14 annexations or other means. When used in the plural in this Agreement, the term  
15 (“Exclusive Service Areas”) refers to all such regions within the County considered  
16 collectively, within which exclusive Collection Services are to be provided, either by  
17 CONTRACTOR pursuant to this Agreement, or by another solid waste enterprise  
18 pursuant to a substantially identical agreement with COUNTY.

19 **“Extension” or “Extended Term”** means the Extension of the Term, for the period of  
20 ten (10) years beyond the Base Term, which has been offered by the COUNTY and  
21 accepted by the CONTRACTOR.

22 **“Fee for Service Recycling”** means any activity relating to the collection of  
23 Recyclables and Recyclable Materials that is solicited, arranged, brokered, or provided  
24 by any person or combination of persons utilizing a bin, barrel, or other container in  
25 exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount,  
26 commission, or other consideration, in any form or amount.

27 **“Green Waste”** means biodegradable materials including branches (less than three [3]  
28 inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants,

1 leaves, prunings, shrubs, weeds, wood (uncoated and untreated), wood chips, yard  
2 trimmings, Christmas trees (placed in Carts/Bins, with no stands, flocking, and/or  
3 decorations, and cut into two [2]-foot sections), provided that larger items such as tree  
4 stumps and intact dead trees are considered Bulky Items as defined herein. Green  
5 Waste shall not include Excluded Waste.

6 **“Green Waste Processing Facility”** means the fully permitted facility(ies) used by  
7 CONTRACTOR for handling, processing, and preparing Green Waste for marketing  
8 through beneficial reuse such as mulching, composting, or processing for alternative  
9 daily cover, and/or for use as biomass fuel.

10 **“Hazardous Waste”** shall have the meaning set forth in California Code of Regulations,  
11 Title 14, Division 7, Chapter 3, Article 4, (most notably Section 17225.32) and Health  
12 and Safety Code Section 25117, or in CERCLA, or in their successor laws and  
13 regulations as may be amended from time to time, whichever definition is in the opinion  
14 of the COUNTY more inclusive.

15 **“Household Hazardous Waste”** shall have the meaning set forth in California Code of  
16 Regulations, Title 14, Division 7, Chapter 7, Article 1.1, Section 18502 or successor  
17 laws and/or regulations, as such provisions may be amended from time to time.

18 **“Liquidated Damages”** means the damages for specified violations of the terms of the  
19 Agreement as enumerated in Exhibit E and levied by COUNTY against CONTRACTOR.

20 **“Material Breach”** shall have the meaning set forth in Section 10.1.A.1.

21 **“Medical and Infectious Waste”** means biomedical waste generated at hospitals,  
22 public or private medical clinics, dental offices, research laboratories, pharmaceutical  
23 industries, blood banks, mortuaries, veterinary facilities, and other similar  
24 establishments.

25 **“Operative Date”** means the date from and after which CONTRACTOR shall be  
26 responsible to provide Collection Services to Customers in accordance with the terms of  
27 this Amended and Successor Agreement, which shall be no later than sixty (60) days  
28 after the Effective Date of this Amended and Successor Agreement. The Operative

1 Date shall be specified by COUNTY in a letter to CONTRACTOR, sufficiently in  
2 advance thereof to allow CONTRACTOR's compliance with the requirement in Section  
3 5.1 to provide thirty (30) days' notice to Customers. It shall be CONTRACTOR's  
4 responsibility to make all necessary and appropriate preparations, between the Effective  
5 Date and the Operative Date, to ensure that CONTRACTOR's readiness to provide all  
6 Services to Customers as required hereunder by the Operative Date.

7 **"Organic Materials" or "Compostable Materials"** food waste, Green Waste,  
8 landscape and pruning waste, nonhazardous wood waste, and food-soiled paper that is  
9 mixed in with food waste.

10 **"Organic Materials Processing"** means the fully permitted facility(ies) selected by  
11 CONTRACTOR for handling, processing, and preparing Organic Materials for  
12 marketing.

13 **"Original Contract"** means the ESAP Agreement entered into between the Parties on  
14 August 30, 2005 (Agreement No. 05-419) for performance by CONTRACTOR of solid  
15 waste collection services within a designated Exclusive Service Area as specified  
16 therein, which provided for a twelve (12) year Base Term with CONTRACTOR's  
17 performance thereunder to commence on the operative date of February 27, 2006.

18 **"Party" or "Parties"** means COUNTY or CONTRACTOR individually, or COUNTY and  
19 CONTRACTOR.

20 **"Pass-Through Expenses"** means, and is strictly limited to include only, (i) facility  
21 tipping fees at COUNTY-owned or COUNTY-operated Disposal Facilities, (ii) increases  
22 in COUNTY Solid Waste Surcharges from their level on the Effective Date, and (iii)  
23 increases in the AB 939 Service Fee from its level on the Effective Date.

24 **"Quarterly Remittance(s)"** means the quarterly payment made to the COUNTY by the  
25 CONTRACTOR as specified in Article 6.

26 **"Rate Revenues"** means the revenues billed to and received from Customers by  
27 CONTRACTOR for provision of Collection Services, Special Services, and from  
28 Community Clean-Up Services under Article 3, subject to the COUNTY's approved and

1 published maximum rate schedules. The term “Rate Revenues” includes all such  
2 revenues received under this Agreement, regardless of whether the Solid Waste  
3 collected by CONTRACTOR for which such payment was received is ultimately  
4 landfilled in Fresno County or at a disposal site located in another county.

5 **“Rates” or “Rate”** means the amount each Customer is billed by CONTRACTOR,  
6 subject to the COUNTY’s approved and published maximum rate schedules (as such  
7 rate schedules may be adjusted during the Term under Articles 5 and/or 7).

8 **“Recyclable Materials” or “Recyclables”** means discarded materials from the  
9 Customer intended for and capable of being Recycled, and that are separated, set  
10 aside, handled, packaged, offered, or otherwise Delivered for Collection by a Customer  
11 in a manner different from Solid Waste. Exhibit A includes the list of Recyclable  
12 Materials that may be set out for Collection by Customers receiving Single-Stream  
13 Recycling Service. Recyclable Materials and Recyclables shall not include Excluded  
14 Waste. The Parties intend that Solid Waste and Solid Waste Handling, as those terms  
15 are defined herein, shall be broadly interpreted and include, without limitation, any  
16 activity relating to the collection of Recyclables and Recyclable Materials that is  
17 solicited, arranged, brokered, or provided by any person or combination of persons  
18 utilizing a bin, barrel, or other container in exchange for the payment, directly or  
19 indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any  
20 form or amount (“fee for service recycling”).

21 **“Recycle”, “Recycled”, “Recycling”** means the process of Collection, sorting,  
22 cleansing, treating and reconstituting of Recyclable Materials that would otherwise be  
23 disposed of, and returning them to the economy in the form of raw materials for new,  
24 reused, repaired, refabricated, remanufactured, or reconstituted products. The  
25 Collection, transportation, or Disposal of Solid Waste that is neither intended for nor  
26 capable of effective and advantageous reuse does not constitute Recycling, as that  
27 term is defined and employed in this Agreement.

28 **“Recycling Facility”** means the fully permitted facility(ies) selected by CONTRACTOR

1 for handling, processing, and preparing Recyclable Materials for marketing.

2 **“Refuse”** means waste material intended for Disposal and including: (1) all putrescible  
3 and non-putrescible wastes, except liquid-carried industrial wastes or sewage hauled as  
4 an incidental part of septic tank or cesspool-cleaning service; (2) garbage (i.e.,  
5 putrescible animal, fish, food, fowl, fruit or vegetable matter, or any residual material  
6 thereof, resulting from the preparation, storage, handling or consumption of such  
7 substances); and (3) rubbish (such as printed materials, paper, pasteboard, rags, straw,  
8 used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and  
9 other waste materials). Refuse shall not include any Excluded Waste.

10 **“Residual” or “Residue”** means materials which remain after processing Recyclable  
11 Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not  
12 limited to, materials such as rocks, contaminated paper, putrescibles, and other debris.  
13 All such Residue shall be subject to the provisions of Section 4.8 as they pertain to  
14 materials delivered by CONTRACTOR to be processed for Recycling.

15 **“SB 1383”** means Chapter 395, Statutes of 2016 (Lara, SB1383), commonly referred to  
16 as “SB1383”, as amended, supplemented, superseded, and replaced from time to time,  
17 that, among other things, adopted methane emissions reduction goals that include the  
18 following targets to reduce the landfill disposal of organics:

19 (1) A 50-percent reduction in the level of the statewide disposal of organic waste from  
20 the 2014 level by 2020.

21 (2) A 75-percent reduction in the level of the statewide disposal of organic waste from  
22 the 2014 level by 2025.

23 **“Self-Haul” or “Self-Hauler”** means that any residential or commercial generator of  
24 Solid Waste may itself (for a commercial generator, this means performance of its  
25 Disposal Services by an individual listed on its payroll as an employee), but not through  
26 an agent, transport and dispose of those Collection Materials generated within the  
27 unincorporated area of the COUNTY by the household or business enterprise of that  
28 generator only. Any such “Self-Hauler” who elects to forego the Collection Services

1 offered by CONTRACTOR shall be obligated to comply with all applicable legal  
2 requirements governing such transport and disposal, including but not limited to  
3 COUNTY reporting requirements.

4 **“Service Rate Area” or “Service Rate Areas”** means the four territorial zones within  
5 the County’s unincorporated area identified in Exhibit C-1 (designated therein as “Zone  
6 1”, “Zone 2a”, “Zone 2b” and “Zone 3”). When used in the plural in this Agreement, the  
7 term refers to all four zones identified in Exhibit C-1 considered collectively, and when  
8 used in the singular the term shall be deemed to refer solely to the specific “Service  
9 Rate Area” zone that may encompass CONTRACTOR’s Exclusive Service Area.

10 **“Single-Stream Recycling”** means the use of a single Container to collect two or more  
11 types of Recyclables.

12 **“Solid Waste”** generally means Solid Waste as defined in California Public Resources  
13 Code, Division 30, Part 1, Chapter 2 (particularly Section 40191) and regulations  
14 promulgated thereunder (except as to any types of waste specifically excluded from the  
15 scope of the definition by the terms of this Agreement), and without limitation includes  
16 the following: (1) Refuse; (2) Bulky Items; and (3) electronic materials classified as  
17 universal wastes pursuant to CCR Title 22, Division 4.5 (e-waste). For purposes of this  
18 Agreement, Solid Waste shall not include Excluded Waste.

19 **“Solid Waste Handling Services”** means the collection, transportation, storage,  
20 transfer, or processing of Solid Waste for residential, commercial, institutional, or  
21 industrial users or customers.

22 **“Special Services”** means those various Collection Services that CONTRACTOR is  
23 not required to provide under this Agreement, but which CONTRACTOR shall offer to its  
24 Customers upon the Customer’s request for the charges specified in Exhibit D-2.  
25 Examples of such optional Special Services may include on-call Bulky Items pick-up (in  
26 addition to the required Bulky Items pick-up provided as part of periodic Community  
27 Clean-Up Services), or side-yard services for Customers other than the disabled and  
28 elderly. The Special Services that CONTRACTOR offers to its customers will be the

1 same as those offered by other exclusive provider(s) of Collection Services within the  
2 Service Rate Area. Those Special Services that CONTRACTOR chooses to offer to its  
3 Customers, and the Special Service Fees to be charged therefor, are listed in Exhibit D-  
4 2 hereto.

5 **“Special Service Fees”** are charges for Special Services, which are specific services  
6 that CONTRACTOR may provide to its customers at its option, as defined above. Such  
7 fees may be charged in addition to the Rates CONTRACTOR may charge Customers  
8 for those Collection Services that CONTRACTOR is required to provide hereunder. Any  
9 increase in Special Service Fees for those Special Services for which a specific charge  
10 is established in Exhibit D shall be determined as provided in Paragraph 7.2.C.

11 **“Special Waste”** includes any materials that under current or future statute, ordinance  
12 or regulation require the application of special treatment, handling, or disposal practices  
13 beyond those normally required for Solid Waste. As defined for purposes of this  
14 Agreement, “Special Waste” shall be deemed to include, without limitation, all of the  
15 following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge;  
16 pollution control process waste; residue and debris from cleanup of a spill or release of  
17 chemical substances, contaminated soil, waste, residue, debris, and articles from the  
18 cleanup of a site or facility formerly used for the generation, storage, treatment,  
19 Recycling, reclamation, or Disposal of any other Special Wastes; dead animals;  
20 manure; waste water; explosive substances; radioactive substances; fluorescent tubes;  
21 Construction and Demolition Debris; and abandoned or discarded automobiles, trucks,  
22 motorcycles or parts thereof, including tires.

23 **“Substantial Evidence”** means such evidence as would convince a reasonable person  
24 and on which reasonable persons would concur as to the inference or conclusion to be  
25 drawn from such evidence.

26 **“Term”** means the Base Term (12 years) and any Extension (10 years, which  
27 hereinafter may be referenced as the “Extension Term”), as provided in Article 3.

28 **“Uncontrollable Circumstance”** means an act of God, including landslides, lightning,

1 fires, storms, floods, pestilence, and earthquakes; explosions, sabotage, civil  
2 disturbances, acts of a public enemy, wars, blockades, eminent domain, condemnation  
3 or other taking, or other events of a similar nature, not caused or maintained by the  
4 COUNTY or CONTRACTOR, which event is not reasonably within the control of the  
5 CONTRACTOR, and only to the extent such event has a material adverse effect on the  
6 ability of the CONTRACTOR to perform Collection Services. Events that could or  
7 should have been prevented through reasonable precaution, including compliance with  
8 agreements and applicable laws, shall not be considered Uncontrollable Circumstances.  
9 Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out,  
10 picketing, or other concerted job action conducted by the CONTRACTOR's employees  
11 or directed at the CONTRACTOR, or a subcontractor, shall not be considered an  
12 Uncontrollable Circumstance.

13 **“Unforeseen Circumstance”** means an event beyond the CONTRACTOR's  
14 reasonable control that may support the initiation of an annual Rate review request.  
15 Examples of such events include: a change in the cost of providing Collection Services  
16 due to an increase in Federal, State or local fees or surcharges at the Disposal or  
17 processing site or a Change in Law; a Change in Scope as provided in Article 5; and a  
18 Change in Law for which CONTRACTOR compliance is mandatory, and that results in  
19 significant documented increases in the specific cost of providing Collection Services.

20 **“Working Days”** means, unless otherwise specified, Monday through Friday.

## 21 **ARTICLE 2**

### 22 **CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

#### 23 **2.1 RELIANCE BY COUNTY**

24 CONTRACTOR understands and acknowledges that, in entering into this Agreement  
25 and performing obligations set forth therein, COUNTY is relying on the representations  
26 and warranties made or confirmed herein by CONTRACTOR, including but not limited  
27 to those listed in this Article 2. In the event any of such representations or warranties  
28 are not satisfied or are found by reasonable and good faith determination of COUNTY to

1 be materially inaccurate or untrue, such occurrence or determination shall constitute a  
2 Material Breach and grounds for termination of this Agreement, at COUNTY's option,  
3 under Article 10. Provided, however, that if COUNTY elects to declare  
4 CONTRACTOR's default on the basis of a violation of this Article 2, such default may be  
5 subject to the cure provisions set forth in Article 10.

## 6 **2.2 BUSINESS STATUS**

7 CONTRACTOR is a California limited liability company duly organized, validly existing,  
8 and in good standing under the laws of the State of California. CONTRACTOR is  
9 registered with the California Secretary of State and is qualified to transact business in  
10 the State of California, and CONTRACTOR agrees to deliver to COUNTY the name and  
11 California-based address of CONTRACTOR's agent for receipt of service of process.  
12 CONTRACTOR has the power to own its properties and to carry on its business as now  
13 owned and operated and as required by this Agreement. CONTRACTOR must also be  
14 a business lawfully permitted by the COUNTY to conduct Collection Services, as  
15 prescribed by the terms and conditions of this Agreement. CONTRACTOR agrees that  
16 this Agreement is not made in the interest of, or on behalf of, any undisclosed person,  
17 partnership, company, association, organization, or corporation. CONTRACTOR has  
18 not unlawfully colluded, conspired, connived, or agreed directly or indirectly with any  
19 person, partnership, company, association, organization, or corporation to secure any  
20 improper advantage against COUNTY, or in contravention of the public interest.

## 21 **2.3 LEGAL AUTHORITY TO BIND CONTRACTOR**

22 CONTRACTOR has the authority to enter into and perform its obligations under this  
23 agreement. CONTRACTOR has taken all actions required by law, its articles of  
24 organization and/or written operating agreement, or otherwise, in order to authorize the  
25 execution of this agreement. Each individual signing this agreement represents and  
26 warrants that he or she is duly authorized to execute and deliver this agreement on  
27 behalf of CONTRACTOR in accordance with CONTRACTOR's articles of organization  
28 and/or written operating agreement. This agreement shall constitute a valid and binding

1 obligation of CONTRACTOR enforceable in full accordance with its terms, except only  
2 to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or  
3 other laws of general application relating to of affecting enforcement of creditors' rights.

#### 4 **2.4 NO CONFLICT**

5 CONTRACTOR warrants and represents that neither the execution nor the delivery by  
6 CONTRACTOR of this Agreement nor the performance by CONTRACTOR of its  
7 obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or  
8 governmental regulation applicable to CONTRACTOR; (ii) conflicts with, violates, or  
9 results in a breach of any term or condition of any judgment, decree, agreement  
10 (including, without limitation, the certificate of incorporation of CONTRACTOR), or  
11 instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of its  
12 properties or assets are bound, or constitutes a default under any such judgment,  
13 decree, agreement or instrument; or (iii) will result in the creation or imposition of any  
14 encumbrance of any nature whatsoever upon any of the properties or assets of  
15 CONTRACTOR.

#### 16 **2.5 NO LITIGATION**

17 CONTRACTOR warrants and represents that, as of the Operative Date of the  
18 Agreement, there is no action, suit, or other proceeding at law or in equity, or to the best  
19 of CONTRACTOR's knowledge, any investigation, before or by any court or  
20 governmental authority, pending or threatened against CONTRACTOR which is likely to  
21 result in an unfavorable decision, ruling, or finding which would materially and adversely  
22 affect the validity or enforceability of this Agreement or any such agreement or  
23 instrument entered into by CONTRACTOR in connection with the transactions  
24 contemplated hereby, or which could materially and adversely affect the ability of  
25 CONTRACTOR to perform its obligations hereunder or which would have a material  
26 adverse effect on the financial condition of CONTRACTOR.

#### 27 **2.6 NO LEGAL PROHIBITION**

28 CONTRACTOR has no knowledge of any applicable law in effect on the Operative Date

1 that would prohibit the performance by CONTRACTOR of this Agreement and the  
2 transactions contemplated hereby.

3 **2.7 CONTRACTOR'S INVESTIGATION**

4 CONTRACTOR has made an independent investigation of the conditions and  
5 circumstances relating to the Agreement and the work to be performed by  
6 CONTRACTOR hereunder.

7 **2.8 INFORMATION SUPPLIED BY CONTRACTOR**

8 The information supplied by CONTRACTOR in all written submittals made in connection  
9 with procurement of CONTRACTOR's services, including CONTRACTOR's proposal,  
10 and negotiation and execution of this Agreement, and all representations and warranties  
11 made by CONTRACTOR throughout this Agreement are true, accurate, correct, and  
12 complete in all material respects on and as of the Effective Date of this Agreement.

13 **2.9 INSURANCE AND PERFORMANCE ASSURANCE REQUIREMENTS**

14 CONTRACTOR hereby represents that CONTRACTOR has the capability and intent,  
15 and accordingly shall submit, no later than thirty (30) days prior to the Operative Date,  
16 the endorsements of insurance coverage required pursuant to Article 9; and further  
17 represents that CONTRACTOR shall maintain all such insurance coverage, to the  
18 satisfaction of COUNTY, throughout the Base Term and any Extension thereof.

19 CONTRACTOR additionally represents that CONTRACTOR has the capability and  
20 intent, and accordingly shall submit pursuant to Article 9 and no later than thirty (30)  
21 days prior to the Operative Date, a letter of credit or performance bond equal to the  
22 lesser of fifty thousand dollars (\$50,000) or twenty-five percent (25%) of  
23 CONTRACTOR's Annual Gross Receipts over the previous three years under this  
24 Agreement, or other performance guarantee; and further represents that  
25 CONTRACTOR shall maintain such performance guarantee to the satisfaction of  
26 COUNTY, throughout the Base Term and any Extension thereof.

27 **2.10 CONTRACTOR'S REPRESENTATIVE**

28 As required by Section 11.15, CONTRACTOR shall, by the Operative Date, designate

1 in writing a responsible officer who shall serve as the representative of CONTRACTOR  
2 and who shall have authority in all daily operational matters related to the Agreement.  
3 COUNTY may rely upon action taken by such designated representative as the action  
4 of CONTRACTOR except for actions not taken within the scope of this Agreement. The  
5 Managing Agent (or such other officer as may have been specifically designated by  
6 CONTRACTOR), shall be the initial designated representative of CONTRACTOR.  
7 CONTRACTOR shall notify COUNTY Representative prior to, or at the time of a  
8 change, in the designated representative.

9 **2.11 WAIVER OF CERTAIN RIGHTS**

10 CONTRACTOR hereby waives any right it may possess to contest the legal right,  
11 power, or the authority of COUNTY to enter into and implement this Agreement; and the  
12 Parties agree to cooperate if CONTRACTOR elects, pursuant to Section 11.17, to  
13 defend the legal validity of this Agreement, and authorization for specific provisions  
14 hereof, in the event of any legal challenge thereto brought or made in any manner by a  
15 third party.

16 **2.12 AGREEMENTS REGARDING CONTINUATION RIGHTS AND**  
17 **ACKNOWLEDGEMENT OF RELIANCE THEREON**

18 CONTRACTOR acknowledges having received from COUNTY, in or about September  
19 2003, its five (5)-year notice under California Public Resources Code Section 49520,  
20 dated September 25, 2003. Such five (5)-year notice was intended by COUNTY to  
21 initiate the period within which solid waste enterprises operating pursuant to duly  
22 authorized permit and otherwise lawfully (including CONTRACTOR), throughout the  
23 three (3)-year period prior thereto, could exercise any "continuation rights" that may  
24 have existed in their favor under such statutory provision. CONTRACTOR further  
25 acknowledges that its voluntary participation in COUNTY's program for creation and  
26 implementation of Exclusive Service Areas provides a benefit to CONTRACTOR that  
27 exceeds and thus fully satisfies any statutory five (5)-year "continuation rights" to which  
28 CONTRACTOR may have been entitled in the absence of its participation in COUNTY's

1 program, by granting CONTRACTOR the exclusive right to provide such services in its  
2 Exclusive Service Area, throughout the anticipated Base Term (and any Extension)  
3 hereof, so long as CONTRACTOR satisfactorily performs its duties and obligations  
4 under this Agreement. In consideration thereof, CONTRACTOR specifically agrees as  
5 follows:

6 (1) that CONTRACTOR forever shall and hereby expressly does forego any right it  
7 otherwise may have to provide such services in any portion of the County other than the  
8 Exclusive Service Area within which CONTRACTOR is granted the exclusive right to  
9 provide such services hereunder; (2) that CONTRACTOR's rights to provide, within the  
10 unincorporated area of the County, any of the services specified in this Agreement, shall  
11 be governed solely by the provisions of this Agreement, the anticipated Base Term of  
12 which extends far beyond and is intended by the Parties to supersede the minimum  
13 continuation rights that otherwise may be provided by statute; and (3) that any of  
14 CONTRACTOR's rights to provide such services within the unincorporated area of the  
15 County (including CONTRACTOR's Exclusive Service Area) shall cease and forever  
16 terminate upon termination or expiration of this Agreement or any Extension hereof.

17 CONTRACTOR understands that COUNTY, and the other providers to other Exclusive  
18 Service Areas within the County, have relied upon CONTRACTOR's agreement to  
19 voluntarily relinquish and disclaim any subsequent claim on the basis of such limited  
20 continuation rights that CONTRACTOR otherwise might claim against them under  
21 statute, in favor of the substantially greater rights (in terms of both duration and  
22 territorial exclusivity) conferred on CONTRACTOR by the terms of this Agreement.

23 Provided, however, and notwithstanding the foregoing, nothing in this Section 2.12 is  
24 intended as a waiver of any statutory continuation rights that may exist in  
25 CONTRACTOR's favor against any city, municipal corporation or public entity (other  
26 than COUNTY), as to any portion of CONTRACTOR's Exclusive Service Area that may  
27 be annexed, incorporated or otherwise acquired by such public entity during the Base  
28 Term or any Extension hereof.

1 **2.13 ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES**

2 Pursuant to specific delegations of authority from the State of California under Sections  
3 40001, 40002, 40057, and 40059 of the Public Resources Code, together with other  
4 provisions of California law, during a period of time predating the approval and  
5 execution of the Original Contract the COUNTY requested and considered the collective  
6 advice of the current commercial and residential haulers concerning recommended  
7 boundaries for the Exclusive Service Area boundaries. CONTRACTOR participated in  
8 the process created by and under the supervision of the COUNTY. The  
9 recommendations were strictly advisory and the COUNTY reserved full authority to  
10 accept, reject or modify those recommendations, to establish Exclusive Service Area  
11 boundaries of its choosing, or to continue to operate without Exclusive Service Areas  
12 consistent with its obligations under applicable law. CONTRACTOR stipulates that it  
13 participated in the COUNTY's process in good faith, and CONTRACTOR hereby  
14 warrants its good faith belief in its disclosures and representations regarding its  
15 Customer base in the unincorporated area of the COUNTY, as of May 2004, in  
16 connection therewith.

17 **ARTICLE 3**

18 **COLLECTION SERVICES AGREEMENT**

19 **3.1 AGREEMENT TERM AND EXTENSIONS**

20 **A. Base Term**

21 The Collection Services granted in this Agreement shall continue in force for a period of  
22 twelve (12) years ("Base Term") commencing on 12:00 a.m. on the Operative Date of  
23 the Original Contract, which unless extended, shall expire at Midnight on the twelve  
24 (12)-year anniversary of such Operative Date. CONTRACTOR will receive no  
25 compensation under this Agreement prior to such Operative Date. However, the Parties  
26 acknowledge that the CONTRACTOR, prior to such Operative Date, will undertake all  
27 necessary implementation measures at CONTRACTOR's own cost, to ensure  
28 commencement of services hereunder on such Operative Date.

1 **B. Extension**

2 Following the Base Term, in the reasonable exercise of COUNTY's discretion,  
3 CONTRACTOR was offered one (1) ten (10)-year Extension of this Agreement and its  
4 full rights and responsibilities. The COUNTY provided CONTRACTOR written notice of  
5 the offer of Extension no less than one (1) year prior to the conclusion of the Base  
6 Term. CONTRACTOR accepted the COUNTY's offer within sixty (60) days following  
7 the date on which CONTRACTOR received the offer.

8 **3.2 COLLECTION SERVICES AGREEMENT**

9 **A. Services Provided**

- 10 1. COUNTY hereby grants CONTRACTOR, and CONTRACTOR shall have  
11 throughout the duration of this Agreement, the exclusive right within the  
12 geographical boundaries of the Exclusive Service Area specified in Exhibit C to  
13 engage in Collection, transportation, processing, transport for transfer and  
14 Disposal, and material sales related to the following:
- 15 2. Solid Waste placed in Carts by residential and commercial Customers.  
16 3. Solid Waste placed in Bins by residential and commercial Customers.  
17 4. Single-Stream Recyclables placed in Carts or Bins by residential and  
18 commercial Customers.  
19 5. Other Recyclables placed for Collection by residential and commercial  
20 Customers.  
21 6. Green Waste placed in Carts by residential Customers.  
22 7. Organic Materials placed for Collection by Customers.  
23 8. Community Clean-Up Services for the collection of non-Excluded Waste  
24 items for all residential Cart Customers. These drop-off events are to occur once  
25 during each calendar year. The maximum amount of materials to be collected  
26 from each Cart Customer shall be limited to two (2) cubic yards, and one (1)  
27 Bulky Item (which may be a Freon-containing appliance). Provided, however,  
28 that if CONTRACTOR is providing Collection Services in the Zone 1 Service

1 Rate Area, the materials collected from each Cart Customer in the Zone 1  
2 Service Rate Area may exceed the maximum amount specified in the preceding  
3 sentence, for an appropriate charge as specified in Exhibit D-3 to this  
4 Agreement.

5 9. It is hereby further agreed, in connection with and to facilitate  
6 CONTRACTOR's provision of the recycling services specified in Subparagraphs  
7 3 and 4 above, that COUNTY hereby appoints CONTRACTOR to act as its  
8 Authorized Recycling Agent (as that term is defined in Public Resources Code  
9 Section 40105) within the geographical boundaries of the Exclusive Service Area  
10 specified in Exhibit C. The Parties specifically intend and agree that the scope of  
11 this Agreement and the right to provide Collection Services granted to  
12 CONTRACTOR hereunder includes the sole and exclusive right to offer or  
13 provide the recycling services detailed in this Agreement within the geographical  
14 boundaries of the Exclusive Service Area specified in Exhibit C in exchange for a  
15 fee or other consideration, in any form or amount.

16 **B. Compensation**

17 The collection of Rate Revenues by CONTRACTOR from Customers for Collection  
18 Services, Special Services, and from Community Clean-Up Event Services, provided to  
19 Customers consistent with the Rates listed in Exhibit D (or any successor Exhibit D  
20 approved hereafter) shall be CONTRACTOR's sole compensation for provision of  
21 Collection Services. CONTRACTOR shall be entitled to retain all revenue from the sale  
22 of Recyclable Materials.

23 **3.3 PROVISION OF SERVICE**

24 **A. General**

25 The work to be done by CONTRACTOR pursuant to this Agreement shall include the  
26 furnishing of all labor, supervision, vehicles, Containers, other equipment, materials,  
27 supplies, and all other items necessary to perform all Collection Services, and the  
28 payment of all related expenses including all taxes, utility charges, etc. The Collection

1 Services shall be performed in a thorough and professional manner that constitutes  
2 reliable, high-quality and litter-free service. CONTRACTOR shall at all times provide  
3 Collection Services using standard industry practice for comparable operations,  
4 performed at all times in full accordance with Exhibit A (“Scope of Services”) and Exhibit  
5 B (“Performance Standards”). Unless otherwise specifically stated in this Agreement,  
6 the Rates are the only compensation to CONTRACTOR for provision of Collection  
7 Services. CONTRACTOR shall comply, and assist its Customers in achieving  
8 compliance, with State goals detailed in Section 3.8 consistent with the provisions of  
9 Section 3.8.

10 **B. Hours of Collection**

11 CONTRACTOR shall limit Collection to 6 a.m. to 7 p.m. in residential zones.

12 CONTRACTOR shall limit Collection to 4 a.m. to 6 p.m. in commercial zones except  
13 that the COUNTY reserves the right to require later morning Collection in areas near  
14 residences.

15 **3.4 EXCEPTIONS TO COLLECTION SERVICES AGREEMENT**

16 Only the CONTRACTOR may lawfully undertake Solid Waste Handling services in the  
17 Exclusive Service Area. The parties intend that Solid Waste and Solid Waste Handling,  
18 as those terms are defined herein, shall be broadly interpreted in accordance with the  
19 provisions of the Agreement and include, without limitation, any activity relating to the  
20 collection of Recyclables or Recyclable Materials that is solicited, arranged, brokered or  
21 provided by a person or combination of persons utilizing a bin, barrel, or other container  
22 in exchange for the payment directly or indirectly, of a fee, charge, rebate, discount,  
23 commission or other consideration, in any form or amount (“Fee for Service Recycling”).  
24 Notwithstanding any other provision of this Agreement, the following services and  
25 materials are expressly excluded from this Agreement. The COUNTY’s approval of this  
26 Agreement and provision herein for exclusive Collection Services shall not preclude the  
27 services and materials described hereinafter in this Section 3.4 from being provided, or  
28 delivered to, Collected and/or transported within the Exclusive Service Area by non-

1 parties to this Agreement.

2 1. Materials which otherwise would constitute Collection Materials that are  
3 removed from premises by a landscaping, gardening or construction contractor  
4 as an incidental part of a gardening, landscaping, tree trimming, cleaning,  
5 maintenance, construction or similar service offered by that contractor rather than  
6 as a hauling service.

7 2. Self-Haul materials, which are delivered by an individual directly to a  
8 transfer station or Disposal facility in a manner consistent with COUNTY  
9 ordinances and codes and other applicable laws.

10 3. Construction and Demolition Debris collected by private companies with  
11 such permits as are required by the COUNTY, operating within the COUNTY on  
12 a non-exclusive basis. COUNTY agrees that CONTRACTOR may provide such  
13 services on a non-exclusive basis in the unincorporated areas of the COUNTY.

14 4. Debris Box and Compactor Services which are provided at least on a  
15 weekly basis by private companies with such permits as are required and issued  
16 by the COUNTY operating within the COUNTY on a non-exclusive basis.  
17 COUNTY agrees that CONTRACTOR may provide such services on a non-  
18 exclusive basis in the unincorporated areas of the COUNTY pursuant to  
19 Ordinance Code Chapter 8.24.

20 Provided however, that nothing in this Section 3.4 is intended to preclude the donation  
21 of recyclable materials that are source-separated at the point of generation, by the  
22 generator thereof, and which may be freely donated by the generator to persons other  
23 than CONTRACTOR without violating the provisions of this Agreement.

### 24 **3.5 AB 939 SERVICE FEE AND COUNTY SOLID WASTE SURCHARGES**

#### 25 **A. Amount**

26 CONTRACTOR shall pay to the COUNTY an AB 939 Service Fee equal to three  
27 percent (3%) of Rate Revenues for the first and second year of the Extension Term.

28 CONTRACTOR shall pay to the COUNTY an AB 939 Service Fee equal to four percent

1 (4%) of Rate Revenues for the third and all subsequent years of the Extension Term.  
2 The COUNTY reserves the right to modify the AB 939 Service Fee at any time during  
3 the Term (including any Extension Term) of this Agreement. The COUNTY shall give  
4 the CONTRACTOR at least ninety (90) days' written notice prior to the date on which  
5 any such charge becomes effective, but in no event less notice than is necessary to  
6 permit CONTRACTOR to request an increase in the Rates in an amount that would fully  
7 offset the amount of the increase in the AB 939 Service Fee.

8 **B. Payment by CONTRACTOR**

9 CONTRACTOR shall compute and pay the AB 939 Service Fee on the basis of the  
10 CONTRACTOR's receipt of Rate Revenues from Customers for each calendar quarter.  
11 CONTRACTOR shall remit the AB 939 Service Fee as part of the Quarterly Remittance  
12 specified in Article 6. If the CONTRACTOR fails to pay the entire amount of  
13 compensation due the COUNTY through error or otherwise, the difference due the  
14 COUNTY shall be paid by the CONTRACTOR within thirty (30) days from discovery of  
15 the error or determination of the correct amount. In addition, the CONTRACTOR shall  
16 pay interest on the amount of any payment not timely remitted to COUNTY (including  
17 the amount of any underpayment) at the rate of ten percent (10%) per annum, from and  
18 after the date such payment was due, up to the date of receipt of full payment and  
19 accrued interest thereon. Any overpayment to the COUNTY, whether attributable to  
20 error or other cause and regardless of fault, shall be offset (without interest) against the  
21 next payment due from the CONTRACTOR (except if made at the end of the Extension  
22 Term, in which case COUNTY shall promptly refund such overpayment). Acceptance  
23 by the COUNTY of any payment due under this Article 3 shall not be deemed to be a  
24 waiver by the COUNTY of any breach of this Agreement, nor shall the acceptance by  
25 the COUNTY of any such payments preclude the COUNTY from later establishing that  
26 a larger amount was actually due, or from collecting any balance due to the COUNTY.  
27 In case of dispute between the COUNTY and the CONTRACTOR regarding any  
28 amounts due, the CONTRACTOR shall pay the amount claimed by the COUNTY as

1 due and notify the COUNTY in writing at the time of payment as to any portion that is  
2 paid under protest, specifying in detail the basis of its claim of overpayment.

3 **C. COUNTY Solid Waste Surcharges**

4 CONTRACTOR shall pay the COUNTY Solid Waste Surcharges, for Solid Waste  
5 generated in the COUNTY, which as of the date of execution of this Agreement are  
6 currently in the following amounts:

- 7 1. Three Dollars and Fifty Cents (\$3.50) per-ton closure/post-closure  
8 maintenance fee for Solid Waste generated and collected within the Southeast  
9 Regional Solid Waste Commission Area as identified in Fresno County  
10 Ordinance Code Section 8.20.035; and
- 11 2. Three Dollars and Forty-One Cents (\$3.41) per-ton surcharge for Solid  
12 Waste management program activities (NOTE: this surcharge is incorporated  
13 into American Avenue Landfill tipping fee).

14 **3.6 GROWTH IN ACCOUNTS**

15 CONTRACTOR shall provide Collection Services to all Customers within its Exclusive  
16 Service Area located within the unincorporated area of the COUNTY requesting service  
17 during the Base Term and any Extension Term and shall be compensated on a per-  
18 account basis by the Rates then in effect.

19 **3.7 TITLE TO COLLECTED MATERIALS**

20 It is expressly understood that, to the fullest extent consistent with Applicable Law, all  
21 Collection Materials shall become the property of CONTRACTOR upon placement by  
22 the Customer at the point of Collection, subject to the provisions of Section 5.5(B) and  
23 the requirements of Article 4 to ensure proper delivery of specified Collection Materials  
24 to properly permitted facilities, and subject to the provisions of Section 12.8 regarding  
25 protection of Customers' privacy interests and requests from courts and law  
26 enforcement concerning Collection Materials.

27 **3.8 STATE GOALS**

28 CONTRACTOR acknowledges that it shall provide a package of Collection Services,

1 including Single-Stream Recycling and Green Waste and Organic Materials Collection  
2 with related public education, rate incentives and Customer service programs that are  
3 designed to achieve and maintain a level of Diversion for the COUNTY that is in  
4 compliance with the State's goals of:

- 5 1. Fifty percent (50%) Diversion under AB939.
- 6 2. Each jurisdiction implementing an outreach and education program and monitor  
7 compliance of businesses with the mandatory commercial recycling requirements  
8 under AB 341.
- 9 3. Each jurisdiction implementing an organic waste recycling program and providing for  
10 education, outreach and monitoring of businesses subject to the requirements of  
11 AB1826.
- 12 4. A fifty 50 percent (50%) reduction by 2020 and a seventy-five percent (75%)  
13 reduction by 2025 in the level of the statewide disposal of organic waste from the  
14 2014 level as required under SB 1383.

15 The foregoing Diversion levels, programs and requirements are to be implemented  
16 hereunder for all Zones as mandated by the State laws cited above. If CONTRACTOR  
17 fails to achieve these required performance levels, the COUNTY will require the  
18 CONTRACTOR, without additional compensation, to conduct twenty (20) waste audits  
19 per quarter for Bin Customers, provide additional incentives to Bin Customers to  
20 increase Diversion and prepare and mail one (1) public education/outreach packet per  
21 quarter to Bin Customers (to be reviewed and authorized by the COUNTY), and place  
22 three (3) advertisements or articles per quarter in a newspaper of general circulation in  
23 the Service Area or comparable media outlets until such time as CONTRACTOR  
24 achieves the State goals. The CONTRACTOR's Diversion rate will be assessed by the  
25 COUNTY one (1) year after the date that the CONTRACTOR was informed by the  
26 COUNTY that it had not met the required Diversion rate. If, at that time, the  
27 CONTRACTOR has not achieved the required Diversion goal, the COUNTY will require  
28 the CONTRACTOR to conduct additional education/outreach activities, which will be

1 determined by the COUNTY, after consultation with CONTRACTOR.  
2 This Section of the Agreement reflects the Parties' understanding that there are  
3 practical limits to what each can do to ensure compliance with the State's waste  
4 diversion and recycling goals. Even with the most comprehensive public education and  
5 outreach program, consumer behavior can be influenced, but cannot be completely  
6 managed or controlled. The Parties further agree and acknowledge that (i) effective  
7 waste processing requires the availability of adequate processing capacity; (ii) the  
8 availability of markets to receive processed material is essential, and (iii) neither party to  
9 this Agreement is in a position to unconditionally guarantee the availability of either  
10 processing capacity or markets. It is accordingly agreed between the Parties that  
11 CONTRACTOR will have fulfilled its compliance obligation to the COUNTY under this  
12 Section if it has offered the programs and services described in this Agreement to each  
13 of its Customers subscribing for Collection Services; and has conducted waste audits;  
14 and has prepared and mailed the public education and outreach materials authorized by  
15 the COUNTY, as more thoroughly provided in the preceding provisions of this Section.  
16 In such event, it is agreed that CONTRACTOR shall not be considered to be in breach  
17 of its obligations under this Agreement, and that no Event of Default will be declared  
18 hereunder, based solely upon CONTRACTOR's failure to achieve the waste reduction,  
19 diversion or recycling goals specified by the laws referenced in this Section.

### 20 **3.9 EMERGENCY SERVICES**

21 Notwithstanding any other provisions of this Agreement (including but not limited to  
22 CONTRACTOR's scope of services under Article 3 and basis for compensation under  
23 Articles 6 and 7), COUNTY reserves the right, in the event of a declared emergency for  
24 an Uncontrollable Circumstance and if CONTRACTOR is unable or unwilling to provide  
25 such services, to use COUNTY staff, agents, contractors, and/or subcontractors as  
26 necessary to clear debris from the CONTRACTOR's Exclusive Service Area.  
27 CONTRACTOR agrees to not contest COUNTY's use of other parties to collect,  
28 transport, and dispose of any debris resulting from such emergency. In the event of

1 such a declared emergency, CONTRACTOR shall upon notice from the COUNTY make  
2 all reasonable effort to provide vehicles and crews to assist in clearing and/or  
3 transporting debris, and CONTRACTOR's reasonable compensation therefor (including  
4 a reasonable margin of profit under the circumstances), shall be determined through  
5 good-faith negotiation between the Parties. Provided, however, that in the absence of  
6 mutual agreement between the Parties on an equitable compensation amount, then the  
7 amount shall be determined by arbitration under the rules of the American Arbitration  
8 Association and shall be limited to that amount shown to equal the out-of-pocket costs  
9 incurred by CONTRACTOR in providing such vehicles and/or crews, including a  
10 reasonable margin of profit under the circumstances.

### 11 **3.10 INFORMATION MANAGEMENT SYSTEMS**

12 CONTRACTOR shall maintain such information management systems as are needed to  
13 collect, store, and organize operational and financial data, and to produce the reports  
14 and plans as specified in this Agreement. All data shall be backed up to the satisfaction  
15 of the COUNTY, so as to ensure no loss of data due to computer failure.

## 16 **ARTICLE 4**

### 17 **SCOPE OF SERVICES**

#### 18 **4.1 CART SERVICE**

19 The following services are to be provided by CONTRACTOR to Cart Customers. All  
20 materials are to be collected at the curb or a centralized service location, on a weekly  
21 basis on the same day (except as necessary to accommodate holidays, Uncontrollable  
22 Circumstances, or permitted changes in Collection dates), within the Zone 1 and Zone 2  
23 Service Rate Areas; provided, however, that Zone 3 Service Rate Area Contractors will  
24 not be required to provide same-day service. Services to be provided shall include the  
25 minimum level of Single-Stream Recycling Service as well as a minimum level of Green  
26 Waste Service as specified in Exhibit A.

#### 27 **A. Solid Waste Collection**

28 Collection of Solid Waste using approximate sixty (60)- or ninety (90)-gallon Carts with

1 the provision of approximate thirty (30)-gallon Carts at Customer request in the Zone 1  
2 Service Rate Area.

3 **B. Single-Stream Recyclables Collection**

4 Collection of the Recyclables specified in Exhibit A, using approximate ninety (90)-  
5 gallon Carts as the default size for basic service, or approximate sixty (60)-gallon Carts  
6 at Customer request.

7 **C. Green Waste Collection**

8 Collection of Green Waste using approximate ninety (90)-gallon Carts as the default  
9 size for basic service, or approximate sixty (60)-gallon Carts at Customer request.

10 CONTRACTOR shall bill each Customer according to the size Container used for Solid  
11 Waste Service, as provided in Exhibit D, regardless of the Recycling Cart and Green  
12 Waste Cart sizes requested by Customer.

13 **4.2 BIN SERVICE**

14 The following services are to be provided by CONTRACTOR to residential or  
15 commercial Bin Customers. Services shall include the minimum level of Single-Stream  
16 Recycling, Green Waste and Organic Materials Services specified in Exhibit A. All  
17 materials are to be collected at the curb or centralized service location, on a weekly  
18 basis on the same day within the Zone 1 and Zone 2 Service Rate Areas; provided,  
19 however, that Zone 3 Service Rate Area Contractors will not be required to provide  
20 same-day service. The current maximum size Bin Rate is for six (6) cubic yards of  
21 service on Exhibit D-1. To offer to service containers over six (6) and less than ten (10)  
22 cubic yards, CONTRACTOR must first apply to the Director for an approved rate.  
23 Unless and until such approval is sought and obtained, CONTRACTOR can charge no  
24 more than the approved maximum rate for six (6) cubic yards.

25 **A. Solid Waste Collection**

26 Collection of Solid Waste using one or more bins, the size(s) of which, as to each  
27 container, is one (1) cubic yard to less than ten (10) cubic yards, at Customer request.

28 ///

1 **B. Recyclables Collection**

2 Collection of the Single Stream and other Recyclables specified in Exhibit A, using  
3 approximate ninety (90)-gallon Carts as the default size for basic service, or  
4 approximate sixty (60)-gallon Carts at Customer request. Upon request from Customer  
5 or COUNTY, CONTRACTOR shall provide Recyclable Materials Collection service to  
6 Customers up to the equivalent volume of Solid Waste Collection service subscribed by  
7 Customer at no additional charge to Customer. In the event a Customer requests  
8 Recyclable Materials Collection service in excess of their subscribed level of Solid  
9 Waste Collection service, CONTRACTOR may charge Customer for that additional  
10 recycling service up to fifty percent (50%) of the Rate for the equivalent level of Solid  
11 Waste Collection service approved under this Agreement after adjusting the service  
12 level to allow for the amount of service that must be provided at no charge. For  
13 example, if CONTRACTOR provides two (2) cubic yards of Solid Waste and four (4)  
14 cubic yards of Recyclables services, the first two (2) cubic yards of Recyclables service  
15 is free and the additional two (2) cubic yards may be charged up to 50% of the Solid  
16 Waste Collection rate.

17 **C. Green Waste Collection**

18 Collection of Green Waste for residential Customers only, using approximate ninety  
19 (90)-gallon Carts as the default size for basic service, or approximate sixty (60)-gallon  
20 Carts at Customer request. CONTRACTOR shall bill each Customer according to the  
21 size Container used for Solid Waste Service, as provided in Exhibit D, regardless of the  
22 Recycling Cart and Green Waste Cart sizes requested by Customer.

23 **D. Mandatory Commercial Recycling**

24 AB 341 imposed mandatory commercial recycling requirements statewide on all  
25 businesses, which includes public entities. Under AB341, a business that generates four  
26 cubic yards or more of commercial solid waste per week or is a multifamily residential  
27 dwelling of five units or more shall arrange for recycling services. It is understood and  
28 acknowledged between the Parties that businesses can use one or any combination of

1 the following practices to reuse, recycle, compost or otherwise divert solid waste from  
2 disposal: 1) Self-haul; 2) Subscribe to a hauler's recycling service; 3) Arrange for the  
3 pickup of recyclable materials independent of waste hauling services; or 4) Subscribe to  
4 a recycling service that may include mixed waste processing that yields diversion  
5 results comparable to source separation.

6 In addition, each jurisdiction must implement an outreach and education program and  
7 monitor compliance with the statewide mandatory commercial recycling requirements.

8 CONTRACTOR shall, within no more than sixty (60) days after the Operative Date,  
9 make available collection and processing of Recyclable Materials for Customers that  
10 must comply with the State-imposed commercial recycling requirements as mandated  
11 by AB 341. CONTRACTOR also shall identify in its Quarterly Report those Customers  
12 that fail or refuse to comply with the mandatory commercial recycling requirements of  
13 AB 341.

14 **E. Organic Materials Collection and Processing**

15 CONTRACTOR shall, within no more than six (6) months after the Operative Date,  
16 make available collection and processing of Organic Materials for at least 25% of  
17 CONTRACTOR's Customers that must comply with AB1826 and/or SB1383 (including  
18 Green Waste). Currently those laws apply to Commercial Customers. During the life of  
19 this Agreement it is expected that those laws will include requirements for Residential  
20 Customers as well. Within no more than three (3) months after the Operative Date,  
21 CONTRACTOR shall submit to the COUNTY Representative its implementation plan  
22 for the provision of such services (for commercial, multi-family and single-family  
23 residential). That implementation plan shall detail how quickly the CONTRACTOR will  
24 roll out the required Organic Materials Collection and Processing program for all of the  
25 Customers that need to comply with State goals in its Service Area and all other  
26 Customers, not to exceed 5 years from the Effective Date. The rate for  
27 CONTRACTOR to provide Organic Materials Collection and Processing Services shall  
28 be calculated on the following basis: 60% of the maximum Rates hereunder for Solid

1 Waste Collection of comparable size and frequency, plus the actual cost per ton for  
2 transfer and/or Organic Materials Processing. Prior to the implementation of this  
3 service, the CONTRACTOR and the COUNTY will meet and confer to establish the  
4 maximum Rates for Organic Material Collection, transfer and Processing services for  
5 both Commercial and Residential Customers services for both commercial and  
6 residential customers based on the use of an Organic Material Processing Facility  
7 mutually agreed upon by the CONTRACTOR and the COUNTY in determining the  
8 actual cost per ton. The COUNTY will solicit proposals from all ESAP haulers and  
9 Organic Material Processing Facilities that serve Fresno COUNTY communities and/or  
10 businesses to arrange a Master Service Agreement for such processing services and a  
11 commitment that all ESAP haulers could use that processing service at a price not to  
12 exceed the maximum Rate in the Master Service Agreement. For Organic Materials  
13 Collection provided at a frequency of more than once per week, rates for an additional  
14 Organic Materials Collection service shall not exceed 90% of the rate for once per  
15 week service. These Organic Materials Collection, transfer and processing rates may  
16 be adjusted annually, upon request from CONTRACTOR to the COUNTY, following  
17 the procedure detailed in Section 7.2.B or as otherwise mutually agreed upon by  
18 COUNTY and CONTRACTOR. A review to consider adjustment of these rates may be  
19 initiated at any time during the year, but will be limited to no more than one adjustment  
20 per calendar year. This review could include both known and anticipated changes in  
21 processing costs. These rates will also be adjusted the same way that Solid Waste  
22 rates are adjusted.at 65% of CPI for bins and 75% of CPI for carts based on fixed vs.  
23 variable costs. The adjusted rates must be approved by the COUNTY Board of  
24 Supervisors by the end of February or as part of the Annual CPI adjustment in March,  
25 to start on July 1.

#### 26 **4.3 COMMUNITY CLEAN-UP SERVICES**

27 CONTRACTOR shall provide Community Clean-Up Services for the collection of non-  
28 Excluded Waste items for all residential Cart Customers. The maximum amount of

1 materials that will be collected from each Cart Customer shall be limited to two (2) cubic  
2 yards (including white goods and e-waste), and one (1) Freon-containing appliance.  
3 These drop-off events shall occur once a year during each calendar year within each  
4 exclusive Service Area Boundary. CONTRACTOR will promote and manage its own  
5 cleanups, which will be funded by the COUNTY's American Avenue Trust Fund cleanup  
6 coupon program as long as such funds are available. Provided, however, that if the  
7 materials collected from each Cart Customer exceed the maximum amount previously  
8 specified in this Section 4.3, then CONTRACTOR shall impose upon that Customer the  
9 additional charge specified in Exhibit D-3 to this Agreement. CONTRACTOR will also  
10 accept material from non-Customers who present COUNTY cleanup coupons.  
11 CONTRACTOR will follow COUNTY guidelines for the use of such coupons and for  
12 reports that CONTRACTOR agrees to provide to the COUNTY on all tons and materials  
13 types collected. CONTRACTOR will charge Bulky Item Special Service Rates after  
14 COUNTY's Coupon Program funding is expended. CONTRACTOR shall also provide  
15 up to 50 tons per year of roll-off services, per Exclusive Service Area Boundary (as  
16 identified in Exhibit C), and within such Exclusive Service Area Boundary within its  
17 territory for free service for homeless encampments and/or litter abatement, upon  
18 request by the COUNTY.  
19 CONTRACTOR shall make Best Efforts to recycle or divert from Disposal fifty percent  
20 (50%) of all materials collected through Community Clean-Up Services.

21 **4.4 ON-CALL BULKY ITEM PICK-UP**

22 Upon notice by a Customer, CONTRACTOR will schedule pick-up of Bulky Items.  
23 CONTRACTOR shall make all reasonable efforts to Recycle or to provide reuse  
24 opportunities for the materials collected on-call and specified in Exhibit A, and shall  
25 transport remaining materials to the Disposal or Transfer Facility. CONTRACTOR will  
26 provide on-call Bulky Item pick-ups as requested within any calendar year for the  
27 Special Service Fee provided in Exhibit D-3.

28 ///

1 **4.5 CHRISTMAS TREE COLLECTION**

2 In the Zone 1 and Zone 2 a Service Rate Areas, CONTRACTOR will, without additional  
3 compensation, collect all Christmas trees discarded by all Customers during the first  
4 three (3) regularly scheduled Collection days after Christmas Day for each collection  
5 route. CONTRACTOR shall deliver all Christmas trees collected during this period to a  
6 Green Waste/Organics Processing Facility. Customers shall be instructed to cut the  
7 Christmas trees into two (2)-foot sections and place the Christmas trees without  
8 flocking, decoration, or metal or plastic stands in the Green Waste Cart.

9 **4.6 FREE SIDE-YARD SERVICE**

10 CONTRACTOR shall provide free side-yard Service to disabled or elderly Customers  
11 that are physically unable to move Carts, as reasonably determined by CONTRACTOR  
12 in good faith. Provided, however, that COUNTY reserves the right to direct the  
13 provision of such free side-yard Service to a Customer if the COUNTY Representative  
14 determines that CONTRACTOR's denial of such a request by that Customer was  
15 arbitrary or unreasonable.

16 **4.7 TRANSPORT AND DISPOSAL OF SOLID WASTE**

17 The Parties acknowledge that COUNTY is responsible under California law to provide  
18 for the collection of solid waste within its jurisdictional boundaries and has the authority  
19 to control by ordinance the disposition of solid waste collected in the unincorporated  
20 area of the County. It is agreed between COUNTY and CONTRACTOR, commencing  
21 with the Operative Date of this Amended and Successor Agreement and continuing  
22 throughout the Extended Term, as follows:

23 A. Flow Control – Delivery of Solid Waste to Designated Disposal Site

24 CONTRACTOR expressly agrees to deliver to the American Avenue Disposal Site  
25 (AADS), for disposal at said Designated Disposal Site, all of the Solid Waste  
26 CONTRACTOR collects within the unincorporated areas of Fresno County.

27 B. Application for Limited Exemption from Flow Control Requirement

28 At any time between the Effective Date and the one-year anniversary of the Operative

1 Date, CONTRACTOR may make an application to the Director of Public Works and  
2 Planning (Director) for an exemption from the Flow Control requirement set forth in the  
3 immediately preceding Paragraph 4.7A.

4 1. The application must provide sufficient factual justification to support the  
5 requested exemption, which in the first instance shall be granted upon the reasonable  
6 determination by the Director that the applicant/CONTRACTOR's application  
7 establishes facts sufficient to meet any of the following circumstances:

8 a. Extreme economic inefficiencies attributable to geographical hardship;

9 b. The applicant/CONTRACTOR owns or operates a landfill and has  
10 established, to the satisfaction of the COUNTY Representative, a history of timely and  
11 accurate compliance with the reporting and payment requirements to the COUNTY  
12 under this Amended and Successor Agreement over the course of the Extended Term;

13 c. The applicant/CONTRACTOR provides, in support of its application for  
14 an exemption, a copy of its separate agreement with the operator of a legally permitted  
15 transfer station that either: (i) establishes to the COUNTY's satisfaction that all Solid  
16 Waste delivered by that CONTRACTOR to said transfer station will be disposed of by  
17 the transfer station operator at AADS; or (ii) requires compliance with the  
18 CONTRACTOR's reporting requirements and payment obligations to the COUNTY  
19 under this Amended and Successor Agreement, by the CONTRACTOR and/or the  
20 operator of the transfer station with regard to such Solid Waste, and expressly identifies  
21 the COUNTY as a third party beneficiary of such separate agreement, at least with  
22 respect to that particular provision of the agreement between the hauler and the transfer  
23 station operator; or

24 d. CONTRACTOR may utilize a Third-Party Transfer Station and a Third-  
25 Party Landfill that meet all of the following: (i) CONTRACTOR may choose to deliver  
26 Solid Waste collected in the COUNTY to a Third Party Transfer Station located in  
27 Fresno COUNTY, or a facility approved by the Director; (ii) CONTRACTOR provides  
28 reports to the COUNTY in a frequency and format requested by the COUNTY, as well

1 as all other information reasonably required by COUNTY for reporting on Solid Waste  
2 disposal tonnage to the California Department of Resources Recycling and Recovery or  
3 its successor agency; (iii) CONTRACTOR remits payment to the COUNTY of all  
4 COUNTY Solid Waste Surcharges that become due and payable to COUNTY from  
5 CONTRACTOR under Section 3.5, Paragraph C of this Agreement, in the same amount  
6 as would be paid by CONTRACTOR if CONTRACTOR's Solid Waste were delivered to  
7 AADS; and (iv) CONTRACTOR's Solid Waste is delivered to a Third Party Landfill  
8 which, in turn, is obligated to deliver or cause its affiliates to deliver the same amount of  
9 tonnage of Solid Waste delivered to the Third-Party Landfill to a landfill operated by the  
10 CONTRACTOR or an affiliate of CONTRACTOR.

11 e. Extenuating circumstances which are not encompassed by any of the  
12 preceding Subdivisions a. through d. of this Subparagraph 4.7.B.1, but which in the  
13 determination of the Director provide sufficient justification for approval of such  
14 exemption application.

15 Any exemption granted to CONTRACTOR shall be valid only for a period of three (3)  
16 years following the date on which it is granted, at which time the exemption will expire  
17 by its terms. Provided, however, that CONTRACTOR may submit an application,  
18 together with sufficient explanatory factual justification, to support an extension of the  
19 exemption, not more than six (6) months and not less than 45 days prior to its  
20 expiration. The extension may be granted, in the discretion of the Director, based on the  
21 facts presented in the application and other relevant factors, which may include  
22 economic considerations relating to AADS operations. If any exemption granted to  
23 CONTRACTOR expires by its terms, CONTRACTOR may submit an application  
24 seeking issuance of a new exemption no sooner than 90 days following the expiration of  
25 the prior exemption. If any exemption granted to CONTRACTOR is revoked pursuant to  
26 the provisions of the immediately following Paragraph 4.7C, CONTRACTOR will not be  
27 eligible to apply for issuance of a new exemption until 24 months have passed following  
28 the revocation of the prior exemption.

1 C. Revocation of Exemption

2 In the event CONTRACTOR applies for and is granted an exemption, the subsequent  
3 failure, by CONTRACTOR to comply with the payment and reporting requirements listed  
4 in Subparagraph 14 of Paragraph 10.2.A, may result in revocation of the exemption.

5 The submittal by CONTRACTOR of records or reports that are untimely, or are  
6 determined by the COUNTY Representative to be insufficient or inaccurate, shall result  
7 in COUNTY giving notice to CONTRACTOR that: (i) any such deficiencies or errors  
8 must be cured within 30 days of the mailing of such notice, and (ii) that a second  
9 instance of submittal by CONTRACTOR of untimely, insufficient or inaccurate reports  
10 during any period of time encompassing the four most recent submittals by  
11 CONTRACTOR or within a period of fifteen (15) consecutive months, shall constitute  
12 grounds for revocation of CONTRACTOR's exemption. From and after the date of  
13 delivery to CONTRACTOR of notice of such revocation of the exemption,  
14 CONTRACTOR shall be required to deliver all Solid Waste collected by CONTRACTOR  
15 under this Agreement to AADS in accordance with the provisions of Section 4.7.A.

16 **4.8 TRANSPORTATION / PROCESSING / MARKETING OF RECYCLABLES**

17 CONTRACTOR shall provide directly or indirectly for the transportation, processing and  
18 marketing of all Recyclable Materials collected pursuant to this Agreement, and is  
19 responsible for payment of all costs relating thereto. CONTRACTOR shall select the  
20 Recycling Facility, and is responsible to report how much Residual was generated by  
21 weight of the materials processed for Recycling. Residual may be disposed of at a  
22 Disposal Facility(ies) selected either by CONTRACTOR or the operator of the Recycling  
23 Facility.

24 **4.9 TRANSPORT / PROCESSING: GREEN WASTE AND ORGANIC MATERIALS**

25 **A. Green Waste.** CONTRACTOR shall provide directly or indirectly for the  
26 transportation, processing and marketing of all Green Waste for use through beneficial  
27 reuse such as mulching, composting, or processing for alternative daily cover, and/or for  
28 use as biomass fuel. CONTRACTOR is responsible for payment of all costs for these

1 services from Rate Revenues collected by CONTRACTOR pursuant to this Agreement

2 **B. Organic Materials.** CONTRACTOR shall provide directly or indirectly for the  
3 transportation, processing and marketing of all Organic Materials for use through  
4 beneficial reuse such as composting or anaerobic digestion. CONTRACTOR is  
5 responsible for payment of all costs for these services from Rate Revenues collected by  
6 CONTRACTOR pursuant to this Agreement. The rate for CONTRACTOR to provide  
7 Organic Materials Collection and Processing Services shall be 60% of the comparable  
8 size and frequency of Solid Waste Collection rates plus the actual cost per ton for  
9 transfer and/or Organic Materials Processing, pursuant to (and as more thoroughly set  
10 forth in) Section 4.2, Paragraph E.

11 **4.10 EXCLUSIVE SERVICE AREA BOUNDARY “TRUE UP” PROCESS**

12 Section 4.10 is inapplicable to this Amended and Successor Agreement. (Any request  
13 under that Section was required to have been submitted by an ESAP Contractor within  
14 six (6) months after commencement of Collection Services under the Original Contract,  
15 and no such request was ever submitted by any of the Contractors.) Provided,  
16 however, that to the extent any minor boundary changes may have been requested and  
17 approved by COUNTY staff during the process of negotiating and drafting this  
18 Agreement, such revisions (if any) shall be reflected in Exhibits C and C-1 hereto.

19 **4.11 COUNTY FACILITIES**

20 CONTRACTOR shall continue to provide Collection Services to those facilities that are  
21 owned or operated by the COUNTY as to which CONTRACTOR provided such  
22 Collection Services during the Base Term of the Original Contract. CONTRACTOR  
23 shall provide such Collection Services based on the terms, rates, and conditions  
24 stipulated in this Amended and Successor Agreement. This Section does not apply to  
25 any services that are specifically excluded from the scope of this Agreement (e.g.,  
26 servicing Containers 10 cubic yards or more).

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28 ///

1 **ARTICLE 5**

2 **OTHER COLLECTION SERVICES**

3 **5.1 CUSTOMER INFORMATION AND PUBLIC EDUCATION**

4 CONTRACTOR is responsible for distribution of public education materials, including  
5 the reproduction and mailing of start-up information kits for new Customers (describing  
6 CONTRACTOR's services), quarterly newsletter and residential, multi-family and  
7 commercial information based on COUNTY templates. Exhibit A specifies the minimum  
8 standards for CONTRACTOR's performance of these activities. CONTRACTOR shall  
9 distribute public education materials and notices as directed by the COUNTY.

10 CONTRACTOR will provide via direct mail to all County residents who subscribe to  
11 services within their specific Zones, at least thirty (30) days' notice of the following:  
12 changes to services and rates; community clean-up program; and information related to  
13 local, state, or federally mandated requirements (e.g., AB341, AB1826, and SB1383).

14 COUNTY will be responsible to notice non-subscribing residents and businesses of  
15 local, State, and Federal mandates and compliance with these mandates. All  
16 information and materials (including telephone messages, as provided in Section 5.2)  
17 shall be conveyed, at a minimum, in both English and Spanish for the CONTRACTORS  
18 operating in Zones 1, 2a and 2b Service Rate Areas. CONTRACTOR further  
19 acknowledges its responsibility, and the important role of the CONTRACTOR's  
20 consumer information and public education efforts, in causing the COUNTY to reach  
21 and maintain State goals detailed in Section 3.8.

22 **5.2 CUSTOMER SERVICE AND ACCESSIBILITY**

23 CONTRACTOR shall maintain and provide to all Customers a telephone number for  
24 Customer service, and shall provide all telephonic services specified in this Section 5.2,  
25 at a minimum, in both English and Spanish. CONTRACTOR shall install and maintain  
26 telephone equipment, and shall have on staff a sufficient number of dedicated service  
27 representatives to handle the volume of calls typically experienced on the busiest days.  
28 Such dedicated customer service representatives shall be available to answer calls from

1 8 a.m. to 5 p.m., Monday through Friday. CONTRACTOR shall also maintain an after-  
2 hours telephone message system to record calls received outside CONTRACTOR's  
3 normal business hours. CONTRACTOR shall provide the COUNTY a means of  
4 contacting a representative of the CONTRACTOR on a twenty-four (24) hour basis.

### 5 **5.3 SERVICE COMPLAINTS AND RESOLUTION**

#### 6 **A. Customer Complaint Log**

7 CONTRACTOR shall maintain a written log of all oral and written service complaints  
8 registered with CONTRACTOR from Customers within COUNTY ("Complaint Log").

9 CONTRACTOR shall be responsible for prompt and courteous attention to, and prompt  
10 and reasonable resolution of, all Customer complaints. CONTRACTOR shall record in  
11 the Complaint Log all written and oral complaints, noting the name and address of  
12 complainant, date and time of complaint, nature of complaint, identity of supervisor, and  
13 nature and date of resolution. COUNTY has the right under this Agreement to inspect  
14 the Complaint Log upon written request. Unless the COUNTY Representative provides  
15 CONTRACTOR with express written authorization for its disposal, such log shall be  
16 retained by CONTRACTOR for three (3) years following the end of the year in which the  
17 complaint was made; provided, however, that any log incidental to an assessment of  
18 Liquidated Damages, a breach, a default, or a cause of termination shall be retained  
19 until the end of the remaining Term of this Agreement, or three (3) years following the  
20 end of the year in which the complaint was made, whichever is later.

#### 21 **B. Resolution of Complaints**

22 CONTRACTOR shall respond to all Customer complaints within twenty-four (24) hours,  
23 Saturdays, Sundays, and holidays excluded, as specified in Exhibit A. CONTRACTOR  
24 shall make every reasonable effort to resolve all complaints within five (5) Working  
25 Days, with the exception of missed Customer pickups. If a complaint involves a missed  
26 pick up of Solid Waste, Recyclables, Green Waste or Organic Materials provided by the  
27 Customer for Collection in accordance with COUNTY Ordinances, CONTRACTOR shall  
28 Collect the Solid Waste, Recyclables, Green Waste or Organic Materials in question by

1 the same day if the complaint is received by 12:00 p.m. (noon), or by 12:00 p.m. (noon),  
2 the following Working Day if the complaint is received after 12:00 p.m. (noon).

### 3 **5.4 CHANGE IN COLLECTION OPERATIONS, ADMINISTRATION, OR SCHEDULE**

#### 4 **A. COUNTY Notice**

5 Changes to Solid Waste, Recycling, Green Waste and Organic Materials Collection  
6 routes, Collection days, or other changes to Collection operations that have potential to  
7 create Customer confusion (hereafter "Changes in Service"), are subject to prior  
8 approval by the COUNTY Representative, which approval, if such changes are useful to  
9 improve the efficiency of CONTRACTOR's operations, shall not be unreasonably  
10 withheld. COUNTY shall respond to such a request within five (5) business days of the  
11 request from CONTRACTOR. For purposes of this Section 5.4, only a change in  
12 Collection route or day that affects more than ten (10%) percent of CONTRACTOR's  
13 Customers shall constitute a Change in Service.

#### 14 **B. Customer Notice**

15 CONTRACTOR shall make the following notifications regarding any Changes in  
16 Service:

- 17 1. Notify all affected Cart Customers at least fourteen (14) calendar days prior to  
18 any change in their scheduled day of Solid Waste, Recyclables, Green Waste  
19 and Organic Materials Collection Service. CONTRACTOR shall not permit any  
20 Cart Customer to go without service during any Collection week, in connection  
21 with a Collection schedule change, excluding scheduled holidays.
- 22 2. Notify all affected Bin Customers at least fourteen (14) calendar days prior to any  
23 Change in Service. Except by prior arrangement with Customer, no Change in  
24 Service shall result in any permanent reduction of the weekly frequency of  
25 Collection required under this Agreement.

### 26 **5.5 HAZARDOUS AND OTHER EXCLUDED WASTE**

#### 27 **A. General**

28 If CONTRACTOR determines that waste placed in any Container for Collection or

1 delivered to any facility is Hazardous Waste, Medical and Infectious Waste, or other  
2 Excluded Waste, CONTRACTOR shall have the right to refuse to accept such waste.  
3 Customer shall be contacted by CONTRACTOR and requested to arrange proper  
4 disposal. If Customer cannot be reached immediately, CONTRACTOR staff shall, prior  
5 to leaving the premises, leave a tag on the top of the Cart or Bin indicating the reason  
6 for refusing to collect the waste.

7 **B. Ownership of Hazardous Waste**

8 The Parties agree and intend that upon Collection, all Collection Materials (which  
9 specifically does not include Hazardous Waste or other Excluded Waste) shall become  
10 the property of CONTRACTOR. All other materials (including Hazardous and other  
11 Excluded Waste) shall remain the property of the Customer or other generator(s) that  
12 disposed of such materials, and such person(s) shall remain solely responsible for such  
13 materials, including without limitation for their transportation and proper disposal,  
14 retrieval of such materials from any location to which CONTRACTOR may have  
15 transported them, and for any and all damages, losses, liabilities, fines, penalties,  
16 forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the  
17 generation, transportation, handling, cleanup, remediation or disposal of such materials,  
18 whether under California Health and Safety Code Section 25189.5 or other Applicable  
19 Law.

20 **C. Hazardous Waste Disposal Responsibility**

21 If Hazardous Waste is nonetheless collected by CONTRACTOR during  
22 CONTRACTOR's normal Collection Service and the Customer cannot be identified or  
23 fails to remove the waste after being requested to do so, CONTRACTOR shall arrange  
24 for its proper disposal at no cost to COUNTY.

25 **5.6 CHANGE IN SCOPE**

26 **A. General**

27 COUNTY may require a Change in Scope, consisting of changes in, or modifications to,  
28 existing Collection Services, request that CONTRACTOR provide new services, or may

1 consider a CONTRACTOR's request for a Change in Scope.

2 1. Should the Change in Scope result in documented increases in CONTRACTOR's  
3 operating or capital expenses that are not Pass-Through Expenses, the  
4 COUNTY shall consider requests to increase Rates, as provided in Article 7 as  
5 necessary to compensate CONTRACTOR for the additional documented  
6 expenses.

7 2. Should the Change in Scope result in documented decreases in  
8 CONTRACTOR's operating or capital expenses that are not Pass-Through  
9 Expenses, the COUNTY shall consider a decrease in Rates, as provided in  
10 Article 7, as necessary to reflect such decrease in costs.

11 **B. Good Faith Negotiation**

12 In the event of a Change in Scope, the Parties agree to negotiate in good faith to  
13 determine the applicable distribution for the reasonable costs of reviewing the proposed  
14 Change in Scope, and for the resulting increase or decrease in Rates. CONTRACTOR  
15 shall promptly provide any documentation requested by COUNTY and reasonably  
16 necessary to identify and quantify any added or reduced expenses related to the  
17 Change in Scope. Either Party may, at its own cost, seek independent third-party  
18 assistance in determining the nature of any costs or savings. Any increase or decrease  
19 in Rates will require approval by the Board of Supervisors. COUNTY will make a good  
20 faith effort to present to the Board of Supervisors the submitted rate adjustment request  
21 within four (4) months from the resolution date of negotiation provided that  
22 CONTRACTOR submits the request and provides all supporting information in a timely  
23 manner. All determinations of added or reduced expenses shall be based on  
24 reasonable industry standards and averages for providing such services established in  
25 the locality within which the Collection Services are provided hereunder. If a Change in  
26 Scope results in a reduction or shift in equipment needs, CONTRACTOR, including any  
27 applicable parent or any affiliates, shall make every reasonable effort to redeploy or sell  
28 vehicles, Containers, equipment, and materials that are not fully amortized in order to

1 minimize capital expenditures. With regard to any Change in Scope, COUNTY reserves  
2 the right to adjust CONTRACTOR's compensation through a mutually agreeable  
3 alternative method.

4 **C. Fluctuation in Pass-Through Expenses Not A Change in Scope**

5 It is expressly agreed between the Parties that any increase or decrease in Pass-  
6 Through Expenses during the Base Term or Extension generally should result in an  
7 appropriate upward or downward adjustment in the Rate commensurate with such  
8 change. It is agreed and acknowledged that an increase or decrease in  
9 CONTRACTOR's cost of providing Collection Services that is attributable to an increase  
10 or decrease in Pass-Through Expenses shall not constitute a Change in Scope, but  
11 rather shall be considered an irrebuttable presumption that Substantial Evidence  
12 justifies approval by the Board of Supervisors of a commensurate upward or downward  
13 change in the Rate, to which CONTRACTOR's charges to Customers hereunder shall  
14 be subject.

15 **ARTICLE 6**

16 **BILLING, COLLECTION, AND REMITTANCE**

17 **6.1 BILLING RESPONSIBILITIES**

18 **A. General**

19 CONTRACTOR is responsible for billing and collecting Rates for all Collection Services.  
20 CONTRACTOR shall not charge any amount in excess of the maximum Rates for any  
21 services required or permitted to be performed by the terms of this Agreement. Those  
22 Rates are those set forth in Exhibit D, "Schedule of Maximum Rates," or as they may be  
23 adjusted by COUNTY during the Term.

24 **B. Specific Requirements**

25 In billing the Rates, CONTRACTOR shall:

- 26 1. Levy Special Service Fees as provided in Exhibit D. Special Service Fees  
27 shall not be levied except at the Customer's request for services for which  
28 fees shall be charged and after prior notification to the Customer of the

1 amount to be charged therefor.

2 2. Not bill for side-yard service for eligible Customers as specified in Article 4  
3 and Exhibit A.

4 All Bin Customers shall be billed monthly, and may be invoiced in advance of service, at  
5 CONTRACTOR's discretion. Cart Customers may be billed in advance, either on a  
6 monthly basis or on a two (2)- or three (3)-month basis, at CONTRACTOR's discretion.  
7 In the event that a customer receives Collection Service without being billed,  
8 CONTRACTOR may charge for no more than three months of service once that  
9 customer is identified and notice is sent to Customer. CONTRACTOR shall inform  
10 COUNTY prior to noticing Customer, and the due date specified in such notice for  
11 payment by the Customer of such previously unbilled Rate charges shall be no less  
12 than 60 days after date of mailing of the notice to Customer. Except as provided in this  
13 paragraph for previously unbilled Rate charges, CONTRACTOR shall not impose any  
14 other retroactive Rate charges on any Customer.

15 **6.2 RECEIPT OF PAYMENT**

16 CONTRACTOR shall record all amounts received from Customers into a special  
17 bookkeeping account to be established by CONTRACTOR entitled "Fresno County  
18 Unincorporated Area Rate Revenues."

19 **6.3 CONTRACTOR'S QUARTERLY BILLING STATEMENT AND REMITTANCE**

20 For each calendar quarter, and by the forty-fifth day following the end of the preceding  
21 quarter, CONTRACTOR shall prepare and submit a quarterly statement to COUNTY  
22 together with the Quarterly Remittance. The quarterly statement shall include the  
23 following information and calculations as supporting documentation for the proffered  
24 amount of the Quarterly Remittance:

25 **A. Reported Revenues**

26 All revenues collected during that month by CONTRACTOR from its Customers  
27 resulting from the imposition of any and all Rates (including payments for both current  
28 and past due accounts) shall be reported in the Quarterly Statement as "Reported

1 Revenues.” Provided, that the AB 939 Service Fee shall be based only on Rate  
2 Revenues actually collected by CONTRACTOR for all the Rates CONTRACTOR may  
3 charge its Customers for Collection, Disposal and processing Services provided within  
4 its Exclusive Service Area(s) that CONTRACTOR is required to provide hereunder and  
5 Special Services provided within its Exclusive Service Area(s), including Rates for  
6 Community Cleanup Services and Organic Materials Collection and Processing  
7 Services. The AB 939 Service Fee shall not reflect any accounts receivable (i.e.,  
8 delinquent accounts and bad debts) or other uncollected amounts (e.g., Special Service  
9 Fees and Community Clean-Up Event Service charges that have not yet been  
10 collected). Documentation shall be provided to support all Reported Revenues  
11 including, at a minimum, the total number of accounts for each applicable charge, the  
12 total number of Customers billed for each such amount, and all revenues collected from  
13 any Community Clean-Up Event Services, and Special Service Fees.

14 **B. AB 939 Service Fee**

15 CONTRACTOR shall provide calculations in support of the amount of the quarterly AB  
16 939 Service Fee obligation included in its Quarterly Remittance. The AB 939 Service  
17 Fee shall be calculated on the following basis and paid by CONTRACTOR in  
18 accordance therewith:

19  $AB\ 939\ Service\ Fee = 0.03 \times Rate\ Revenues\ actually\ collected\ that\ month\ within\ the$   
20  $Exclusive\ Service\ Area\ for\ the\ first\ and\ second\ year\ of\ the\ Extension\ Term.$

21  $AB\ 939\ Service\ Fee = 0.04 \times Rate\ Revenues\ actually\ collected\ that\ month\ within\ the$   
22  $Exclusive\ Service\ Area\ for\ the\ third\ and\ all\ subsequent\ years\ of\ the\ Extension\ Term.$

23 **C. Southeast Regional Fee**

24 Fresno County Ordinance Code Section 8.20.075 authorizes the COUNTY to collect a  
25 fee from permitted haulers to cover the costs for closure and post-closure maintenance  
26 of closed COUNTY landfills in the Southeast Regional Solid Waste Commission Area.  
27 The charges imposed by the COUNTY will be on all Solid Waste generated within the  
28 Southeast Regional Solid Waste Commission area. The Southeast Regional Fee

1 Component of each Rate for Customers within the Southeast Regional Solid Waste  
2 Commission Area will be calculated as provided in Exhibit I, which is attached hereto  
3 and incorporated by this reference, and which explains the manner in which the  
4 adjusted Southeast Regional Fee Component is to be determined.

5 **D. Liquidated Damages**

6 Any Liquidated Damages CONTRACTOR is obligated to pay to COUNTY, as provided  
7 for in Article 10 and Exhibit E, shall be reported separately in the Quarterly Statement.

8 **E. Other Payments**

9 Any other payments due to COUNTY hereunder (if applicable).

10 **F. Quarterly Remittance**

11 The Quarterly Remittance to COUNTY shall be calculated as follows:

12 Quarterly Remittance = COUNTY fees (AB 939 Service Fee and COUNTY Solid Waste  
13 Surcharges) + Liquidated Damages or Other Payments (if applicable). An illustration of  
14 the manner in which the Quarterly Remittance is calculated is set forth in Exhibit F  
15 attached hereto and incorporated by this reference.

16 **6.4 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT**  
17 **PAYMENTS**

18 CONTRACTOR shall solely bear all expenses and losses related to collecting or failing  
19 to collect bad debt from delinquent Customer accounts. Notwithstanding the foregoing,  
20 the AB 939 Service Fee shall be based only on Rate Revenues actually collected by  
21 CONTRACTOR within its Exclusive Service Area and shall not reflect any delinquent  
22 accounts, bad debts or other uncollected amounts. Upon reasonable effort to collect  
23 delinquent payments, CONTRACTOR may stop service to Customers whose accounts  
24 are delinquent by sixty (60) days or more.

25 It is understood and hereby acknowledged by the Parties that CONTRACTOR may not  
26 impose a retroactive Rate charge on any Customer, except in accordance with and  
27 under the limited circumstances expressly authorized by the last paragraph of Section  
28 6.1.

1 **6.5 AUDIT OF BILLINGS AND FINANCIAL REPORTS**

2 **A. Scope of Audit.**

3 COUNTY may at its sole discretion select a qualified independent firm to perform an  
4 audit of CONTRACTOR's records and data directly relevant to matters relating to  
5 CONTRACTOR's performance of its obligations under this Agreement, as set forth in  
6 this Paragraph 6.5.A. Upon demand, the CONTRACTOR shall permit the firm specified  
7 by COUNTY to audit and inspect all financial, statistical and accounting records,  
8 pertaining to CONTRACTOR's billing records and all revenues associated with  
9 CONTRACTOR's delivery of Collection Services. CONTRACTOR shall, upon request  
10 and written notification by COUNTY, permit the audit and inspection of all of such  
11 records and data by the firm specified by COUNTY. The frequency and timing of the  
12 audits shall be determined at COUNTY's discretion, but shall not exceed a maximum of  
13 three (3) audits during the Base Term and two (2) during the Extension Term. COUNTY  
14 shall be responsible for payment of all audits during the Base Term of the Agreement  
15 and any Extension of the Agreement. COUNTY shall provide CONTRACTOR thirty (30)  
16 days' notice of each audit. COUNTY shall determine the scope of any audits consistent  
17 with the purposes specified below and may elect to conduct either one or both of the  
18 following types of audit:

- 19 1. **Audit of Billings.** The auditor shall review the billing practices of  
20 CONTRACTOR with relation to delivery of Collection Services. The  
21 independent auditor would utilize randomized Customer sampling, across  
22 service sectors. The intent of this audit is to use sampling to verify that  
23 CONTRACTOR's charges to its Customers do not exceed the maximum  
24 Rates and that all customer types are receiving the type and level of  
25 service for which they are billed. Complete customer listings, by type, from  
26 which randomized case audits would be selected, would be provided  
27 through the CONTRACTOR.
- 28 2. **Audit of Revenue Reporting.** The auditor shall review relevant financial

1 reports and data submitted by CONTRACTOR pursuant to Article 8. The  
2 purpose of this audit is to verify that CONTRACTOR is correctly  
3 calculating Rate Revenues, and is properly remitting AB 939 Service Fees  
4 and Liquidated Damages.

5 All documents and records to which the auditor is given access shall remain within the  
6 ownership and control of CONTRACTOR at all times. To the extent that COUNTY  
7 obtains copies of such records that are marked as “confidential” and/or “trade secret,” or  
8 of notes created by the auditor utilizing information contained in such records, all such  
9 copies and/or notes shall be returned promptly to CONTRACTOR at the conclusion of  
10 the audit.

11 **B. Confidentiality.** CONTRACTOR understands that although all materials reviewed  
12 by the COUNTY pursuant to this Section 6.5 are intended for sole use by the COUNTY,  
13 they are potentially subject to disclosure under the provisions of the California Public  
14 Records Act (“CPRA”). Provided, however, that if any document provided by  
15 CONTRACTOR for review by the independent auditor to assist with the audit process is  
16 identified by CONTRACTOR at the time it is provided to the specified auditing firm as  
17 “confidential” and/ or “trade secret” information, then COUNTY shall be given access to  
18 review such document(s) at the local office of the CONTRACTOR.

19 For any document(s) marked “confidential” and/ or “trade secret” (hereinafter  
20 “Confidential Documents”), COUNTY may not obtain and retain copies thereof. It is  
21 agreed between the Parties hereto that any subsequent access and review by COUNTY  
22 personnel with regard to any such Confidential Document(s) shall take place only at the  
23 CONTRACTOR’s local office, and any copies of such Confidential Document(s) shall at  
24 all times remain in the sole custody and control of the independent auditor, unless and  
25 until such Confidential Document(s) become subject to production under Applicable  
26 Law, whether pursuant to the CPRA or by means of a subpoena or its legal equivalent.  
27 In such event, COUNTY and its independent auditor may undertake such analysis as  
28 COUNTY deems appropriate, pertaining to any request for disclosure made by a

1 member of the public pursuant to the CPRA, which is addressed in the immediately  
2 following Section 6.5.C.), or by means of a subpoena or its legal equivalent.

3 C. Public Accessibility to Records Pursuant to the CPRA

4 Notwithstanding any other provision of this Agreement, any Records/Documents that  
5 are provided by CONTRACTOR to COUNTY pursuant to any provision of this  
6 Agreement, or that are provided by CONTRACTOR to the independent auditor to assist  
7 with the audit process, which thereafter become the subject of a request for access  
8 thereto by a member of the public that would qualify as a request under the CPRA, will  
9 be handled as follows:

10 1. If COUNTY or the independent auditor receives any Records/Documents from  
11 the CONTRACTOR that are not labeled as “confidential” or “trade secret,” such  
12 Records/Documents shall not be determined exempt from disclosure to the public under  
13 the CPRA on that basis, and will be made available to the requesting party in  
14 accordance therewith, unless determined to be exempt from disclosure on some other  
15 basis.

16 2. If COUNTY or the independent auditor receives any Records/Documents from  
17 the CONTRACTOR that are labeled as “confidential” or “trade secret,” then COUNTY or  
18 the independent auditor, as applicable, will promptly notify CONTRACTOR, in writing, of  
19 any request made by any member of the public for access to such Records/Documents.  
20 CONTRACTOR shall promptly respond to COUNTY or the independent auditor, as  
21 applicable, in writing (but in no event more than three (3) calendar days from the date  
22 that COUNTY or the independent auditor notifies CONTRACTOR of the request), by  
23 informing COUNTY or the independent auditor, as applicable, as to whether  
24 CONTRACTOR is agreeable or objects to the release of such Records/Documents to  
25 the member of the public. If CONTRACTOR objects to such release, then the response  
26 provided by CONTRACTOR to COUNTY or the independent auditor, as applicable,  
27 must describe in detail the factual and legal grounds for such objection, by identifying  
28 the specific facts and citing the relevant legal authorities in support of CONTRACTOR’s

1 position that the Records/Documents should not be released. If CONTRACTOR fails to  
2 timely object to the release of the Records/Documents to the requesting member of the  
3 public in accordance with this Subparagraph 6.5.C.2, then CONTRACTOR shall be  
4 deemed to have waived any and all rights, if any, to claim that the Records/Documents  
5 are confidential or otherwise exempt from disclosure to members of the public under the  
6 applicable provisions of the CPRA.

7 1. If the Records/Documents that are the subject of a request under the  
8 CPRA may arguably include any Confidential Documents as defined in the immediately  
9 preceding Paragraph 6.5.B, then COUNTY shall review such Confidential Documents at  
10 the local office of the CONTRACTOR. In such a case, COUNTY shall consult with the  
11 independent auditor in considering the grounds upon which CONTRACTOR based its  
12 objection to the release of such Records/Documents, but COUNTY, in its reasonable  
13 judgment, shall determine whether to direct the independent auditor to release or not to  
14 release such Records/Documents.

15 2. If COUNTY or the independent auditor, as applicable, chooses not to  
16 release any Records/Documents, or portion(s) thereof, which arguably are  
17 encompassed by the scope of a request under the CPRA and as to which  
18 CONTRACTOR objected to the release of such Records/Documents, CONTRACTOR  
19 shall, in addition to any other indemnification and defense provisions in this Agreement,  
20 protect, defend, indemnify and hold harmless the COUNTY and its elective and  
21 appointive boards, officers, agents and employees, and the independent auditor from  
22 any and all claims, suits, liabilities, expenses, costs, damages, or judgments of any  
23 nature, including attorney's fees, arising out of, or in any way connected with the failure  
24 or refusal by COUNTY or the independent auditor to release such Records/Documents  
25 to such member of the public. In addition, if the member of the public requesting access  
26 to the Records/Documents pursues legal action against the COUNTY or the  
27 independent auditor in order to obtain access to the Records/Documents,  
28 CONTRACTOR shall, at its own expense, appear through legal counsel in such court

1 action by joining in the defense of the COUNTY and the independent auditor.

2 3. It is understood and acknowledged by the Parties that CONTRACTOR'S  
3 labeling or characterization of any Records/Documents as confidential, or  
4 CONTRACTOR'S requesting that COUNTY and/or the independent auditor treat any  
5 Records/Documents as confidential or otherwise exempt from disclosure to any  
6 member of the public cannot, in and of itself, confer upon such Records/Documents  
7 "confidential" status under Applicable Law, or otherwise exempt such  
8 Records/Documents from disclosure to members of the public under the CPRA.

## 9 **ARTICLE 7**

### 10 **CONTRACTOR COMPENSATION AND CUSTOMER RATES**

#### 11 **7.1 RATES**

##### 12 **A. General Provisions**

13 The collection of Rate Revenues by CONTRACTOR (together with other revenues  
14 described in Section 3.2(B)) shall be the only compensation to CONTRACTOR for  
15 provision of Collection Services to Customers. (It is expressly understood and  
16 acknowledged that no payment whatsoever shall be made to CONTRACTOR by  
17 COUNTY for the provision of such services.) CONTRACTOR shall bill Customers for  
18 charges as appropriate, and in no event shall any of such charges exceed the  
19 applicable Rate for that service listed in the Schedule of Maximum Rates (Exhibit D  
20 hereto), as may be adjusted from time to time pursuant to the terms of this Agreement.  
21 CONTRACTOR shall collect payments in accordance with the provisions of Article 6.  
22 CONTRACTOR shall be entitled to retain all revenue from charges to customers for  
23 Special Services and the sale of Recyclable Materials.

##### 24 **B. Determination of Maximum Rates Dependent on Applicable Schedule**

25 Section 7.1, Paragraph B is inapplicable to this Amended and Successor Agreement.  
26 (Unlike the Original Contract, this Amended and Successor Agreement will list only one  
27 set of maximum Rates that may be implemented by the Board of Supervisors.)

28 ///

1 **7.2 ADJUSTMENT OF RATES**

2 **A. One-Time Rate “True-Up” Adjustment Process**

3 Section 7.2, Paragraph A, is inapplicable to this Amended and Successor Agreement.  
4 (Any request under that Section was required to have been submitted by an ESAP  
5 Contractor within six (6) months after commencement of Collection Services under the  
6 Original Contract, and no such request was ever submitted by any of the Contractors.)

7 **B. Unforeseen Circumstance Rate Adjustment**

8 Either Party hereto may, subject to the terms of this Section 7.2, initiate a request for  
9 consideration of a Rate adjustment in the Service Rate Area encompassing  
10 CONTRACTOR’s Exclusive Service Area, based on Unforeseen Circumstances;  
11 provided, however, that CONTRACTOR may initiate a request under this Paragraph not  
12 more than once annually, beginning one year after the Operative Date of this Amended  
13 and Successor Agreement, and any premature request by CONTRACTOR shall be  
14 deemed invalid and void. CONTRACTOR’s request for such a Rate adjustment shall be  
15 prepared in a format acceptable to the COUNTY Representative, and shall be submitted  
16 to COUNTY no later than 180 days after the anniversary of such Operative Date  
17 (beginning with the first such anniversary in calendar year 2019). Each such Rate  
18 adjustment request is to be based on data from the preceding twelve (12)-month period.  
19 COUNTY will make a good faith effort to present to the Board of Supervisors the  
20 submitted rate adjustment request within four (4) months from the date of submittal of  
21 CONTRACTOR’s initiating request, provided that CONTRACTOR submits the initiating  
22 request, and all supporting information is provided to COUNTY, in a timely manner.

23 **1. Eligible Items**

24 Eligible Items are divided into two general classifications, as explained in Parts (a) and  
25 (b) of this Subparagraph 7.2.B.1. Eligible Items include (but are not limited to) those  
26 events, listed in Part (a) of this Subparagraph, that will justify approval of an Unforeseen  
27 Circumstances Rate Adjustment, to the extent the request is supported by Substantial  
28 Evidence. While it is neither possible, nor reasonable to attempt, to provide an

1 exhaustive listing of all other events that may, in the reasonable exercise of the  
2 discretion of the Board of Supervisors, justify approval of an Unforeseen Circumstances  
3 Rate Adjustment, examples of such Items are listed in Part (b) of this Subparagraph.  
4 Part (b) of this Subparagraph shall apply to all requested rate adjustments submitted  
5 under this Paragraph 7.2.B for all Eligible Items, to the extent such request is not  
6 covered by Part (a) of this Subparagraph. For purposes of clarification, to the extent  
7 any request submitted under this Paragraph 7.2.B is not based on an event properly  
8 classified as either a Change in Scope, Change in Law or Pass-Through Expense (each  
9 of which is covered by Part (a) of this Subparagraph), then Part (b) shall be applicable  
10 to COUNTY's consideration of such request, and in such cases the extent to which  
11 Substantial Evidence may provide support for a requested Rate Adjustment is merely  
12 one of the factors the Board of Supervisors, in the reasonable exercise of its discretion,  
13 may consider relevant to its determination.

14 (a) The following events will support CONTRACTOR's application to  
15 COUNTY for consideration of an annual Unforeseen Circumstance Rate  
16 Adjustment, or COUNTY's initiation of such a review. Subject only to the  
17 irrefutable presumption applicable solely to Pass-Through Expenses  
18 under Subdivision (iii), any requested Rate Adjustment that is based on  
19 any of the events listed in Subdivisions (i) through (iii) inclusive of this Part  
20 (a) shall be approved only to such extent (if any), and in such amount, as  
21 is supported by Substantial Evidence to justify a change in the Rates  
22 applicable to the Service Rate Area.

23 (i) Change in Scope.

24 A Change in Scope (as provided in Article 5) shall justify approval  
25 of an upward or downward change in the Rate to the extent, if any,  
26 that is supported by Substantial Evidence.

27 (ii) Change in Law.

28 A Change in Law for which CONTRACTOR's compliance is

1 mandatory, and that results in a significant and documented  
2 change in the specific cost of providing Collection Services, shall  
3 justify approval of an appropriate upward or downward change in  
4 the Rate to the extent, if any, that is supported by Substantial  
5 Evidence.

6 (iii) Pass-Through Expenses.

7 A change in the cost of providing Collection Services, to the extent  
8 it is due to an increase or decrease in the cost of any Pass-Through  
9 Expense(s), shall be deemed to create an irrebuttable presumption  
10 that Substantial Evidence justifies approval of a commensurate  
11 upward or downward change in the Rate.

12 (b) The following are examples of events that may, in the reasonable  
13 discretion of the Board of Supervisors support CONTRACTOR's  
14 application to COUNTY for consideration of an annual Unforeseen  
15 Circumstance Rate Adjustment, or COUNTY's initiation of such a review.  
16 The following subdivisions (i) through (v), inclusive, are not intended as an  
17 exhaustive listing of Eligible Items to which this Part (b) is applicable, but  
18 only as examples of such events, which include, but are not limited to:

19 (i) Substantial changes in fuel cost, to the extent such fuel cost  
20 changes may reasonably be described as substantial, after  
21 considering the extent to which they are or may be offset by the  
22 CPI Adjustment provisions of Paragraph 7.2.C below.

23 (ii) Increases in disposal surcharges, taxes, fees and other charges  
24 imposed after the Operative Date by a governmental agency other  
25 than COUNTY, at a Disposal Facility that is neither owned nor  
26 operated by COUNTY and is utilized by CONTRACTOR for  
27 Disposal of Collection Materials generated by Customers pursuant  
28 to this Agreement.

- 1 (iii) Increases in the tipping fee charged at a Disposal Facility that is  
2 neither owned nor operated by COUNTY and is utilized by  
3 CONTRACTOR for Disposal of Collection Materials generated by  
4 Customers pursuant to this Agreement, that are imposed on  
5 CONTRACTOR after the Operative Date of this Agreement, by the  
6 operator of such Disposal Facility.
- 7 (iv) Subdivision (b)(iv) of this Subparagraph 7.2.B.1 is inapplicable to  
8 this Amended and Successor Agreement.
- 9 (v) A substantial change in character of the Service Rate Area or  
10 portion thereof, when attributable to an annexation, incorporation or  
11 de-annexation, may justify a redesignation of the impacted area(s)  
12 to allow application of the Rate schedule most appropriate to the  
13 area's changed character, as provided in Subparagraph 7.3.D.1.

## 14 **2. Ineligible Items**

15 Examples of items for which CONTRACTOR shall not be additionally compensated as  
16 Unforeseen Circumstance Rate Adjustments, except as resulting from a Change in  
17 Scope, include, but are not limited to:

- 18 (a) Changes in the number of Customers due to changes in population or  
19 housing/business development (unless eligible under Subdivision  
20 7.2.B.1(b)(v) as a change in character attributable to an annexation,  
21 incorporation or de-annexation).
- 22 (b) Shifts in the number of accounts between larger and smaller Cart sizes,  
23 large and smaller Bins, or more or less frequency of Cart and Bin pickup.
- 24 (c) Increases in transportation time and/or costs related to provision of  
25 Collection Services that may reasonably be described as either  
26 foreseeable or insubstantial, or that may be addressed appropriately by  
27 the CPI Adjustment provisions that immediately follow this Subparagraph.
- 28 (d) If CONTRACTOR receives a Poor Performance Rating, and COUNTY

1 requires reasonable changes to CONTRACTOR's operations, at  
2 CONTRACTOR's cost, in order to remedy identified deficiencies in  
3 CONTRACTOR's performance, pursuant to Subparagraph 8.6.D.1. (It is  
4 acknowledged and agreed that exercise of such right by COUNTY is not a  
5 Change in Scope, in that the costs incurred by CONTRACTOR are  
6 intended to remedy deficiencies in its performance as measured against  
7 satisfactory performance of the scope of duties encompassed by the  
8 terms of this Agreement.)

9 **3. Implementation of Approved Rate Adjustments**

10 (a) Approval of a requested rate adjustment for any Pass-Through Expenses  
11 and Changes in Scope shall include payment for any time periods from the date  
12 CONTRACTOR incurred an actual increase in costs as a result of the act or event on  
13 which the request was based, through and including the date of approval of the Rate  
14 Adjustment (such interim period shall be referenced for purposes hereof as the  
15 "Retroactive Adjustment").

16 (b) COUNTY will make a reasonable attempt to give CONTRACTOR  
17 sufficient advance notice of any proposed action that is anticipated to result in a Change  
18 in Scope or an increase in any Pass-Through Expenses, which thereby may avoid the  
19 necessity of any Retroactive Adjustment (if the date of the proposed action and the Rate  
20 Adjustment resulting therefrom are made to coincide). COUNTY may, in its reasonable  
21 discretion, make such Retroactive Adjustment as is required hereunder by: (i) including  
22 appropriate compensation therefor as a component of the Rate Adjustment; (ii)  
23 permitting CONTRACTOR to charge a temporary surcharge; or (iii) such other method  
24 as is reasonably calculated to permit CONTRACTOR to receive the full Retroactive  
25 Adjustment.

26 (c) Approval of a requested Rate Adjustment attributable either to a Change  
27 in Law, or to any of those Eligible Items that are covered by the provisions of Part (b) of  
28 Subparagraph 7.2.B.1, shall not include any Retroactive Adjustment if determined within

1 a reasonable time from the date of the initiating request therefor: and such rate  
2 Adjustment shall be effective on a prospective basis only from the date of approval by  
3 COUNTY's Board of Supervisors, subject only to CONTRACTOR's compliance with the  
4 requirements of Section 7.3 regarding advance notice to Customers. Provided,  
5 however, and notwithstanding the foregoing, if the initiating request for such a  
6 requested Rate Adjustment (i.e., attributable either to a Change in Law or an Eligible  
7 Item covered by the provisions of Part (b) of Subparagraph 7.2.B.1) and all supporting  
8 information are submitted timely by CONTRACTOR and the Other Interested Providers,  
9 and if approval by the Board of Supervisors occurs more than six months after the  
10 initiating request, then only under such limited circumstances a Retroactive Adjustment  
11 shall be allowed; and in such case, the Retroactive Adjustment shall apply only to that  
12 period commencing 120 days after submission of the initial request, through and  
13 including the date of approval by the Board of Supervisors.

14 **C. CPI Adjustment**

15 Each Rate (including Solid Waste, Organic Materials Collection, transfer and  
16 Processing costs, Special Services rates, and Community Cleanup rates after the  
17 COUNTY's coupons are exhausted) shall be adjusted up or down, by COUNTY, on an  
18 annual basis beginning on July 1 after the first anniversary of the Operative Date of this  
19 Amended and Successor Agreement, and on July 1 of each year thereafter for the  
20 remainder of the Extension Term, to reflect the product of the change in the annual  
21 inflation rate measured as the percentage increase in the CPI over the previous twelve  
22 (12)-month period ending on December 31 of the preceding calendar year. COUNTY  
23 Representative shall seek approval of adjustments by the COUNTY Board of  
24 Supervisors during the month of March to facilitate issuance of notices to customers  
25 with hauler billing cycles. For purposes of illustration, the calculation of the change in  
26 the CPI for a Rate adjustment taking effect on July 1, 2019 after the first anniversary of  
27 the Operative Date of this Amended and Successor Agreement shall be based on the  
28 change in the CPI over the period between December 31, 2017, and December 31,

1 2018. The CPI is then adjusted by the applicable percentage of the CPI (the “CPI  
2 Adjustment Factor”), which is 75 percent (75%) for Cart Rates. 65 percent (65%) for Bin  
3 Rates and 65 percent (65%) for Special Services rates, and Community Cleanup rates.  
4 The adjusted Rate shall be calculated as follows:

$$\begin{aligned} & \text{Adjusted Rate} = \text{Current Rate} \times [(\text{Current CPI}/12\text{-month previous CPI}) - 1] \\ & \times \text{CPI Adjustment Factor} + 1] \end{aligned}$$

7 An illustration of the calculation of the adjusted CPI Component is attached as Exhibit G  
8 and incorporated by this reference. The CPI Adjustment is independent of any other  
9 Rate Adjustment request that either Party may initiate, and is neither intended to  
10 preclude the availability nor to supplant the procedures provided in this Agreement for  
11 Rate adjustments that may be justified on other bases (including without limitation for  
12 Pass-Through Expenses).

13 **D. Change in the CPI Index**

14 If the CPI is discontinued or revised during the Term by the United States Department of  
15 Labor, such other government index or computation with which it is replaced shall be  
16 used in order to obtain substantially the same result as would be obtained if the CPI had  
17 not been discontinued or revised.

18 **E. Adjustment of the Disposal Tipping Fee Component**

19 The Disposal Tipping Fee Component of each Rate will be adjusted to reflect any  
20 percentage change in the per-ton tipping fee at the Disposal facilities owned and/or  
21 operated by COUNTY, and that will be in effect during the new Rate period.

22 For each Rate, the adjusted Disposal Tipping Fee Component shall be calculated  
23 as follows:

$$\begin{aligned} & \text{Adjusted Disposal Tipping Fee Component} = (\text{Current Disposal Tipping Fee} \\ & \text{Component}) \times [(\text{New Disposal tipping fee}/\text{Old Disposal tipping fee}) / (1 - \text{AB 939} \\ & \text{Service Fee percentage})] \end{aligned}$$

27 If COUNTY’s new Disposal Tipping Fee will only be in effect for a portion of the new  
28 Contract Year, the adjustment to the Disposal Tipping Fee Component shall be prorated

1 accordingly. Examples of the manner in which the adjusted Disposal Tipping Fee  
2 Component is calculated are provided in Exhibit H hereto and incorporated by this  
3 reference.

### 4 **7.3 NOTICE OF ADJUSTED RATES**

5 CONTRACTOR shall provide all Customers with advance written notice of approved  
6 Rate adjustments, in the form of a bill insert or appropriate notification on the invoice, at  
7 least thirty (30) days prior to the effective date of each Rate adjustment.

#### 8 **A. Review of Costs**

9 Should either Party request a Rate adjustment review, COUNTY shall have the right to  
10 review any or all costs associated with CONTRACTOR's services under this  
11 Agreement. A Rate adjustment review may, at COUNTY's discretion, occur in  
12 conjunction with a performance review pursuant to Article 8.

#### 13 **B. Submittal of Request**

14 CONTRACTOR must submit, at least six (6) months prior to the proposed effective date  
15 of any Rate adjustment, any request for an Unforeseen Circumstance review of Rates,  
16 together with sufficient supporting cost and operational data in a form and manner  
17 acceptable to the COUNTY Representative.

#### 18 **C. Burden of Justification**

19 CONTRACTOR shall bear the burden of justifying to COUNTY by Substantial Evidence  
20 any request by CONTRACTOR for consideration of a Rate adjustment under this Article  
21 7. The request shall be addressed to the COUNTY Representative, and on its face  
22 shall reflect that CONTRACTOR also has sent copies of such request to all other  
23 exclusive providers of Collection Services operating within the Service Rate Area at  
24 issue (for purposes of this Paragraph 7.3.C, hereinafter "Other Interested Providers"),  
25 pursuant to agreements substantially identical to this Agreement. The recommendation  
26 of the COUNTY Representative as to approval or disapproval of the request shall be  
27 based upon the accompanying supporting information submitted together with the  
28 initiating request submitted by CONTRACTOR to the COUNTY Representative and

1 such additional supporting information as may be presented to the COUNTY  
2 Representative, in a reasonably timely manner, by any Other Interested Providers.  
3 The submittal of such additional supporting information by Other Interested Providers  
4 shall be considered timely if submitted within 45 days after CONTRACTOR's initiating  
5 request. The supporting information submitted by CONTRACTOR and any Other  
6 Interested Providers, or an appropriate summary thereof, shall be presented to the  
7 Board of Supervisors as part of the agenda packet in advance of the hearing on the  
8 request. The Board of Supervisors, in its discretion and only for good cause shown,  
9 may consider additional evidence not previously presented to the COUNTY  
10 Representative, in accordance with the provisions of this Paragraph 7.2.C, by  
11 CONTRACTOR and any Other Interested Providers. If the Board of Supervisors  
12 determines that CONTRACTOR has not met its burden, to present Substantial  
13 Evidence to justify a Rate Adjustment in the Service Rate Area at issue (whether based  
14 on CONTRACTOR's initial submission of supporting documentation or any additional  
15 evidence allowed in the Board of Supervisors' discretion), the decision of the Board of  
16 Supervisors on that issue shall be final for administrative purposes, subject only to  
17 limited judicial review as specified in Section 7.4.

18 **D. Grant of Request**

19 The extent to which Substantial Evidence supports a requested Rate adjustment may  
20 be a factor (and in certain cases, as specified in Paragraph 7.2, will presumably be the  
21 controlling factor) in the Board of Supervisors' determination as to whether to grant  
22 some, all or none of the requested Rate adjustment.

23 **1. The Evidentiary Standard Applies to the Entire Service Rate Area**

24 Because Rates are intended to be uniform throughout the entire Service Rate Area that  
25 includes CONTRACTOR's Exclusive Service Area, the CONTRACTOR is required to  
26 provide evidence that supports or justifies application of the requested Rate Adjustment  
27 throughout the entire Service Rate Area, consistent with the provisions of Paragraph  
28 7.3.C. Notwithstanding the foregoing, in the event of an annexation, incorporation or

1 de-annexation, as contemplated by Subdivision 7.2.B.1(b)(v), COUNTY may (and if  
2 requested by CONTRACTOR shall) determine whether the Service Rate Area or some  
3 portion thereof should be redesignated from its existing designation (Zone 1, Zone 2a,  
4 Zone 2b and Zone 3) to one of the other designations, because of a substantial change  
5 in the character thereof caused by the annexation, incorporation or de-annexation, in  
6 which case CONTRACTOR and the COUNTY shall cooperate in taking all actions  
7 reasonably necessary to implement the redesignation expeditiously, including without  
8 limitation making the necessary modifications to the Agreement and providing  
9 reasonable notice to CONTRACTOR's Customers.

10 **2. Consideration of Unforeseen Rate Adjustment Requests**

11 (a) For those Eligible Items that are considered under Part (a) of Subparagraph  
12 7.2.B.1, the extent to which Substantial Evidence supports the requested Rate  
13 Adjustment may properly be characterized as the controlling factor in the Board of  
14 Supervisors' determination. To the extent a request is based on a properly  
15 characterized Pass-Through Expense, Change in Law or Change in Scope, then such  
16 request shall be approved, but only to the extent (if any), and in such amount, as is  
17 supported by Substantial Evidence, as applied to the entire Service Rate Area at issue.

18 (b) All Eligible Items other than a properly characterized Pass-Through Expense,  
19 Change in Law or Change in Scope may, in the reasonable discretion of the Board of  
20 Supervisors, support a requested Rate Adjustment, as provided in Part (b) of  
21 Subparagraph 7.2.B.1. However, as to Eligible items considered under Part (b) of  
22 Subparagraph 7.2.B.1, the extent to which Substantial Evidence may provide support  
23 for a requested Rate Adjustment is merely one of the factors the Board of Supervisors  
24 may, in the reasonable exercise of its discretion, consider in making its determination.  
25 The Board of Supervisors may consider and weigh such evidence, and further may  
26 consider any and all other factors it deems relevant in making its determination  
27 (including but not limited to the extent to which evidence of increased costs may be  
28 offset or outweighed by other factors, or fairly attributable to CONTRACTOR's own

1 business decision rather than properly characterized as an Unforeseen Circumstance),  
2 all in the reasonable exercise of its discretion.

3 **E. Unspecified Special Service Fees**

4 Notwithstanding the foregoing, CONTRACTOR and any one or more of its Customers  
5 may agree to any reasonable charge for unspecified Special Services for which no  
6 specific charge is established in Exhibit D, and no prior notice or approval by the  
7 COUNTY shall be required for such charge.

8 **7.4 RESOLUTION OF DISPUTES REGARDING RATE ADJUSTMENT REVIEW**

9 This Section 7.4 pertains only to Rate adjustment review requested by CONTRACTOR  
10 under the provisions of Article 7. CONTRACTOR expressly agrees that  
11 CONTRACTOR's sole cause of action and exclusive remedy for any allegedly improper  
12 action or inaction by COUNTY in response to CONTRACTOR's timely request for Rate  
13 Adjustment shall be a petition for writ of mandate under Code of Civil Procedure Section  
14 1085. CONTRACTOR understands and acknowledges that the applicable standard of  
15 judicial review for any such petition filed by CONTRACTOR will be whether the Board of  
16 Supervisors abused its discretion, in denying all or some portion of the requested Rate  
17 adjustment. The Parties further agree that they will join in a request for priority setting  
18 of the trial court's hearing, of any petition for writ of mandate that is filed by  
19 CONTRACTOR pursuant to and in full accordance with the provisions of this Section  
20 7.4, and that each Party will bear its own costs in connection therewith. If  
21 CONTRACTOR's challenge to COUNTY's determination in such a writ of mandate  
22 proceeding is successful, then CONTRACTOR's recovery shall be calculated in such  
23 manner to permit CONTRACTOR to receive the full Retroactive Adjustment to which it  
24 is entitled, consistent with the provisions of this Agreement (including but not limited to  
25 Section 7.2.B.3(b)).

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1 **ARTICLE 8**

2 **RECORD KEEPING, REPORTING, AND PERFORMANCE REVIEWS**

3 **8.1 RECORD KEEPING**

4 **A. Accounting Records**

5 CONTRACTOR shall maintain full, complete and separate financial, statistical and  
6 accounting records, pertaining to cash, billing, and provisions of all Collection Services,  
7 prepared on an accrual basis in accordance with generally accepted accounting  
8 principles. Such records shall be subject to audit, copy, and inspection by COUNTY  
9 Representative or designee upon request. Rate Revenues, Special Service Fees,  
10 Community Clean-Up Event Services, and Recycling revenues derived from provision of  
11 the Collection Services, whether such services are performed by the CONTRACTOR or  
12 by a subcontractor(s), shall be recorded as revenues in the accounts of  
13 CONTRACTOR. CONTRACTOR shall maintain and preserve all cash, billing and  
14 Disposal records for a period of not less than five (5) years following the close of each  
15 of CONTRACTOR's fiscal years. Provided, however, that as to any record relating to an  
16 assessment of Liquidated Damages, or to declaration of a breach, a default, or a  
17 specified cause of termination, any and all such record(s) shall be retained for a  
18 minimum of five (5) years, or for four (4) years following the expiration or termination of  
19 this Agreement, whichever is earlier, unless the COUNTY Representative gives express  
20 written authorization for its disposal.

21 **B. Collection Materials Records**

22 CONTRACTOR shall maintain, and preserve for the time period specified in the  
23 immediately preceding Paragraph 8.1.A, records of the quantities of each of the  
24 following: (i) Solid Waste Collected and Disposed under the terms of this Agreement; (ii)  
25 Recyclable Materials, by type, Collected, purchased, processed, sold, donated or given  
26 for no compensation, and Residual Disposed; (iii) Green Waste and Organic Materials  
27 Collected, received, purchased, processed, sold, donated or given for no compensation;  
28 (iv) Residual Disposed; and (v) unit counts for Bulky Items collected.

1 **C. Public Education and Information**

2 CONTRACTOR shall maintain, and preserve for the time period specified in Paragraph  
3 8.1.A, records of its customer information and public education activities as detailed in  
4 Article 5.1 and Exhibit A of this Agreement. Such records shall be subject to audit, copy,  
5 and inspection by COUNTY Representative or designee upon request.

6 **D. AB 341 and AB 1826 Compliance**

7 CONTRACTOR shall maintain, and preserve for the time period specified in Paragraph  
8 8.1.A, records of all public education, outreach, and monitoring activities, for all  
9 commercial accounts as required by AB 341 and AB 1826, and other applicable laws.  
10 Such records shall be subject to audit, copy, and inspection by COUNTY  
11 Representative or designee upon request.

12 **E. Customer Complaint Log**

13 CONTRACTOR shall maintain, and preserve for the time period specified in Paragraph  
14 8.1.A, the customer complaint log pursuant to Article 5.

15 **F. Operations Data**

16 CONTRACTOR shall maintain, and preserve for the time period specified in Paragraph  
17 8.1.A, full, complete and separate operations data, pertaining to residential, commercial,  
18 industrial and institutional customers and provisions of all Collection Services. Data  
19 shall include: account names, addresses, and phone numbers; size of containers  
20 provided; frequency of Collection Services provided; days of Collection Services; route  
21 maps; other services provided; and history of customer complaints. Data shall be  
22 provided in a format and software acceptable to COUNTY, Such records shall be  
23 subject to audit, copy, and inspection by COUNTY Representative or designee. Such  
24 records shall be provided to the COUNTY Representative in the event of an Emergency  
25 (as determined under Section 3.9) or one (1) year prior to the conclusion of the Term of  
26 this Agreement (including this Extension) in order to assist with the competitive bid  
27 process to award Collection Services at the conclusion of the current Term.  
28 CONTRACTOR shall provide COUNTY with such other information as may reasonably

1 be requested.

2 **G. Other Records**

3 CONTRACTOR shall maintain all other records reasonably related to provision of  
4 Collection Services, whether or not specified in this Article 8 or elsewhere in this  
5 Agreement.

6 **8.2 REPORTING**

7 **A. General**

8 Quarterly reports shall be submitted in hard copy, based upon COUNTY format, and  
9 shall be provided electronically in a format acceptable to COUNTY, unless otherwise  
10 directed by COUNTY Representative.

11 As set forth in this Article, CONTRACTOR shall submit reports to the COUNTY on Solid  
12 Waste Collection and Disposal, Recyclables Collection, Green Waste and Organic  
13 Materials Collection to assist the COUNTY in meeting the reporting requirements of AB  
14 939, SB 1016, AB 341, AB 1826, SB1383 and other new laws or requirements.

15 CONTRACTOR shall provide all necessary reporting data requested by the COUNTY  
16 relating to the COUNTY's compliance requirements as per the aforementioned laws.

17 The quarterly reports are due to the COUNTY by the 45th day following the end of the  
18 preceding quarter. The CONTRACTOR shall provide, upon request, all additional  
19 reporting data requested by the COUNTY relating to the COUNTY's compliance  
20 requirements as per the aforementioned laws. Such additional reports shall be provided  
21 to the COUNTY within thirty (30) days following each request.

22 **B. Accuracy of Reports**

23 The failure of the CONTRACTOR to file accurate and timely reports, the inclusion of any  
24 inaccurate or misleading data in reporting, or statement of misrepresentation by  
25 CONTRACTOR in such report(s), shall be subject to Liquidated Damages as set forth in  
26 Exhibit E.

27 The submittal by CONTRACTOR of records or reports that are untimely, or are  
28 determined by the COUNTY Representative to be insufficient or inaccurate pursuant to

1 the provisions of Paragraph 4.7C shall also constitute grounds for revocation of  
2 CONTRACTOR's exemption from the requirement of Paragraph 4.7A to deliver to the  
3 American Avenue Disposal Site all of the Solid Waste CONTRACTOR collected within  
4 the unincorporated areas of Fresno County. CONTRACTOR shall ensure that reports  
5 submitted to processing and disposal facilities match reports submitted to the COUNTY,  
6 to the satisfaction of the COUNTY. CONTRACTOR'S drivers will provide the same  
7 county of origin information to processing and disposal facilities as provided to the  
8 COUNTY.

9 **C. Quarterly Reports to COUNTY**

10 Quarterly reports to COUNTY shall be due forty-five (45) days after the end of the  
11 respective quarter and shall include.

- 12 1. Amount (in tons) of Solid Waste, Recyclables, Green Waste and Organic  
13 Materials Collected;
- 14 2. Amount (in tons) and type of materials deposited in a permitted facility and  
15 identification of permitted facility.
- 16 3. Amount (in tons) of Recyclables, Green Waste and Organic Materials  
17 Diverted.
- 18 4. Customer count and tons by type of service including Special Services  
19 and Community Clean-Up Services and coupons accepted from  
20 Customers and Non-Customers.
- 21 5. Unit counts, material types and tonnages of bulky items collected from  
22 residential customers, indexed by zipcode+4 coding.
- 23 6. Customer participation rates by type of service (i.e., Solid Waste,  
24 Recyclables, Green Waste and Organic Materials collection services) by  
25 customer service sector (residential and commercial). Residential  
26 participation rate to be measured by the percentage of customers setting  
27 out a cart in a given month. Commercial account participation rate  
28 calculation to be mutually agreed upon by the CONTRACTOR and

- 1 COUNTY.
- 2 7. COUNTY Fees and supporting data and calculations as detailed in Exhibit
- 3 F.
- 4 8. Public education and information activities undertaken during the quarter
- 5 by category (electronic, print, and direct contact), including distribution of
- 6 bill inserts, number of issued collection notification tags, community
- 7 information and events, quarterly newsletters, and other activities related
- 8 to the provision of Collection Services.
- 9 9. Information on commercial recycling technical assistance including listing
- 10 waste audits/business assessments conducted and new commercial
- 11 accounts offered service.
- 12 10. AB 341 and AB 1826 compliance and monitoring reporting, including a
- 13 listing of the businesses and institutions subject to the requirements of
- 14 each law, and the actual businesses and institutions with Recycling and
- 15 Organic Material Collection Services. CONTRACTOR additionally shall list
- 16 the informational notices, as applicable, and the non-compliance notices
- 17 (including identification of the non-compliant Customer), as applicable,
- 18 distributed each quarter throughout its service area.
- 19 11. State-mandated reporting data required under AB341, AB1826, SB1383
- 20 or any new laws or requirements.
- 21 12. Separate tonnage data (Solid Waste, Recyclables, Green Waste,
- 22 Organics Materials) for all schools, colleges, universities, Special Districts,
- 23 COUNTY, State and Federal facilities that CONTRACTOR serves in the
- 24 County (even if not a Customer under this Agreement).
- 25 13. Residual rates for the amount of Residual generated by weight of
- 26 materials processed for Recycling.
- 27 14. Customer complaint logs for the specified time period.
- 28 15. Summary of Liquidated damages assessed for the specified time period.

1 Fourth Quarter reports to COUNTY due on February 15<sup>th</sup> of each year  
2 additionally shall include data by category (electronic, print, and direct contact),  
3 for Electronic Annual Reports to the State under AB341 Mandatory Commercial  
4 Recycling (MCR) and data for Electronic Annual Reports to the State under AB  
5 1826 Mandatory Commercial Organics Recycling (MORe) as indicated in Exhibit  
6 J and below:

- 7 1. All quarterly data as detailed above.
- 8 2. A summary assessment of the delivery of services in the  
9 CONTRACTOR'S service area. The intent of the report is for the  
10 CONTRACTOR to assess how well services and programs are operating  
11 in terms of efficiency, and meeting the COUNTY's diversion requirements.  
12 This is an opportunity for the CONTRACTOR to highlight significant  
13 accomplishments and provide recommendations for service and program  
14 improvements.
- 15 3. A summary of the prior year's quarterly Rate Revenues, COUNTY Fees,  
16 Liquidated Damages, any other payments to COUNTY, and Quarterly  
17 Remittances.
- 18 4. An estimated annual Diversion rate for CONTRACTOR's Customers  
19 calculated for the previous calendar year by customer service sector  
20 (residential, commercial and bulky items) and overall.
- 21 5. Customer account data by service level and customer service sector  
22 including the number of accounts, number of carts and bins by service  
23 level,  
24 amount (in tons) and type of materials collected, amount and type of  
25 materials deposited in a permitted facility, amount and type of materials  
26 Diverted, applicability of mandatory commercial recycling (MCR) and  
27 mandatory organics recycling (MORe) for each account, and customer  
28 count by type of service, including Special Services and Community

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Clean-Up Services.

- 6. Compilation of all quarterly reports information on public education and information activities undertaken during the year by category (electronic, print, and direct contact), including distribution of bill inserts, number of issued collection notification tags, community information and events, quarterly newsletters, and other activities related to the provision of Collection Services.
- 7. Amount of Solid Waste removed by CONTRACTOR for Collection purposes from locations within the COUNTY and taken by CONTRACTOR for Disposal to landfills located outside the COUNTY.
- 8. Compilation of all quarterly reports information on the number and type of complaints received over the past year, including how they were resolved and the elapsed time between receipt of the first complaint and final resolution of the complaint. CONTRACTOR shall propose, and COUNTY shall approve in advance the format to be used for this portion of the annual report.
- 9. CONTRACTOR shall include a listing of markets for Recyclable Materials and the end use of these materials in general categories requested by COUNTY (such as broad categories of “domestic” or “export”, not specific purchasers of the materials). This type of information is used to help the COUNTY gauge the sustainability of Recycling markets and to assist in the development of new markets.

**8.3 OTHER RELATED REQUIREMENTS**

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

CONTRACTOR shall, upon reasonable advanced notice from COUNTY, fully and in a timely manner cooperate with and assist COUNTY in COUNTY’s preparation and performance (if and as needed and at COUNTY’s own cost), of periodic waste characterization and waste diversion studies to be conducted in a manner agreed upon

1 by CONTRACTOR and COUNTY.

2 **B. Collection Monitoring**

3 CONTRACTOR shall monitor its Collection of Solid Waste, Recyclable Materials, Green  
4 Waste and Organic Materials to identify occurrences of, and to prevent, contamination  
5 of Recyclable Materials, Green Waste and Organic Materials. COUNTY may also  
6 monitor CONTRACTOR while on route by observing collection activities and practices.  
7 COUNTY Representative will inform CONTRACTOR at least one (1) week in advance  
8 prior to date of such route monitoring. COUNTY Representative will make such  
9 observations at a safe distance from CONTRACTOR's vehicles, equipment and  
10 employees and otherwise comply with all policies and procedures of CONTRACTOR  
11 when making such observations.

12 **8.4 INSPECTION BY THE COUNTY**

13 COUNTY Representative, or designee(s), shall have the right to observe and review  
14 any of CONTRACTOR's records, operations, and equipment, relevant to a  
15 determination of CONTRACTOR's compliance with the requirements of this Agreement  
16 pertaining to the provision of Collection Services, and to enter premises during normal  
17 business hours for the purposes of such observations, and to conduct such review at  
18 any time upon reasonable prior notice. COUNTY Representative shall notify  
19 CONTRACTOR's representative upon arrival. COUNTY Representative will comply  
20 with all policies and procedures of CONTRACTOR when on CONTRACTOR's  
21 premises. CONTRACTOR may condition any such entry in or upon CONTRACTOR's  
22 premises, by COUNTY Representative or designee(s), on the prior execution of a  
23 waiver of any liability of CONTRACTOR for any injury or damages suffered by COUNTY  
24 Representative or designee(s), or their respective heirs and assigns, or others claiming  
25 by, through or under them, arising out of or relating to such entry. Provided, however,  
26 that any such waiver that CONTRACTOR may require COUNTY Representative or  
27 designee(s) to sign, shall include a provision confirming that it shall not apply to the  
28 extent any such injury or damages are attributable to CONTRACTOR's gross

1 negligence or intentional wrongdoing.

2 **8.5 PERIODIC REVIEW**

3 COUNTY will periodically review the performance of CONTRACTOR based on  
4 Customer complaints, timely payment of sums due, statistical reporting, program  
5 progress, compliance with AB 939 and all other statutory and regulatory requirements,  
6 and Quarterly and Annual reports.

7 **8.6 PERFORMANCE REVIEW**

8 Subject to issues listed below, COUNTY may require a "Performance Review" of  
9 CONTRACTOR up to three (3) times during the Base Term of the Agreement and two  
10 (2) times during the Extension Term of the Agreement. (Provided, however, that a  
11 Remedial Performance Review, whether scheduled by the COUNTY Representative  
12 pursuant to Subparagraph 8.6.D.2, or by the Board of Supervisors pursuant to  
13 Subparagraph 10.7.A.2, shall not count against the maximum allotted number of  
14 Performance Reviews specified in the preceding sentence.) COUNTY shall be  
15 responsible for payment for all Performance Reviews during the Base Term and any  
16 Extension Term of the Agreement. (Provided, however, that CONTRACTOR is  
17 responsible for any costs incurred by CONTRACTOR in cooperating and participating in  
18 the Performance Review process, and CONTRACTOR shall not be entitled to  
19 reimbursement therefor.) The Performance Review shall be conducted as set forth in  
20 the following provisions of this Section 8.6.

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

- 22 1. Be performed by a qualified firm under contract to COUNTY. The  
23 qualified firm shall be selected by COUNTY.
- 24 2. Address all appropriate areas of concern to COUNTY, and shall provide  
25 specific recommendations, as appropriate, for improvement in each area,  
26 including but not limited to the following:
- 27 a. Compliance with the terms of this Agreement and Applicable Laws.
- 28 b. Overall organizational structure and management systems and

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- procedures.
- c. Efficiency of Collection operations, including an analysis of routes, schedules, and the impact of the requirements of this Agreement.
- d. Timeliness and thoroughness of Collection Services.
- e. Staffing practices, including the deployment of management and supervisory personnel.
- f. Financial management practices, including billing and collection system and policies regarding uncollected Customer accounts.
- g. Personnel management practices, including compensation policies and the resolution of employee grievances.
- h. Employee training, with respect to safety and management of Hazardous Waste.
- i. Procedures for receiving and resolving Customer complaints and concerns.
- j. Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
- k. Utilization and management of facilities, equipment and personnel.
- l. Comparison with practices of businesses deemed similar to CONTRACTOR.

CONTRACTOR shall cooperate fully with the Performance Review, and provide within thirty (30) days of request, all operational, financial, and other information related to its obligations and performance under this Agreement and deemed reasonable or convenient by COUNTY or the firm selected by COUNTY for purposes of conducting the Performance Review. CONTRACTOR's failure to cooperate, or CONTRACTOR's willful or continuing failure to provide all requested information, shall be considered an Event of Default as provided in Section 10.2.A.4.

**B. Performance Review Rating**

1. At the conclusion of the Performance Review, the CONTRACTOR's performance

1 of its duties and obligations under this Agreement shall be accorded one of the following  
2 ratings by COUNTY (in consultation with the firm selected pursuant to Subparagraph  
3 8.6.A.1): “Satisfactory,” “Needs Improvement,” or “Poor.” Determination of the rating  
4 given to the CONTRACTOR shall be based on the factors and concerns specifically  
5 enumerated in Subparagraph 8.6.A.2, and the extent to which CONTRACTOR’s  
6 performance meets or exceeds generally accepted industry standards and COUNTY’s  
7 reasonable expectations regarding the quality of service and responsibility to the  
8 general public demonstrated by CONTRACTOR in its performance of a critical public  
9 service.

10 2. Either of the following circumstances shall be considered presumptive evidence  
11 of poor performance, based on unacceptably high Liquidated Damages:

12 (a) Both (i) - Assessment of cumulative Liquidated Damages totaling more than  
13 five thousand dollars (\$5,000.00) in any twelve (12)-month period; and

14 (ii) six (6) or more separate and unrelated events within any twelve (12)-month  
15 period, leading to the imposition of Liquidated Damages; or

16 (b) Both (i) - Assessment of cumulative Liquidated Damages totaling more than  
17 eight thousand dollars (\$8,000.00) in any twenty-four (24)-month period; and

18 (ii) ten (10) or more separate and unrelated events within any twenty-four (24)-  
19 month period, leading to the imposition of Liquidated Damages.

## 20 **C. Determination of Breach**

21 If COUNTY determines, to its satisfaction, based upon the results of a particular  
22 Performance Review (including consideration of problems and frequency of occurrence,  
23 recommended improvements and any implementation efforts, as well as any evidence  
24 presented by the CONTRACTOR in connection therewith), that any significant event of  
25 Breach has occurred, and if such Breach is not (or cannot be) cured by CONTRACTOR,  
26 then the COUNTY Representative may initiate proceedings recommending COUNTY’s  
27 termination of this Agreement at its option pursuant to Subparagraph 10.7.A.1, and  
28 without prejudice to any other remedy to which it may be entitled to either at law, in

1 equity, or under this Agreement.

2 **D. Determination of Required Changes to Operations, Probation or Default**

3 1. In the event CONTRACTOR receives a rating of "Poor" in its Performance  
4 Review, the COUNTY reserves the right to require such reasonable changes to  
5 CONTRACTOR's operations as COUNTY determines to be necessary or  
6 appropriate, at CONTRACTOR's cost, in order to remedy identified deficiencies  
7 in CONTRACTOR's performance of its duties and obligations hereunder, and  
8 thereby carry out the intent of the terms and conditions of this Agreement.

9 2. In the event CONTRACTOR receives a rating in its Performance Review other  
10 than "Satisfactory" (i.e., either "Improvement Needed" or "Poor"), then the  
11 COUNTY Representative, in his or her discretion, may place the CONTRACTOR  
12 on probationary status, and in such case a Remedial Performance Review shall  
13 be scheduled to be conducted approximately six (6) months after the date of  
14 CONTRACTOR's placement on probationary status. If the CONTRACTOR  
15 receives a rating of "Satisfactory" in the Remedial Performance Review, the  
16 CONTRACTOR automatically shall be removed from probationary status.

17 3. In the event CONTRACTOR receives a rating of "Poor" in its Performance  
18 Review, then the COUNTY Representative, in his or her discretion, may declare  
19 an Event of Default and initiate proceedings recommending COUNTY's  
20 termination of the Agreement, pursuant to the provisions of Subparagraph  
21 10.7.A.2. If the COUNTY Representative declares an Event of Default and  
22 recommends termination of this Agreement (rather than placement of  
23 CONTRACTOR on probationary status under the immediately preceding  
24 Subparagraph 8.6.D.2), based on CONTRACTOR's "Poor" performance rating,  
25 then that recommendation shall proceed to the Board of Supervisors for its  
26 consideration in accordance with the provisions of Subparagraph 10.7.A.2.

27 4. In the event CONTRACTOR receives two (2) consecutive ratings of "Poor" (first  
28 in a standard Performance Review and subsequently in the Remedial

1 Performance Review), then the COUNTY Representative shall declare an Event  
2 of Default and recommend termination of this Agreement, and that  
3 recommendation shall proceed to the Board of Supervisors for its consideration  
4 in accordance with the provisions of Subparagraph 10.7.A.2.

## 5 **ARTICLE 9**

### 6 **INDEMNITY, INSURANCE, BOND**

#### 7 **9.1 INDEMNIFICATION OF THE COUNTY**

8 CONTRACTOR agrees to and shall indemnify, defend, with Counsel acceptable to  
9 COUNTY, and hold harmless COUNTY, its officers, officials, employees, volunteers,  
10 agents and assigns (indemnitees) from and against any and all costs (including  
11 attorneys' fees) and damages (whether special, general or punitive), loss, liability, fines,  
12 penalties, forfeitures, claims, demands, actions, proceedings or suits (whether  
13 administrative or judicial), in law or in equity, of every kind and description (including,  
14 but not limited to, injury to and death of any person and damage to property, strict  
15 liability, product liability, or for contribution or indemnity claimed by third parties), arising  
16 or resulting from or in any way connected with: (i) subcontractors, in performing or  
17 failing to perform this Agreement; (ii) the failure of the CONTRACTOR, its agents,  
18 employees, and/or subcontractors to comply in all respects with applicable laws,  
19 ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of  
20 CONTRACTOR, its officers, employees, agents, and/or subcontractors in performing  
21 services under this Agreement for which strict liability is imposed by law; (iv) the  
22 processing, marketing, and end use of Recyclable Materials, Green Waste and Organic  
23 Materials; and (v) CONTRACTOR's acts or omissions in performance of its duties  
24 hereunder resulting in the improper disposal of any Hazardous Waste at any place  
25 where CONTRACTOR transports, stores or disposes of Collection Materials pursuant to  
26 this Agreement. In the event such loss, liability, penalty, forfeiture, claim, demand,  
27 action, proceeding, suit, injury, death or damage is also caused in part by any of the  
28 indemnitees' negligence, the foregoing indemnity shall apply to the full extent

1 permissible under California Public Resources Code Section 40059.1 and other  
2 Applicable Law.

3 In instances where CONTRACTOR and COUNTY are both named defendants,  
4 CONTRACTOR shall provide a defense for COUNTY, unless after meeting and  
5 conferring on the issue, it appears that sufficient conflicts between CONTRACTOR and  
6 COUNTY exist so as to reasonably prevent a joint defense of CONTRACTOR and  
7 COUNTY by counsel for CONTRACTOR. If a final decision, judgment, or settlement  
8 allocates liability to CONTRACTOR and to the COUNTY, or to one or more other  
9 COUNTY contractors, CONTRACTOR shall have no obligation to the COUNTY for  
10 indemnification or otherwise with respect to any liability allocated to COUNTY for  
11 intentional wrongful acts or sole negligence of the COUNTY. CONTRACTOR's  
12 responsibility for indemnification of one or more other COUNTY contractors, if any, shall  
13 be based on legal principles regarding allocation of fault, contribution and equitable  
14 indemnity.

## 15 **9.2 INSURANCE SCOPE AND LIMITS**

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

19 **A. Coverages and Requirements.** The comprehensive general liability insurance  
20 shall include broad form property damage insurance.

21 1. Insurance coverage shall be provided by CONTRACTOR with limits not  
22 less than the following:

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

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

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**Workers' Compensation - Statutory Limits/Employers' Liability -**

\$1,000,000/accident for bodily injury or disease.

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

**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 insureds on all but the workers' compensation and pollution liability coverages.
- 3. Said policies shall remain in force throughout the entire Term (including any Extension Term) 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 encompassing the entire Term of this Agreement and an additional period extending not less than three (3) years after expiration of the Extension Term. 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 under this Amended and Successor Agreement.
- 5. The deductibles or self-insured retentions are for the account of CONTRACTOR and shall be the sole responsibility of the CONTRACTOR.

- 1           6.     CONTRACTOR shall notify COUNTY Representative in writing within  
2                     thirty (30) calendar days of any planned nonpayment of premium or  
3                     planned reduction in coverage.
- 4           7.     Insurance is to be placed with insurers with a current A.M. Best's rating of  
5                     no less than A-VII, unless otherwise approved by the COUNTY Risk  
6                     Manager.
- 7           8.     The policies shall cover all activities of CONTRACTOR, its officers,  
8                     employees, agents and volunteers arising out of or in connection with this  
9                     Agreement.
- 10          9.     For any claims relating to this Agreement, the CONTRACTOR's insurance  
11                     coverage shall be primary, including as respects the COUNTY, its officers,  
12                     agents, employees, and volunteers. Any insurance maintained by the  
13                     COUNTY shall apply in excess of, and not contribute with, insurance  
14                     provided by CONTRACTOR's liability insurance policy.
- 15          10.    The CONTRACTOR shall waive all rights of subrogation against the  
16                     COUNTY, its officers, employees, agents, and volunteers related to the  
17                     performance of services under this Agreement.

18 **B.    Endorsements.** Prior to the Effective Date of this Amended and Successor  
19 Agreement, CONTRACTOR shall furnish the COUNTY Representative with  
20 certificates or original endorsements reflecting coverage required by this  
21 Agreement. The certificates or endorsements are to be signed by a Person  
22 authorized by that insurer to bind coverage on its behalf. All certificates or  
23 endorsements are to be received by, and are subject to the approval of, the  
24 COUNTY Risk Manager before work commences.

25 **C.    Renewals.** Throughout the entire Term of this Agreement, CONTRACTOR shall  
26 furnish the COUNTY Representative with certificates or original endorsements  
27 reflecting renewals, changes in insurance companies, and any other documents  
28 reflecting the maintenance of the required coverage throughout the entire Term

1 (including any Extension Term) of this Agreement. The certificates or  
2 endorsements are to be signed by a Person authorized by that insurer to bind  
3 coverage on its behalf.

4 **D. Workers' Compensation.** CONTRACTOR shall provide workers' compensation  
5 coverage as required by State law, and prior to the Effective Date of this  
6 Amended and Successor Agreement, CONTRACTOR shall file the following  
7 statement with the COUNTY.

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

13  
14 *The Person executing this Certificate on behalf of CONTRACTOR*  
15 *affirmatively represents that she/he has the requisite legal authority to do*  
16 *so on behalf of CONTRACTOR, and both the Person executing this*  
17 *Agreement on behalf of CONTRACTOR and CONTRACTOR understand*  
18 *that the COUNTY is relying on this representation in entering into this*  
19 *Agreement."*

20 **9.3 INSTRUMENT FOR SECURING PERFORMANCE**

21 Within seven (7) calendar days of the COUNTY's notification to CONTRACTOR that the  
22 COUNTY has executed this Amended and Successor Agreement, CONTRACTOR shall  
23 file with the COUNTY a bond, payable to the COUNTY, securing the CONTRACTOR's  
24 performance of its obligations under this Agreement and such bond shall be renewed  
25 annually if necessary so that the performance bond is maintained at all times during the  
26 Term. The principal sum of the bond shall be the lesser of fifty thousand dollars  
27 (\$50,000) or twenty-five percent (25%) of CONTRACTOR's Annual Gross Receipts over  
28 the previous three years under this Agreement.

1 The bond shall be issued by a surety company designated as an admitted surety insurer  
2 in good standing with and authorized to transact business in this state by the California  
3 Department of Insurance, and that has a record of service and financial condition  
4 acceptable to the COUNTY. In its discretion, when determining the sufficiency of  
5 a proposed surety company, the COUNTY may require the surety company to provide  
6 additional information supported by documentation. The COUNTY generally requires  
7 such information and documentation whenever the proposed surety company has either  
8 a Best's Key Rating Guide of less than A or a financial size designation of less than VIII.  
9 Provided, however, that the COUNTY expressly reserves its right to require all  
10 information and documentation to which the COUNTY is legally entitled from any  
11 proposed surety company.

12 The COUNTY, in its discretion, may accept an alternative form of performance security  
13 (e.g., a letter of credit or certificate of deposit), in a form approved by the COUNTY's  
14 Risk Manager, if requested by the CONTRACTOR; and the CONTRACTOR agrees that  
15 the COUNTY may require a higher amount of security in such a case. In all events, the  
16 premium for such bond or letter of credit or any other charges related in any way to  
17 CONTRACTOR's obtaining or maintaining any and all such instruments, shall be fully  
18 borne and paid by CONTRACTOR.

## 19 **ARTICLE 10**

### 20 **BREACH, DEFAULT, AND TERMINATION**

#### 21 **10.1 EVENTS OF BREACH**

22 The Parties acknowledge that provision of consistent, reliable Collection Services is of  
23 critical importance to COUNTY and that COUNTY has considered and relied on  
24 CONTRACTOR's representations as to its ability and commitment to the provision of  
25 service in awarding this Agreement. In the event that CONTRACTOR fails to perform  
26 fully any of its obligations under this Agreement, CONTRACTOR shall be in breach of  
27 this Agreement, and a default may thereupon be declared by COUNTY, as set forth in  
28 this Article 10.

1 **A. Definitions**

2 1. Material Breach. "Material Breach" shall mean the failure by  
3 CONTRACTOR to perform any obligation under this Agreement which: (i) constitutes a  
4 significant hazard to the public health, safety, or welfare or (ii) is reasonably likely to  
5 impose civil or criminal liability on the COUNTY. Additionally, when a pattern of  
6 otherwise "standard" breaches occurs over time, such that in combination, the breaches  
7 constitute a significant failure by CONTRACTOR to perform its obligations hereunder,  
8 the latest in such a series of repetitive-type breaches may be deemed a Material Breach  
9 in the discretion of the COUNTY Representative, in which event CONTRACTOR may  
10 be required to take immediate action to correct the repeated deficiencies in performance  
11 to cure the default, as provided in Section 10.2.A.1.

12 2. Standard (Non-Material) Breach. "Standard Breach" shall mean any  
13 breach by CONTRACTOR of any of its obligations under this Agreement that is not  
14 encompassed by the definition of "Material Breach" set forth in the preceding  
15 Paragraph.

16 **B. Liquidated Damages**

17 **1. Assessment of Liquidated Damages for Specified Types of Breaches**

18 The Parties recognize that some quantified standards of performance are  
19 necessary and appropriate to ensure consistent and reliable service and performance,  
20 and to serve as a specific measure of successful performance under the Agreement.  
21 The Parties further recognize that if CONTRACTOR fails to perform its obligations,  
22 COUNTY and residents of COUNTY will suffer damages that are and will be impractical  
23 and extremely difficult to ascertain and determine. The Parties agree that the  
24 Liquidated Damage amounts provided in Exhibit E represent a reasonable estimate of  
25 the amount of such damages for the types of breaches specified therein, without  
26 prejudice to COUNTY's right to treat uncorrected non-performance as an Event of  
27 Default under this Article 10. It is acknowledged and agreed that the assessment and  
28 payment of Liquidated Damages hereunder shall constitute damages, and are neither

1 intended nor considered to be a penalty. COUNTY may determine the occurrence of  
2 events giving rise to Liquidated Damages through the observation of its own employees  
3 or representatives, or by investigation of Customer or resident complaints.

## 4 **2. Notice of Assessment of Liquidated Damages**

5 Prior to assessing Liquidated Damages, and in addition to any other available  
6 remedies COUNTY may impose, COUNTY shall give CONTRACTOR written notice of  
7 its intention to do so. The notice shall include a brief description of the incident or  
8 nonperformance. CONTRACTOR may review (and copy at its own expense) all  
9 information in the possession of COUNTY relating to the assessment of Liquidated  
10 Damages. CONTRACTOR may, within ten (10) Working Days after receiving the  
11 notice, request a meeting with COUNTY Representative. CONTRACTOR may present  
12 evidence in writing and through testimony of its employees and others relevant to the  
13 incident or nonperformance. COUNTY Representative shall provide CONTRACTOR  
14 with a brief written explanation of his or her determination on each breach prior to  
15 authorizing the assessment of liquidated damages. The decision of COUNTY  
16 Representative shall be final. The assessment of Liquidated Damages issued by the  
17 COUNTY shall appear on the next quarterly statement and the CONTRACTOR shall, at  
18 its own expense, remit to the COUNTY the amount of damages specified in said  
19 assessment as part of the Quarterly Remittance.

## 20 **10.2 EVENTS OF DEFAULT**

### 21 **A. Circumstances Constituting an Event of Default**

22 Each of the following circumstances or events shall constitute, and shall justify  
23 COUNTY's election to declare, an Event of Default ("Event of Default") hereunder:

- 24 1. **Uncured Material Breach.** Failure by CONTRACTOR to take immediate  
25 actions as necessary, appropriate and sufficient to cure a Material Breach  
26 once CONTRACTOR becomes cognizant thereof, whether as a result of  
27 receipt of notice thereof from COUNTY or otherwise, and whether based  
28 on the significant nature of the breach or its characterization as the latest

1 in a repeated pattern of otherwise standard breaches (either of which may  
2 constitute a Material Breach as defined in Section 10.1 above).

3 2. **Uncured Standard Breach.** A standard (non-material) breach of this  
4 Agreement that appears to be accidental, inadvertent, and occasional (i.e.,  
5 that is not indicative of a pattern or repetitive practice of CONTRACTOR  
6 based on past performance hereunder) may constitute a basis for  
7 declaration of an Event of Default if, within thirty (30) days after receipt of  
8 notice of the breach, CONTRACTOR: (a) fails to correct its deficient  
9 performance, or (b) fails to commence appropriate corrective action and  
10 provide written notice to COUNTY specifying the estimated time-frame for  
11 completion of the corrective action; or (c) CONTRACTOR's estimated  
12 time-frame for completion of corrective action is not reasonable, based on  
13 the nature and consequences of the breach; or (d) CONTRACTOR fails  
14 to complete the corrective action within the estimated reasonable time-  
15 frame previously provided by CONTRACTOR.

16 3. **Misrepresentation or False Warranty.** Any representation, disclosure,  
17 assurance, or warranty made to COUNTY by CONTRACTOR in  
18 connection with, or as an inducement to entering into or performing this  
19 Agreement or any future amendment to this Agreement, or that is a  
20 condition to the effectiveness of the Agreement, that proves to be false or  
21 misleading in any material respect as of the time the representation,  
22 disclosure, assurance, or warranty is made.

23 4. **Failure to Cooperate, or to Provide Information for Performance**  
24 **Review.** Willful Failure by CONTRACTOR to cooperate, or willful or  
25 continuing failure to provide information for performance review, as  
26 provided in Paragraph 8.6. A.

27 5. **Result of Performance Review.** As a result of a rating of "Poor" in  
28 CONTRACTOR's performance review, in which case the default and cure

1 provisions of this Article 10 shall be read together with those provided in  
2 Section 8.6 (and specifically Paragraphs C and D thereof), and to the  
3 extent of any inconsistency, the provisions of Section 8.6 shall control.

4 6. **Seizure or Attachment of Equipment.** There is a seizure or attachment  
5 (other than a prejudgment attachment) of, or levy affecting possession on,  
6 the operating equipment of CONTRACTOR, including without limit its  
7 vehicles, maintenance or office facilities, or any part thereof of such  
8 proportion as to materially impair CONTRACTOR's ability to perform  
9 under this Agreement and which cannot be released, bonded, or  
10 otherwise lifted within forty-eight (48) hours excluding weekends and  
11 holidays.

12 7. **CONTRACTOR Debt.** CONTRACTOR files a voluntary petition for debt  
13 relief under any applicable bankruptcy, insolvency, or other similar law, or  
14 consents to the appointment of, or taking of possession by, a receiver,  
15 liquidator or sequestrator (or similar official) of any part of  
16 CONTRACTOR's operating assets or any substantial part of  
17 CONTRACTOR's property, or shall make any general assignment for the  
18 benefit of CONTRACTOR's creditors, or shall become insolvent and  
19 unable to pay its debts generally as they become due. Provided,  
20 however, that (as is the case with any default) COUNTY may, in its  
21 discretion, may waive or choose not to declare such default. In order for  
22 COUNTY to give any serious consideration to the exercise of its option to  
23 waive or refrain from declaring a default under this Subparagraph (or the  
24 following Subparagraph 8), the CONTRACTOR would have to provide  
25 notification to COUNTY in advance of its bankruptcy filing (or similar  
26 action), provide strong assurances that there will be no disruption of  
27 Collection Services to Customers, and all supporting facts that would be  
28 reasonably necessary to establish CONTRACTOR's continuing ability to

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- perform its obligations under this Agreement.
8. **Court Order or Decree.** Any court having jurisdiction enters a decree or order for relief in respect of CONTRACTOR, in any involuntary case brought under any bankruptcy, insolvency, or similar law, or any such court shall enter a decree or order appointing a receiver, liquidator, sequestrator (or similar official) of any part of CONTRACTOR's operating equipment or assets, or order the winding up or liquidation of CONTRACTOR's affairs.
9. **Failure to Provide Performance Assurances.** CONTRACTOR fails to provide reasonable assurances of performance as required under Section 10.9.
10. **Failure to Notify COUNTY.** CONTRACTOR fails to notify COUNTY in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, Green Waste, Organic Materials Collection, transportation, processing or Disposal activities that might materially affect CONTRACTOR's ability to perform all of the Collection Services.
11. **Lapse of Financial Requirement.** Lapse of any insurance, letter of credit, bond or other financial instrument required under this Agreement.
12. **Regulatory Violation.** CONTRACTOR violates in any material respect any orders or filings of any regulatory body having jurisdiction over CONTRACTOR relative to this Agreement, provided CONTRACTOR may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until the later of a final order or judgment has been issued.
13. **Cessation of Services.** CONTRACTOR ceases to provide Collection Services as required under this Agreement for a period of three (3) consecutive Working Days or more, for any reason within the control of

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CONTRACTOR.

14. **Failure to Meet Payment or Reporting Requirements.** CONTRACTOR fails to make any payment of any sum owed to COUNTY that is required under Section 3.5 of this Agreement and/or refuses to provide COUNTY with required information, reports, and/or records in a timely manner as provided for in this Agreement, including but not limited to the requirements of Sections 8.1 and 8.2.

15. **Unremedied Acts or Omissions.** Any act or omission relative to this Agreement by CONTRACTOR which violates in any significant respect the material terms, conditions, or requirements of this Agreement, the provisions of AB 939, AB341, AB1826 and SB1383 applicable to CONTRACTOR as they may be amended from time to time, or any other provision of Applicable Law as it relates to this Agreement, and which is not corrected or remedied within the time set in the written notice of the violation.

16. **Criminal Activity of CONTRACTOR.** Should CONTRACTOR or any of its officers, directors or contract manager, or other employees in position to supervise or influence actions under this Agreement, be “found guilty” under Federal law or California law of a felony for conduct within the State of California relating to the performance or non-performance of obligations similar to those imposed on CONTRACTOR directly or indirectly by its execution of this Agreement. The term “found guilty” shall be deemed to include any judicial determination that CONTRACTOR or any of CONTRACTOR’s officers, directors or employees is guilty, and any admission of guilt by CONTRACTOR, or any of CONTRACTOR’s officers, directors or employees including, but not limited to, the pleas of “guilty,” “nolo contendere,” “no contest,” or “guilty to a lesser felony” entered as part of any plea bargain. Such felonious conduct includes, but is not

1 limited to, any activities related to or carried out pursuant to this  
2 Agreement for: (i) price fixing, (ii) illegal transport or disposal of  
3 hazardous or toxic materials, (iii) bribery of public officials, (iv) fraud, or (v)  
4 jury tampering. In the event of any such felonious conduct, COUNTY  
5 reserves the right to exercise one or more of the remedies specified below  
6 in Article 10. Such action shall be taken only after CONTRACTOR has  
7 been given notice and an opportunity to present evidence in mitigation.  
8 COUNTY shall not terminate this Agreement as a result of a determination  
9 of felonious conduct within the meaning of this Paragraph, if  
10 CONTRACTOR dismisses or removes officers, directors or employees  
11 found guilty of felonious behavior and takes all action necessary and  
12 appropriate to remedy any breach of its obligations hereunder.

13 17. **Assignment.** CONTRACTOR assigns this Agreement, or any portion of  
14 its duties or obligations hereunder, in violation of either Section 11.5 or  
15 Section 11.8.

16 **B. Notice of Default**

17 CONTRACTOR shall be in default from the date of receipt of a notice from COUNTY  
18 identifying such default. The notice shall include a brief description of the default.  
19 CONTRACTOR may review (and copy at its own expense) all information in the  
20 possession of COUNTY relating to the Event(s) of Default. CONTRACTOR may, within  
21 three (3) Working Days after receiving the notice, request a meeting with COUNTY  
22 Representative. CONTRACTOR may present evidence in writing and through  
23 testimony of its employees and others relevant to the Event(s) of Default. The decision  
24 of COUNTY Representative regarding determination of any noticed Event(s) of Default  
25 shall be final for administrative purposes. Accordingly, there shall be no appeal from  
26 the COUNTY Representative's determination, unless CONTRACTOR receives a  
27 subsequent notice of COUNTY's intent to terminate the Agreement on the basis of that  
28 Event of Default, in which case the appeal of the proposed termination would proceed in

1 accordance with the applicable provisions of Section 10.7.

2 **C. Cure of Default**

3 Notwithstanding any other provision of this Agreement to the contrary, the COUNTY  
4 shall provide CONTRACTOR with reasonable notice of and a reasonable opportunity to  
5 cure any breach of this Agreement if: (i) the breach is reasonably subject to cure (i.e.,  
6 not of a type that would undermine the public trust or confidence in CONTRACTOR's  
7 fitness and ability to perform its obligations under this Agreement), and (ii) the COUNTY  
8 is not materially and adversely affected by providing the CONTRACTOR with an  
9 opportunity to cure. Any breach that is timely cured by CONTRACTOR, consistent with  
10 the provisions of this Article 10, shall not be determined to constitute an Event of  
11 Default.

12 CONTRACTOR shall begin cure of any Event of Default as soon as it becomes aware  
13 of the Event of Default, whether discovered by CONTRACTOR or through notice from  
14 COUNTY. Upon becoming cognizant of the default, CONTRACTOR shall proceed to  
15 cure such default as follows:

- 16 1. Immediately, if the default is such that in the determination of COUNTY,  
17 the health, safety, or welfare of the public is endangered thereby; or
- 18 2. Within thirty (30) Working Days of giving or receiving notice of default;  
19 provided that if the nature of the default is such that it will reasonably  
20 require more than thirty (30) days to cure, CONTRACTOR shall have such  
21 additional time as is reasonably needed to expeditiously complete a cure,  
22 and only upon written agreement from COUNTY. During any default cure  
23 period, CONTRACTOR shall provide COUNTY weekly written status of progress  
24 in curing such default.

25 **10.3 COUNTY DETERMINATION OF CURE OF BREACH OR DEFAULT**

26 A Breach or an Event of Default shall be considered remedied and/or cured upon  
27 execution of a written acknowledgment, executed both by the COUNTY Representative  
28 and CONTRACTOR's representative, specifying the event and stating that remedy

1 and/or cure of such event has been satisfactorily completed.

## 2 **10.4 COUNTY'S RIGHT TO PERFORM**

### 3 **A. General**

4 In addition to any and all other legal or equitable remedies, in the event that  
5 CONTRACTOR, for any reason whatsoever, fails, refuses or is unable to provide any  
6 Collection Service for a period of more than three (3) consecutive Working Days, and if,  
7 as a result thereof, should Solid Waste accumulate in COUNTY to such an extent, in  
8 such a manner, or for such a time that COUNTY should find that such accumulation  
9 endangers or menaces the public health, safety, or welfare, then COUNTY shall have  
10 the right, but not the obligation, without payment to CONTRACTOR after twenty-four  
11 (24) hours prior notice to CONTRACTOR, during and throughout the period of such  
12 emergency as determined by COUNTY, to perform or cause to be performed, with its  
13 own or other personnel, all such services as COUNTY deems necessary or appropriate,  
14 without liability to CONTRACTOR.

15 Notice of CONTRACTOR's failure, refusal, or neglect to provide Collection Services  
16 may be given orally by telephone to CONTRACTOR and shall be effective immediately.  
17 Written confirmation of such oral notification shall be sent to CONTRACTOR within  
18 twenty-four (24) hours of the oral notification.

19 CONTRACTOR further agrees that in such event:

- 20 1. CONTRACTOR will fully cooperate with COUNTY to effect the temporary  
21 transfer of possession of property, as necessary and appropriate for  
22 COUNTY's use, to provide for the resumption of Collection Services.
- 23 2. CONTRACTOR will, if COUNTY so requests, and to the extent feasible,  
24 keep in good repair and condition all of such property, provide all motor  
25 vehicles with fuel, oil and other service, and provide such other service,  
26 and provide such other service as may be necessary to maintain said  
27 property in operational condition.
- 28 3. CONTRACTOR shall provide all necessary billing information to the

1 COUNTY. COUNTY shall determine how to bill, in what amounts, and the  
2 distribution of amounts received. COUNTY shall provide CONTRACTOR  
3 reasonable compensation for provision of CONTRACTOR's land,  
4 equipment, or other property, if COUNTY's exercise of the right to perform  
5 is the result of an Uncontrollable Circumstance.

6 CONTRACTOR hereby acknowledges and agrees that COUNTY's exercise of its rights  
7 under this Section 10.4 in the circumstances specified herein: (i) does not constitute a  
8 taking of private property for which compensation must be paid; (ii) will not create any  
9 contract, tort, or common count liability on the part of COUNTY to CONTRACTOR; and  
10 (iii) does not exempt CONTRACTOR from the indemnity provisions of Section 9.1,  
11 which are intended by the Parties to extend to circumstances arising under this Section  
12 10.4. COUNTY shall make good faith efforts to coordinate use of CONTRACTOR's  
13 land, equipment and other property with CONTRACTOR in order to minimize  
14 interference with or disruption of other business activities of CONTRACTOR.

15 **B. Duration of COUNTY's Possession**

16 COUNTY has no obligation to maintain or continue in possession of CONTRACTOR's  
17 property and/or continue its use in providing any Collection Services for any specific  
18 period of time and may, at any time, in its discretion, relinquish possession to  
19 CONTRACTOR. COUNTY's right to retain temporary possession of CONTRACTOR's  
20 property, and to provide one or more Collection Services, shall continue until  
21 CONTRACTOR can demonstrate to COUNTY's satisfaction that it is ready, willing, and  
22 able to resume such services.

23 **10.5 COUNTY REMEDIES FOR CONTRACTOR DEFAULT**

24 Upon CONTRACTOR's failure to cure a default pursuant to Section 10.2, COUNTY  
25 shall have the following rights:

- 26 1. **Waive Default.** At its discretion (and subject to the provisions of Section  
27 10.6), to waive CONTRACTOR's default.
- 28 2. **Termination.** Terminate the Agreement in accordance with Section 10.7.

1           3.     **All Other Available Remedies.** In addition to, or in lieu of termination, to  
2           exercise all of its remedies in accordance with this Article 10 and any  
3           other remedies at law and in equity, to which COUNTY shall be entitled,  
4           according to proof.

5           4.     **Damages Survive.** If CONTRACTOR owes any damages upon  
6           COUNTY's termination of the Agreement, CONTRACTOR's liability under  
7           this Section 10.5 shall survive such termination.

8     Whether or not COUNTY exercises its right to terminate, COUNTY shall have the right  
9     to: (i) seek performance by the surety under the performance bond (or demand payment  
10    under the letter of credit), and (ii) make a claim on any insurance policy or policies.

11    **10.6 COUNTY WAIVER OF BREACH OR DEFAULT**

12    A waiver by COUNTY of any breach or default by CONTRACTOR shall not be deemed  
13    to be waiver of any other breach or default by CONTRACTOR, including such  
14    occurrences with respect to identical or similar obligations hereunder, and including new  
15    incidents of the same breach or default. The subsequent acceptance by COUNTY of  
16    any damages or other money paid by CONTRACTOR hereunder shall not be deemed  
17    to be a waiver by COUNTY of any preexisting or concurrent breach or default by  
18    CONTRACTOR.

19    **10.7 TERMINATION**

20    **A. Termination for Cause**

21    Any of the following circumstances shall constitute grounds for COUNTY's exercise of  
22    its unilateral right to terminate this Agreement, for cause, by action of its Board of  
23    Supervisors at any regularly scheduled (or special) meeting of that body.

24    CONTRACTOR shall be given reasonable notice of such meeting and an opportunity to  
25    respond and to offer testimonial and documentary evidence during the hearing of the  
26    matter at such meeting.

27    1.     **Uncured Default.** An uncured Event of Default by CONTRACTOR.

28    2.     **Poor Performance Review.** If the uncured Event of Default that is the basis for

1 the proposed termination is a Poor Performance Review, under the procedures  
2 governing Performance Reviews as provided in Section 8.6, the Board of Supervisors  
3 shall have the following options in considering a recommendation for termination of the  
4 Agreement on the basis of a Poor Performance Review.

5 (i) Terminate the Agreement for cause, or

6 (ii) Place CONTRACTOR on probationary status and direct staff to conduct a  
7 Remedial Performance Review in six (6) months (or such other time as the Board of  
8 Supervisors in its discretion may designate), and to report back to the Board of  
9 Supervisors with the results and staff's recommendation upon completion of such  
10 Remedial Performance Review.

11 In determining whether a Poor Performance Review requires termination of the  
12 Agreement or placement of CONTRACTOR on probationary status, the factors to be  
13 considered by the Board of Supervisors shall include, but not be limited to, both the  
14 number of instances and cumulative amount of Liquidated Damages assessed during  
15 the Term (including the Extended Term if applicable). Assessment of Liquidated  
16 Damages against CONTRACTOR in both a cumulative dollar amount and number of  
17 instances, that is unacceptable (as set forth both in the immediately following  
18 Subparagraph 10.7.A.3 and in Subparagraph 8.6.B.2), shall create a rebuttable  
19 presumption in support of COUNTY's action to terminate the Agreement or place  
20 CONTRACTOR on probationary status, as appropriate under the circumstances and  
21 based on the facts presented.

22 **3. Unacceptably High Incidence of Liquidated Damages**, based on both the  
23 number of occurrences and the cumulative amount assessed, may constitute an  
24 independent basis for termination of the Agreement, as set forth in Subparagraph  
25 8.6.B.2.

26 Provided, however, that an Unacceptable Level of Liquidated Damages shall  
27 form an independent basis for termination of the Agreement for cause only if  
28 CONTRACTOR has received a Poor Performance Review and termination of the

1 Agreement is proposed on the separate basis of such Poor Performance Review.

2 In the event of termination of the Agreement by COUNTY for cause pursuant to  
3 this Section 10.7, CONTRACTOR shall forfeit its instrument for securing performance to  
4 COUNTY to the extent required to compensate COUNTY for damages incurred as a  
5 result of the breach or default.

6 **B. Notice of Intent to Terminate**

7 In addition to any other available remedies COUNTY may impose as specified in  
8 Section 10.5 and as a result of CONTRACTOR default, COUNTY may give  
9 CONTRACTOR written notice of intent to terminate this Agreement. The ultimate  
10 decision concerning any recommendation by the COUNTY Representative to terminate  
11 this Agreement shall be made by the Board of Supervisors, subject only to  
12 CONTRACTOR's right to seek judicial review of such determination by a court of  
13 competent jurisdiction. Upon notice of intent to terminate, CONTRACTOR shall  
14 promptly provide COUNTY with any or all records kept in accordance with Article 8 or  
15 any other record keeping provisions of this Agreement or its Exhibit; and in the event of  
16 termination of the Agreement, CONTRACTOR's duty (and its liability for failure or  
17 refusal) to provide all such records shall survive the termination of this Agreement.

18 **10.8 EXCUSE FROM PERFORMANCE**

19 **A. Excuse from Performance**

20 The Parties shall be excused from performing their respective obligations hereunder in  
21 the event they are prevented from so performing by reason of Uncontrollable  
22 Circumstances. Labor unrest, including but not limited to strike, work stoppage or  
23 slowdown, sick-out, picketing, or other concerted job action conducted by  
24 CONTRACTOR's employees or lawfully directed at CONTRACTOR, or a subcontractor  
25 shall not constitute an excuse from continuing to provide a reasonably satisfactory level  
26 of performance during the pendency thereof, and CONTRACTOR shall be obligated to  
27 continue to provide an adequate level of service notwithstanding the occurrence of any  
28 or all of such events. In the case of labor unrest or job action directed at a third party

1 over whom CONTRACTOR has no control, the inability of CONTRACTOR to make  
2 collections due to the unwillingness or failure of the third party to provide reasonable  
3 assurance of the safety of CONTRACTOR's employees while making collections or to  
4 make reasonable accommodations with respect to container placement and point of  
5 delivery, time of collection, or other operating circumstances to minimize any  
6 confrontation with pickets or the number of persons necessary to make collections,  
7 shall, to that limited extent, excuse performance; provided, however, that such excuse  
8 shall be conditioned on CONTRACTOR's cooperation in making collection at different  
9 times and in different locations.

10 **B. Inexcuse from Performance**

11 None of the following shall be considered an excuse from performance: (i) general  
12 economic conditions, interest or inflation rates, or currency fluctuation or changes in the  
13 cost of fuel, commodities, supplies or equipment; (ii) changes in transport or Disposal  
14 costs, Disposal facility locations, and/or other related circumstances; (iii) changes in the  
15 financial condition of CONTRACTOR or any of its subcontractors affecting their ability to  
16 perform their obligations; (iv) the consequences of errors, neglect or omissions by  
17 CONTRACTOR, or any subcontractor; (v) any failure of any subcontractor or supplier to  
18 furnish labor, materials, service or equipment for any reason; and/or (vi) equipment  
19 failure.

20 **C. Interruption or Discontinuance of Service**

21 The partial or complete interruption or discontinuance of CONTRACTOR's services, if  
22 reasonably limited in time and caused by one or more of the events constituting an  
23 excuse from performance under Paragraph A of this Section, shall not constitute an  
24 Event of Default by CONTRACTOR under this Agreement. Notwithstanding the  
25 foregoing, however, the existence of an excuse from performance shall not affect  
26 COUNTY's right to perform services under Section 10.4.

27 **10.9 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

28 If CONTRACTOR is: (i) the subject of any labor unrest including work stoppage or

1 slowdown, sick-out, picketing or other concerted job action; (ii) appears in the  
2 reasonable judgment of COUNTY to be unable to regularly pay its bills as they become  
3 due; or (iii) is the subject of a civil or criminal investigation, charge, or judgment or order  
4 entered by a Federal, State, regional or local agency for violation of a law relating to  
5 performance under this Agreement, and COUNTY believes in good faith that  
6 CONTRACTOR's ability to perform under the Agreement has thereby been placed in  
7 substantial jeopardy, COUNTY may, at its option and in addition to all other remedies it  
8 may have, demand from CONTRACTOR reasonable assurances of timely and proper  
9 performance of this Agreement, in such form and substance as COUNTY believes in  
10 good faith is reasonably necessary in the circumstances to evidence continued ability to  
11 perform under the Agreement. If CONTRACTOR fails or refuses to provide satisfactory  
12 assurances of timely and proper performance in the form and by the date required by  
13 COUNTY, such failure or refusal shall be an Event of Default for purposes of  
14 Section 10.2 and this Article 10.

## 15 **ARTICLE 11**

### 16 **OTHER AGREEMENTS OF THE PARTIES**

#### 17 **11.1 RELATIONSHIP OF PARTIES**

18 The Parties intend that CONTRACTOR shall perform the Collection Services as an  
19 independent contractor engaged by COUNTY and not as an officer or employee of  
20 COUNTY, and also not as a partner of or joint venturer with COUNTY. No employee or  
21 agent of CONTRACTOR shall be or shall be deemed to be an employee or agent of  
22 COUNTY. Except as expressly provided herein, CONTRACTOR shall have the  
23 exclusive control over the manner and means of conducting Collection Services and all  
24 persons performing such services. CONTRACTOR shall be solely responsible to the  
25 COUNTY for the acts and omissions of its officers, employees, subcontractors, and  
26 agents. Neither CONTRACTOR nor any of its officers, employees, subcontractors, and  
27 agents shall obtain any rights to retirement benefits, workers' compensation benefits, or  
28 any other benefits which accrue to COUNTY employees by virtue of their employment

1 with COUNTY. CONTRACTOR or its employees shall not provide, directly or indirectly,  
2 any gifts or gratuities to any COUNTY employee or representative.

### 3 **11.2 COMPLIANCE WITH LAW**

4 In providing the services required under this Agreement, CONTRACTOR shall at all  
5 times, at its sole cost (subject to rate adjustment provisions elsewhere in this  
6 Agreement), comply with all Applicable Laws of the United States, the State of  
7 California, Fresno County, and other states or governmental agencies which may have  
8 jurisdiction over any service provided pursuant to this Agreement, and with all  
9 applicable regulations promulgated by any Federal, State, regional, or local  
10 administrative and regulatory agencies, now in force and as they may be enacted,  
11 issued, or amended during the Term (including any Extension) of this Agreement,  
12 including all permit requirements for facilities used in disposal activities relating to  
13 CONTRACTOR's provision of Collection Services hereunder.

### 14 **11.3 GOVERNING LAW**

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

### 17 **11.4 JURISDICTION AND VENUE**

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

### 22 **11.5 ASSIGNMENT**

#### 23 **A. Definition**

24 For purposes of this Section 11.5, the term, "assignment" shall include, but not be  
25 limited to: (i) a transfer by CONTRACTOR to another person or entity of all of  
26 CONTRACTOR's rights, duties and obligations under this Agreement; (ii) a sale,  
27 exchange, or other transfer of substantially all of CONTRACTOR's assets dedicated to  
28 service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of

1 fifty percent (50%) or more of the outstanding common stock of CONTRACTOR; (iv)  
2 any reorganization, consolidation, merger, recapitalization, stock issuance or  
3 reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other  
4 transaction to which CONTRACTOR or any of its shareholders is a party which results  
5 in a change of ownership or control of fifty percent (50%) or more of the value or voting  
6 rights in the stock of CONTRACTOR; and (v) any combination of the foregoing (whether  
7 or not in related or contemporaneous transactions) which has the effect of any such  
8 transfer or change of ownership. If CONTRACTOR is not a corporation, an assignment  
9 shall also include, among other things, any transfer or reorganization that has an effect  
10 similar to the situations described in foregoing sentence for corporations. For purposes  
11 of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or  
12 other successor(s) in interest pursuant to the assignment. If CONTRACTOR is a  
13 subsidiary of another corporation or business entity, any assignment, as defined above,  
14 by the parent company or corporation shall be considered an assignment by  
15 CONTRACTOR.

16 **B. COUNTY Consent**

17 CONTRACTOR acknowledges that this Agreement involves rendering a vital service to  
18 COUNTY's residents and businesses, and that COUNTY has relied upon  
19 CONTRACTOR's representation of its experience and financial resources in qualifying  
20 CONTRACTOR to provide Collection Services under this Agreement. Except as  
21 provided in this Article or otherwise in this Agreement, CONTRACTOR shall not assign,  
22 delegate, subcontract, or otherwise transfer any of its rights or obligations under this  
23 Agreement to any other person or entity without the prior written consent of COUNTY.  
24 Any such purported assignment without the consent of COUNTY shall be void and the  
25 attempted assignment shall constitute a material breach of this Agreement. Under no  
26 circumstances shall CONTRACTOR be entitled to have COUNTY give any  
27 consideration whatsoever to any proposed assignment if there is an uncured Event of  
28 Default at the time of the request, or at any time during the period such request is under

1 consideration.

2 **C. Requirements of CONTRACTOR**

3 If CONTRACTOR requests COUNTY's consideration of and consent to an assignment,  
4 COUNTY may approve or deny such request in the reasonable exercise of its  
5 discretion. COUNTY agrees that its consent to such proposed assignment will not be  
6 unreasonably withheld, and that no request submitted in accordance with the  
7 requirements of this Paragraph 11.5.C will be denied without a detailed review of the  
8 proposed assignment. Provided, however, and notwithstanding the foregoing,  
9 COUNTY shall not be obligated to consider a request by CONTRACTOR for consent to  
10 an assignment unless and until CONTRACTOR has met each of the following  
11 requirements:

- 12 1. CONTRACTOR shall pay COUNTY its reasonable expenses for attorney's  
13 fees and investigation costs to investigate the suitability of any proposed  
14 assignee, and to review and finalize any documentation required as a  
15 condition for approving any such assignment.
- 16 2. CONTRACTOR shall furnish COUNTY with audited financial statements  
17 of the proposed assignee's operations for the immediately preceding five  
18 (5) operating years.
- 19 3. CONTRACTOR shall furnish COUNTY with satisfactory proof that the  
20 proposed assignee has the demonstrated technical capability to perform  
21 all Collection Services and to provide exceptional service to customers,  
22 including: (i) that the proposed assignee has at least ten (10) years of  
23 Solid Waste management experience on a scale equal to or exceeding the  
24 scale of operations conducted by CONTRACTOR under this Agreement;  
25 (ii) in the last five (5) years, the proposed assignee has not suffered any  
26 significant citations or other censure from any Federal, State, or local  
27 environmental laws and the assignee has provided COUNTY with a  
28 complete list of such citations and censures; (iii) the proposed assignee

1 has at all times conducted its operations in an environmentally safe and  
2 conscientious fashion; (iv) the proposed assignee conducts its Solid  
3 Waste management practices in substantial compliance with all Federal,  
4 State, and local laws regulating the Collection and Disposal of Solid Waste  
5 including hazardous substances; (v) the proposed assignee has in the last  
6 five (5) years provided excellent service to existing franchised customers  
7 and has not been subject to any administrative or legal actions related to  
8 failure to provide adequate service under a contract or franchise; and (vi)  
9 any other information required by COUNTY to ensure the proposed  
10 assignee can fulfill the terms of this Agreement in a timely, safe, and  
11 effective manner. A formal written instrument of assignment shall be  
12 executed by CONTRACTOR and the proposed assignee, which shall  
13 provide for the proposed assignee's acceptance of all terms and  
14 conditions of this Agreement, including all duties and obligations imposed  
15 thereby, and also the proposed assignee's express adoption of the  
16 representations of CONTRACTOR set forth herein as its own  
17 representations. COUNTY reserves the right to approve an assignment  
18 conditioned on an increase to the instrument for securing performance  
19 required pursuant to Article 9 and/or use of another mechanism in addition  
20 to, or as an alternative to, the instrument for securing performance  
21 required in Article 9.

22 **D. Required Statement for Conditionally Exempt Transfers**

23 Notwithstanding any other provisions of this Section 11.5, if a written statement is  
24 submitted to the COUNTY Representative in accordance with Subparagraph 11.5.D.1,  
25 then a transfer of an ownership interest in CONTRACTOR's business of any type listed  
26 in Subparagraph 11.5.D.2 shall not be deemed to constitute an assignment for  
27 purposes of this Section.

28 ///

1           1.     Required Statement of Exemption of Proposed Transfer

2           The written statement shall contain a representation that both  
3           CONTRACTOR and the prospective transferee intend and expect that at  
4           least two-thirds of those individuals responsible for the day-to-day  
5           management and supervision of CONTRACTOR's performance under this  
6           Agreement, during the six (6)-month period immediately preceding the  
7           anticipated date of the proposed transfer, will continue to be responsible  
8           for CONTRACTOR's performance under this Agreement for at least six (6)  
9           months following such transfer. The written statement shall be executed  
10          by both CONTRACTOR and the prospective transferee, and shall be  
11          submitted to the COUNTY Representative at least thirty (30) days before  
12          the anticipated date of transfer.

13          2.     Conditionally Exempt Transfers of Ownership Interests

14          If the foregoing condition of exemption is met, by execution and  
15          submission of the written statement in full compliance with the provisions  
16          of the preceding Subparagraph 11.5.D.1, then the following transfers will  
17          be deemed not to constitute an assignment and therefore will not be  
18          subject to the provisions of Paragraphs B and C of this Section 11.5:

19          (a)     If CONTRACTOR is a family-owned business (including a closely-  
20          held corporation):

- 21                 •     Any transfer of ownership interests among existing owners  
22                         of CONTRACTOR;
- 23                 •     Any transfer of ownership interests by an existing owner of  
24                         CONTRACTOR to a revocable living trust for the benefit of  
25                         his or her family;
- 26                 •     Any transfer to a family member resulting from bequest,  
27                         intestate succession or otherwise by operation of law,  
28                         following an owner's death. (In this case the requirements in

1 Subparagraph 11.5.D.1 for execution of the statement by the  
2 deceased owner and its submission thirty (30) days in  
3 advance shall not apply, and the statement need then be  
4 executed only by the transferee and submitted within a  
5 reasonable time thereafter.)

6 (b) If CONTRACTOR is, or is owned, directly or indirectly by, a publicly  
7 traded corporation: Any transfer of stock ownership that does not  
8 directly result in an immediate change to CONTRACTOR's  
9 corporate identity.

#### 10 **E. Transition**

11 If COUNTY consents to an assignment, CONTRACTOR shall cooperate fully with  
12 COUNTY and subsequent CONTRACTOR(s) or subcontractor(s), and shall provide all  
13 appropriate assistance to ensure an orderly transition. Such cooperation and  
14 assistance shall include, but not be limited to, CONTRACTOR providing, to COUNTY  
15 and the subsequent CONTRACTOR(s) or subcontractor(s), all route lists and billing  
16 information listing accounts, and using CONTRACTOR's Best Efforts to avoid and  
17 minimize any disruption or inconvenience to Customers.

### 18 **11.6 DISPUTE RESOLUTION**

#### 19 **A. Continue Performance**

20 Except for an event of termination, in the event of any dispute arising under this  
21 Agreement, COUNTY and CONTRACTOR shall continue performance of their  
22 respective obligations under this Agreement and shall attempt to resolve such dispute in  
23 a cooperative manner, including but not limited to, negotiating in good faith.

#### 24 **B. Mediation**

25 Any unresolved dispute arising between the Parties under this Agreement shall first be  
26 submitted to non-binding mediation before a recognized mediator having experience  
27 with agreements of this nature and that is mutually acceptable to the Parties, provided  
28 that neither Party shall unreasonably withhold its acceptance. If the parties are unable,

1 after a period of thirty (30) days from commencement of the dispute resolution process,  
2 to agree on a mediator, either Party shall be entitled to petition a court of competent  
3 jurisdiction to appoint such a mediator for the Parties. Each Party shall bear its own  
4 costs, including attorney's fees, incurred in connection with the mediation. If the  
5 mediation does not result in a resolution of the dispute that is acceptable to both  
6 Parties, either Party may pursue its legal remedies.

#### 7 **11.7 NON-DISCRIMINATION**

8 CONTRACTOR shall not discriminate in the provision of service or the employment of  
9 persons engaged in performance of this Agreement on account of race, religious creed,  
10 color, national origin, ancestry, physical handicap, medical condition, marital status, or  
11 sex of such persons or as otherwise prohibited by law.

#### 12 **11.8 SUBCONTRACTING**

13 A. CONTRACTOR shall not engage any subcontractors for performance of  
14 Collection Services without the prior written consent of COUNTY, in accordance with  
15 the provisions of this Paragraph 11.8.A.

##### 16 **1. Subcontract for Performance of Specified Types of Services.**

17 CONTRACTOR may request COUNTY'S written consent to a proposed subcontracting  
18 agreement between CONTRACTOR and another ESAP Hauler, pursuant to which  
19 CONTRACTOR proposes that one or more specified types of Collection Services that  
20 CONTRACTOR is responsible to provide hereunder (e.g., commercial recycling) shall  
21 be provided to its Customers by the subcontracted ESAP Hauler to be retained for that  
22 purpose. The request for COUNTY'S consent must be submitted in writing to the  
23 COUNTY Representative and shall be accompanied by a copy of the proposed  
24 subcontract, which necessarily would have to contain all provisions appropriate to  
25 ensure CONTRACTOR'S continued and uninterrupted compliance with all of its  
26 obligations to COUNTY hereunder in order to be considered for approval. The request  
27 may be approved or denied in the sole discretion of the COUNTY Representative.

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1           **2. Subcontracting of Specifically Identified Accounts**

2 CONTRACTOR may request COUNTY’S written consent to a proposed subcontracting  
3 agreement between CONTRACTOR and another ESAP Hauler, pursuant to which  
4 CONTRACTOR proposes that one or more specified accounts maintained by  
5 CONTRACTOR in connection with CONTRACTOR’S provision of Collection Services  
6 hereunder (e.g., accounts pertaining to Customer(s) within a discrete and specifically  
7 identified area within CONTRACTOR’S designated Exclusive Service Area, or  
8 specifically identified accounts of a certain type) may be effectively delegated to the  
9 subcontracted Hauler to be retained for that purpose, who subject to COUNTY’S  
10 consent to such subcontract would then proceed to provide Collection Services to such  
11 accounts pursuant thereto. The request for COUNTY’S consent must be submitted in  
12 writing to the COUNTY Representative and shall be accompanied by a copy of the  
13 proposed subcontract which necessarily would have to contain all provisions  
14 appropriate to ensure CONTRACTOR’S continued and uninterrupted compliance with  
15 all of its obligations to COUNTY hereunder in order to be considered for approval. The  
16 request may be approved or denied in the sole discretion of the COUNTY  
17 Representative.

18           **3. Payment of COUNTY’S Costs is a Condition of Approval**

19 CONTRACTOR and the other ESAP Haulers shall be jointly and severally responsible  
20 for payment of COUNTY’S expenses for staff costs, including attorney’s fees, involved  
21 in the review of any proposed subcontract pursuant to the provisions of either of the  
22 immediately preceding Subparagraphs 11.8.A.1 or 11.8.A.2. Full payment of  
23 COUNTY’S costs in connection with such review shall be a condition to the final written  
24 consent of the COUNTY to any such proposed subcontract pursuant to this Paragraph  
25 11.8.A. The Haulers will be invoiced for such costs once the provisions of the  
26 proposed subcontract have been reviewed and verbally approved by the COUNTY  
27 Representative, at which point the COUNTY’S written consent shall remain subject only  
28 to prior payment of the invoice for COUNTY’S costs and execution of the subcontract by

1 a duly authorized officer of each Hauler. The Haulers may separately agree as to how  
2 they may wish to allocate those costs as between themselves, but each is responsible  
3 for the entire amount of the invoice until it has been paid in full.

4 **4. CONTRACTOR Remains Entirely Responsible for Performance By**  
5 **Subcontractor of CONTRACTOR's Obligations Hereunder**

6 The COUNTY'S consent to the proposed subcontracting agreement between  
7 CONTRACTOR and another ESAP Hauler pursuant to this Paragraph 11.8.A shall  
8 neither relieve nor diminish, in any manner or to any degree whatsoever,  
9 CONTRACTOR'S continuing responsibility for the full performance of all of its  
10 responsibilities pursuant to the provisions of this Agreement. CONTRACTOR hereby  
11 acknowledges its understanding that, at all times following COUNTY'S written consent  
12 to the proposed subcontracting agreement and throughout the remainder of the  
13 Extension Term, CONTRACTOR would remain entirely responsible to the COUNTY for  
14 such full performance of all of CONTRACTOR'S obligations hereunder.

15 **5. Requisite Notices**

16 a. Notice To Affected Customers

17 Promptly following issuance of COUNTY'S written consent to the  
18 proposed subcontracting agreement, CONTRACTOR shall give a minimum of thirty (30)  
19 days' notice to all affected Customers informing them of the arrangement and the  
20 resultant changes for billing and payment purposes regarding the continued provision of  
21 each affected Customer's Collection Services.

22 b. Limit on Termination of Subcontract / Notice To COUNTY

23 Although CONTRACTOR may, without the prior consent of COUNTY, terminate the  
24 subcontract with the subcontracted Hauler, notice of such termination shall be given by  
25 CONTRACTOR, both to the COUNTY Representative and to all affected Customers, no  
26 less than thirty (30) days prior to such termination. In addition, for a period of twelve  
27 (12) months following termination by CONTRACTOR of any such subcontract,  
28 CONTRACTOR shall not request and COUNTY shall not consider any subsequent

1 proposal for another subcontracting agreement between CONTRACTOR and another  
2 ESAP Hauler.

3 **B. TRANSFER OF ACCOUNTS**

4 CONTRACTOR may request COUNTY'S approval, based on a showing of good cause,  
5 of a proposed transfer to another ESAP Hauler of CONTRACTOR'S responsibility  
6 hereunder for the provision of Collection Services to certain specified Customer  
7 account(s) (e.g., accounts pertaining to Customer(s) within a discrete and specifically  
8 identified area within CONTRACTOR'S designated Exclusive Service Area, or  
9 specifically identified accounts of a certain type). Such request must be submitted in  
10 writing to the COUNTY Representative, and both CONTRACTOR as proposed  
11 transferor and the other ESAP Hauler as proposed transferee must submit a written  
12 statement (either a collective statement signed by both or a separate statement signed  
13 by each), setting forth the reasons that they contend serve to establish the requisite  
14 showing of good cause for the proposed transfer. The proposed transfer may  
15 contemplate either an exchange of such account(s) or a purchase of such account(s),  
16 and the request may be approved or denied in the sole discretion of the COUNTY'S  
17 Board of Supervisors, in accordance with the provisions of this Paragraph 11.8.B.

18 **1. Procedure for Review of Proposed Transfer of Accounts**

19 If COUNTY Staff agrees that all requisite documentation has been submitted and that a  
20 showing of good cause has at least arguably been made, the request will be submitted  
21 to the COUNTY'S Board of Supervisors for its consideration and potential approval of  
22 the proposed concept. If the Board of Supervisors grants its conceptual approval,  
23 COUNTY staff will proceed to prepare amendments to each affected Hauler's  
24 respective ESAP Agreement and Exhibits thereto as appropriate. Following approval of  
25 the proposed language and execution of the amendments by each of the affected  
26 Haulers, and after payment of COUNTY'S costs in accordance with the provisions of the  
27 immediately following Subparagraph 11.8.B.2, the proposed amendments shall be  
28 presented to the COUNTY'S Board of Supervisors for its review, and recommended

1 approval and execution, of the proposed amendments.

2 **2. Advance Payment by CONTRACTOR and the Proposed Transferee Hauler**  
3 **of COUNTY'S Costs is a Condition of Approval**

4 CONTRACTOR and the other ESAP Hauler shall be jointly and severally responsible for  
5 payment of COUNTY'S expenses for staff costs, including attorney's fees, involved in  
6 the preparation of the amendments to each of the impacted Haulers' respective ESAP  
7 Agreements (and Exhibits thereto, as appropriate). The Haulers will be invoiced for  
8 such costs once the amendments have been signed by each Hauler and the Agenda  
9 Item has been prepared for approval by the COUNTY'S Board of Supervisors of the  
10 proposed amendments. The Haulers may agree separately as to how they may wish to  
11 allocate those costs as between themselves, but each is responsible for the entire  
12 amount of the invoice until it has been paid in full. Full payment of COUNTY'S costs  
13 shall be a condition to the approval by the COUNTY'S Board of Supervisors of any such  
14 transfer of accounts pursuant to this Paragraph 11.8.B. Receipt of such payment must  
15 be received by the COUNTY Representative at least ten (10) working days prior to the  
16 date scheduled for presentation of the proposed amendments for approval by the  
17 COUNTY'S Board of Supervisors.

18 **3. Notice to Affected Customers**

19 Promptly following the Board of Supervisors' approval of the proposed amendments,  
20 CONTRACTOR and the other ESAP Hauler shall give a minimum of thirty (30) days'  
21 notice to all affected Customers informing them of the resultant changes, for billing and  
22 payment purposes, regarding the continued provision of each affected Customer's  
23 Collection Services.

24 **11.9 BINDING ON SUCCESSORS**

25 The provisions of this Agreement shall inure to the benefit of and be binding upon the  
26 successors and permitted assigns of the Parties.

27 **11.10 TRANSITION TO NEXT CONTRACTOR**

28 If at any time COUNTY desires to grant, to any person or entity not a party hereto, those

1 Collection Services that are contracted to CONTRACTOR under this Agreement,  
2 CONTRACTOR shall be obligated to cooperate with COUNTY and such prospective  
3 successor contractor, and to assist and cooperate in an orderly transition. One (1) year  
4 prior to the conclusion of the Extension Term, and in order to assist with the competitive  
5 bid process to award the Collection Services for the term immediately following the  
6 conclusion of the Extension Term, CONTRACTOR shall provide COUNTY with such  
7 information as may reasonably be requested, which at a minimum shall include all  
8 information specified in Section 8.1F. CONTRACTOR shall cooperate with and  
9 schedule with COUNTY and new CONTRACTOR its removal of all Carts distributed to  
10 each Customer. CONTRACTOR and the new CONTRACTOR may choose at their  
11 discretion to enter into negotiations to sell (in part or all) Collection vehicles, Bins, and  
12 Containers to the new CONTRACTOR. Failure by CONTRACTOR to provide full  
13 cooperation with a transition may, at COUNTY's discretion, preclude CONTRACTOR  
14 from participating in future competitive procurements, including the procurement of the  
15 CONTRACTOR for the term that follows the Extension Term.

16 **11.11 PARTIES IN INTEREST**

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

20 **11.12 WAIVER**

21 The waiver by either Party of any breach or violation of any provisions of this Agreement  
22 shall not be deemed to be a waiver of any breach or violation of any other provision, nor  
23 of any subsequent breach or violation of the same or any other provision. The  
24 subsequent acceptance by either party of any monies that become due hereunder shall  
25 not be deemed to be a waiver of any preexisting or concurrent breach or violation by the  
26 other party of any provision of this Agreement.

27 **11.13 CONDEMNATION**

28 In addition to the rights specified in Article 10, COUNTY fully reserves any and all other

1 rights available for the COUNTY's use in acquiring CONTRACTOR's property utilized in  
2 the performance of this Agreement, including purchase or through exercise of  
3 COUNTY's right of eminent domain.

4 **11.14 NOTICE**

5 **A. Notice Procedures**

6 Except as otherwise specifically provided herein, all notices, demands, requests,  
7 proposals, approvals, consents and other communications made in connection with this  
8 Agreement shall be in writing and shall be effective when personally delivered to a  
9 representative of the Parties at the address below or deposited in the United States  
10 mail, first class postage prepaid, addressed as follows:

11 If to COUNTY: County of Fresno  
12 Department of Public Works and Planning  
13 2220 Tulare Street, 6<sup>th</sup> Floor  
14 Fresno, California 93721  
15 Attention: Deputy Director of Resources and Administration

16 If to CONTRACTOR: Tule Trash Company, LLC  
17 P.O. Box 288  
18 Pixley, California 93256  
19 Attention: Richard L. Gress, Managing Member  
20 Genice L. Price, Office Manager

21 The address to which communications may be delivered may be changed from time to  
22 time by a notice given in accordance with this Section 11.14.

23 **B. Facsimile and Electronic Mail Notice Procedures**

- 24 1. Facsimile and/or electronic mail notice may be substituted for written  
25 notice with the following limitations:
- 26 a. Facsimile and/or electronic mail notice shall be considered valid  
27 and delivered during standard business hours and days, Monday  
28 through Friday, at such time as an authorized representative of the

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receiving Party acknowledges receipt in writing or by facsimile and/or electronic mail acknowledgement to the sending party.

b. Written notice, in accordance with Paragraph A, must follow any facsimile and/or electronic mail notice, in order for the facsimile and/or electronic mail notice to be considered valid notice hereunder.

2. If above conditions are met, facsimile and/or electronic mail notice will be considered effective from date and time of transmission as indicated on receiving Party's original copy of the transmission.

3. Facsimile and/or electronic mail notices must be sent to the following addressees:

If to COUNTY:  
Deputy Director of Resources and Administration  
Fax number: (559) 600-4552  
Electronic mail: jthompson@co.fresno.ca.us

If to CONTRACTOR:  
Richard L. Gress, Managing Member  
Fax number: (559) 757-5002  
Electronic mail: richardg@tuletrash.com  
tuletrashco@gmail.com

4. The facsimile number and/or electronic mail address to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section 11.14.

**11.15 REPRESENTATIVES OF THE PARTIES**

All actions to be taken by or on behalf of COUNTY with respect to this Agreement shall be taken by the Board of Supervisors, except as expressly provided to the contrary in this Article 11 or elsewhere in the Agreement. The Board of Supervisors hereby delegates the authority to take those actions specified in this Article to the Director of

1 the Department of Public Works and Planning, who may in turn delegate such authority  
2 to the manager and other subordinate officers of that Department's Resources Division,  
3 as he or she deems appropriate. CONTRACTOR may rely upon actions taken by such  
4 delegates if they are within the scope of the authority properly delegated to them.

- 5 1. Director of the Department of Public Works and Planning or his/her  
6 designee shall be responsible for administration of this Agreement on  
7 behalf of COUNTY.
- 8 2. Director of the Department of Public Works and Planning or his/her  
9 designee may delegate authority to appropriate COUNTY employees or  
10 other appropriate persons.
- 11 3. Board of Supervisors reserves to itself all discretionary and administrative  
12 authority not otherwise expressly delegated pursuant to ordinance. In all  
13 instances that require prior approval by COUNTY under this Agreement,  
14 such approval may be given by the Deputy Director of Resources and  
15 Administration or his or her designee, subject to appeal to the Board of  
16 Supervisors by CONTRACTOR.

17 CONTRACTOR shall, no later than the Operative Date, designate in writing a  
18 responsible officer, or duly authorized officer, who shall serve as the representative of  
19 CONTRACTOR in all matters related to the Agreement and shall inform COUNTY in  
20 writing of such designation and of any limitations upon his/her authority to bind  
21 CONTRACTOR. COUNTY may rely upon action taken by such designated  
22 representative as action of CONTRACTOR unless they are outside the scope of the  
23 authority delegated to him/her by CONTRACTOR as communicated to COUNTY.

#### 24 **11.16 COUNTY FREE TO NEGOTIATE WITH THIRD PARTIES**

25 COUNTY may, at any time, investigate all options for the provision of the exclusive  
26 services granted to CONTRACTOR by this Agreement. Without limiting the generality  
27 of the foregoing, COUNTY may solicit proposals from CONTRACTOR and from third  
28 parties for the provision of any or all Collection Services and may negotiate and execute

1 agreements for such services which will take effect upon expiration of the Extension  
2 Term, or earlier termination of this Agreement under Article 10, and/or with respect to  
3 any future agreements.

4 **11.17 CONTRACTOR ELECTION TO DEFEND VALIDITY OF AGREEMENT**

5 CONTRACTOR may at its election and sole expense, defend the validity of this  
6 Agreement against all challenges to the Agreement by any entity or person not a Party  
7 to this Agreement. Neither COUNTY nor CONTRACTOR shall have any liability to the  
8 other resulting from a determination that this Agreement violates any Federal or State  
9 law, statute, or constitutional provision, except to the extent such determination relates  
10 to CONTRACTOR's willful misconduct or gross negligence. However, if the  
11 CONTRACTOR elects to not defend the validity of this Agreement, the COUNTY may,  
12 upon reasonable notice, terminate the Agreement at its election, and if it makes that  
13 election, it shall have no liability to CONTRACTOR resulting from that election to  
14 terminate. CONTRACTOR's sole remedy shall be to retain its share of Rate Revenues  
15 as specified in Article 6, for services rendered by CONTRACTOR up to the date of  
16 termination, less any offsets or monies due the COUNTY under the provisions of this  
17 Agreement. Notwithstanding the CONTRACTOR's option to defend the validity of this  
18 Agreement as provided above, COUNTY agrees to take such action as may be  
19 necessary or appropriate, during the Base Term (and any Extension) hereof, to  
20 maintain, or assist in the defense of, CONTRACTOR's exclusive right to provide  
21 Collection Services within the Exclusive Service Area specified in Exhibit C.

22 **11.18 GOOD FAITH AND EXERCISE OF OPTIONS**

23 Each Party's performance under this Agreement, including its exercise of any option,  
24 approval or discretion it may possess hereunder, and each Party's interpretation of this  
25 Agreement, shall be reasonable and consistent with the intent to deal fairly and in good  
26 faith with the other Party hereto, in regard to the respective obligations binding on each  
27 Party toward the other Party, as set forth throughout the provisions hereof. To that end,  
28 the CONTRACTOR agrees at all times to perform its obligations hereunder in a

1 commercially reasonable manner that: (1) meets or exceeds regional and national  
2 industry standards for solid waste collection and Disposal; (2) upholds the public  
3 confidence entrusted by COUNTY to the CONTRACTOR hereunder for the  
4 performance of duties critical to the public; and (3) reflects CONTRACTOR's  
5 cooperation with COUNTY to assist in COUNTY's achievement of State goals detailed  
6 in Section 3.8. On its part, COUNTY similarly shall be guided at all times in the  
7 performance of its obligations hereunder by COUNTY's duty to uphold the public  
8 interest, including but not limited to the protection of the health, safety and welfare of all  
9 residents of the County.

## 10 **ARTICLE 12**

### 11 **MISCELLANEOUS PROVISIONS**

#### 12 **12.1 ENTIRE AGREEMENT**

13 This Amended and Successor Agreement constitutes the entire agreement between the  
14 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes  
15 all previous negotiations, proposals, commitments, writings, advertisements, publications,  
16 and understandings of any nature whatsoever unless expressly included in this  
17 Agreement.

#### 18 **12.2 REFERENCES TO LAWS**

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

#### 22 **12.3 NO INTERPRETATION FOR EITHER PARTY / NO INDUCEMENTS**

23 Each of the Parties has received the advice of legal counsel prior to signing this  
24 Agreement. Each Party acknowledges no other party or agent or attorney has made a  
25 promise, representation, or warranty whatsoever, express or implied, not contained  
26 herein concerning the subject matter herein to induce another party to execute this  
27 Agreement. The Parties agree no provision or provisions may be subject to any rules of  
28 construction based upon any party being considered the party "drafting" this Agreement.

1 **12.4 MODIFICATION**

2 Any matters of this Agreement may be modified from time to time by the written consent  
3 of both Parties without, in any way, affecting the remainder.

4 **12.5 SEVERABILITY**

5 If any provision of this Agreement is for any reason found or deemed to be invalid or  
6 unenforceable, this Agreement shall be construed as not containing such provision. All  
7 other provisions of this Agreement which are otherwise lawful shall remain in full force  
8 and effect, and shall be enforced as if such invalid or unenforceable provision had not  
9 been contained herein, and to this end the provisions of this Agreement are hereby  
10 declared to be severable.

11 **12.6 COUNTERPARTS**

12 This Agreement may be executed in counterparts, each of which shall be considered an  
13 original.

14 **12.7 NOTICES**

15 This Section 12.7 has been deleted as its provisions have been combined in this  
16 Amended and Successor Agreement with those in Section 11.14 above.

17 **12.8 PRIVACY**

18 CONTRACTOR shall strictly observe and protect the rights of privacy of Customers  
19 during provision of all Collection Services. Information identifying individual Customers  
20 or the composition or contents of Customer's Solid Waste, Recyclables, Green Waste  
21 or Organic Materials shall not be revealed to any person, governmental unit, private  
22 agency, or company, unless upon the authority of a court of law, by statute, written  
23 request from a law enforcement agency, or upon valid authorization of the Customer.  
24 This provision shall not be construed to preclude CONTRACTOR from preparing,  
25 participating in, or assisting in the preparation of waste characterizations studies or  
26 waste stream analysis which may be required by a regional, Federal or State agency.

27 **12.9 INTERPRETATION: TEXT / EXHIBITS**

28 This Agreement shall be interpreted and construed reasonably and neither for nor

1 against either Party, without reference to and regardless of the degree to which either  
2 Party participated in its drafting. In the event of any inconsistencies or disputes between  
3 the text of this Agreement and the exhibits hereto, the text of this Agreement shall  
4 control and govern.

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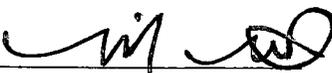
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28 ///

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
2 executed as of the day and year first above written.

3 CONTRACTOR

COUNTY OF FRESNO

4 By 

By 

5 Richard Gress

Brian Pacheco, Chairman  
Board of Supervisors

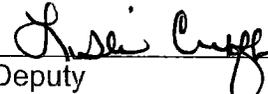
6 Print Name

7 Manager / Member

8 Print Title

9 Tule Trash Company, LLC  
10 P.O. Box 288  
11 Pixley, California 93256  
12 (559) 757-1045

ATTEST:  
Bernice E. Seidel, Clerk  
Board of Supervisors

By   
Deputy

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**FOR ACCOUNTING USE ONLY:**

ORG:	9015	9015	9020	9026
FUND:	0701	0701	0720	0700
SUBCLASS:	15003	15002	15000	15000
ACCOUNT:	1450	1450	5800	7295

## **EXHIBITS**

<b>EXHIBIT A</b>	<b>SCOPE OF SERVICES</b>
<b>EXHIBIT B</b>	<b>PERFORMANCE STANDARDS</b>
<b>EXHIBIT C</b>	<b>EXCLUSIVE SERVICE AREA NARRATIVE</b>
<b>EXHIBIT C-2</b>	<b>EXCLUSIVE SERVICE AREA TERRITORY BOUNDARY MAP</b>
<b>EXHIBIT C-3</b>	<b>EXCLUSIVE SERVICE RATE AREA ZONE MAP</b>
<b>EXHIBIT C-4</b>	<b>SER MAP</b>
<b>EXHIBIT D</b>	<b>SCHEDULE OF MAXIMUM CART COLLECTION RATES</b>
<b>EXHIBIT D-1</b>	<b>SCHEDULE OF MAXIMUM BIN COLLECTION RATES</b>
<b>EXHIBIT D-2</b>	<b>SCHEDULE OF SPECIAL SERVICE RATE</b>
<b>EXHIBIT D-3</b>	<b>SCHEDULE OF COMMUNITY CLEAN-UP RATES</b>
<b>EXHIBIT E</b>	<b>LIQUIDATED DAMAGES</b>
<b>EXHIBIT F</b>	<b>QUARTERLY REMITTANCE EXAMPLE AND REVENUE REPORTING FORM</b>
<b>EXHIBIT G</b>	<b>CPI ADJUSTMENT</b>
<b>EXHIBIT H</b>	<b>ADJUSTMENT OF DISPOSAL TIPPING FEE</b>
<b>EXHIBIT I</b>	<b>CALCULATION FOR SER FEE COMPONENT OF RATES</b>
<b>EXHIBIT J</b>	<b>AB 341 REPORTS</b>
<b>EXHIBIT K</b>	<b>AB 1826 REPORTS</b>

## EXHIBIT A

### SCOPE OF SERVICES

#### 1. GENERAL

CONTRACTOR is to perform the following services under the Agreement:

- Solid Waste Collection:
  - residential service using Carts (or Bins if requested)
  - commercial service using Carts or Bins
- Recyclable Materials Collection from single-family, multi-family, mobile home parks, and commercial Customers for Single-Stream and other Recyclables
- Green Waste Collection from residential Customers Organic Materials  
Collection from Customers pursuant to mandatory collection requirements under State law.
- Recyclable Materials processing and marketing services
- Other services:
  - Community Clean-Up Event services
  - On-call Bulky Item collection
  - Side-yard service for disabled or elderly residential customers

For all services required under the Agreement, CONTRACTOR will be responsible for purchasing, distributing, and maintaining any Collection Carts or Bins provided to Customers. The cost of any such Containers is to be included in the Rates.

CONTRACTOR shall not separately bill Customers for the rental or use of Carts or Bins.

For all services required under the Agreement, CONTRACTOR will be responsible for following Health Code requirements to collect putrescibles weekly.

Payment of all transfer, Disposal, and processing facility tipping fees are part of the CONTRACTOR's obligations under the Agreement. Compensation for such expenses will be part of the CONTRACTOR Rates

## **2. SOLID WASTE COLLECTION**

Solid Waste Collection Services will include the following services:

Solid Waste Collection in Carts for residential and commercial Customers

Solid Waste Collection in Bins for residential and commercial Customers

CONTRACTOR is responsible for collecting and transporting Solid Waste to the Disposal or Transfer Facility and conforming with the Disposal or Transfer Facility's receiving and unloading standards and hours of operation.

### **Cart Service**

CONTRACTOR shall provide at least weekly Solid Waste Collection Services to Customers receiving Cart Service. The standard service will include collection at the curb or a centralized service location and should be, at a minimum, provided using semi-automated or automated collection vehicles. CONTRACTOR will provide side-yard service to disabled and elderly customers for free and, to other individuals desiring the convenience of side-yard pickup, at a Special Service Fee.

COUNTY requires provision of industry standard wheeled Carts for Solid Waste with attached lids in the following capacities: approximately thirty (30) gallons (in Zone 1 Service Rate Area only), sixty (60) gallons, and ninety (90) gallons.

### **Bin Service**

CONTRACTOR will provide collection of Solid Waste generated by residential or commercial Customers receiving Bin Service with container sizes and collection frequencies to serve the needs of the Customer. The Collection Container size will be variable, having a capacity of one (1) to less than 10 (ten) cubic yards. Cart and Bin

service will be provided on a regularly scheduled basis at a frequency, not less than once per week, requested by the Customer. All materials are to be collected at the curb or centralized service location, on a weekly basis on the same day, within the Zone 1 and Zone 2 Service Rate Areas; provided, however, that Zone 3 Service Rate Area Contractors will not be required to provide same-day service. Services shall include the minimum level of Single-Stream Recycling, Green Waste and Organic Materials Services specified in this Exhibit. CONTRACTOR may provide additional special services (e.g., long walks, enclosures, extra Solid Waste pickup, etc.) for additional Fees.

### **3. RECYCLABLE MATERIALS COLLECTION**

Single-Stream Recyclables will be collected from Customers receiving Cart Service using fully commingled using wheeled Carts. CONTRACTOR will provide industry standard approximate 60- or 90-gallon capacity wheeled Carts for all Recyclables Customers. Approximate ninety (90)-gallon Carts will be provided as the default size for basic service, unless Customer requests otherwise.

The Recyclables Collection Services will be provided at least weekly on the same day as Solid Waste collection within Zones 1 and 2; however, the Zone 3 Service Rate Area Contractors will not be required to provide same-day service. Recyclables collected from all Customers that receive Solid Waste Cart Service shall be collected curbside. CONTRACTOR shall bill each Customer according to the size Container used for Solid Waste Service, as provided in Exhibit D, regardless of the Recycling Cart and Green Waste Cart sizes requested by Customer. CONTRACTOR will provide side-yard service to disabled and elderly customers for free and, at a Special Service Fee, to other individuals desiring the convenience of side-yard pickup. Recyclables collected from Customers that receive Solid Waste Bin Service subscribing for Recyclables

Collection service shall be collected from designated Containers at one or more on-site locations designated by the property owner.

The materials to be collected will include, but are not limited to, the following:

- Newspaper (including inserts, coupons, and store advertisements)
- Chipboard
- Corrugated cardboard
- Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, Kraft bags and Kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
- Glass containers (including brown, clear, and green glass bottles and jars)
- Milk, soy and juice cartons
- Aluminum (including beverage containers, food containers, small scrap metal)
- Steel or tin cans
- Scrap metal (ferrous and non-ferrous)
- All plastic containers #1 through #7
- Any other materials mutually agreed to by the CONTRACTOR and the COUNTY

CONTRACTOR may propose for Customers receiving Bin Service a method of collecting the Recyclable Materials which is different than that described for Cart Customers, provided that all materials listed in this section are collected.

CONTRACTOR will accept responsibility for maintaining minimum contamination levels of the Recyclable Materials. CONTRACTOR is responsible to report how much Residual was generated by weight of the materials processed for Recycling.

CONTRACTOR will collect and transport the Recyclable Materials to a recyclables processing facility selected by CONTRACTOR.

#### **4. GREEN WASTE COLLECTION**

CONTRACTOR will provide Green Waste Collection Services to all residential Customers. CONTRACTOR will provide industry standard, approximate sixty (60) or ninety (90)-gallon capacity wheeled Carts for Green Waste Service Customers. Approximate ninety (90)-gallon Carts will be provided as the default size for basic service, unless Customer requests otherwise. Cart collection should be provided using semi-automated or automated collection vehicles. Green Waste Collection Services will be provided at least weekly on the same day as Solid Waste and Recyclable Material Collection Services within the Zone 1 and Zone 2 Service Rate Areas; provided, however, that Zone 3 Service Rate Area Contractors will not be required to provide same-day service. CONTRACTOR shall bill each Customer according to the size Container used for Solid Waste Service, as provided in Exhibit D, regardless of the Recycling Cart and Green Waste Cart sizes requested by Customer. CONTRACTOR will provide side-yard service to disabled and elderly customers for free and to other individuals desiring the convenience of side-yard pickup at a Special Service Fee. CONTRACTOR shall deliver public education materials to all Cart Customers prior to the Operative Date.

The materials to be collected will include, but are not limited to, the following:

- Branches (less than three inches [3"] in diameter)
- Brush
- Cut flowers
- Dead plants
- Grass clippings

- House plants
- Leaves
- Prunings
- Shrubs
- Weeds
- Wood (uncoated, untreated)
- Wood chips
- Yard trimmings
- Christmas trees (cut into two [2]-foot sections, and placed in the Green Waste Cart without flocking, decoration or metal or plastic stands)

## **5. ORGANIC MATERIALS COLLECTION AND PROCESSING**

As more thoroughly provided in Paragraph 4.2.E, CONTRACTOR shall make available collection and processing of Organic Materials for Customers that must comply with AB1826 and/or SB1383 (including Green Waste). Currently those laws apply to commercial Customers. During the life of this Agreement it is expected that those laws will include requirements for residential Customers as well. The rate for CONTRACTOR to provide Organic Materials Collection and Processing Services shall be 60% of the maximum Solid Waste Collection rates of comparable size and frequency, plus the actual cost per ton for transfer and/or Organic Materials Processing. Prior to the implementation of this service, the CONTRACTOR and the COUNTY will meet and confer to establish Rates for this service based on the use of an Organic Material Processing Facility mutually agreed upon by the CONTRACTOR and the County. For Organic Materials Collection provided at a frequency of more than once per week, rates for an additional Organic Materials Collection service shall not exceed 90% of the rate for once per week service. These Organic Materials Collection, transfer and

Processing rates may be adjusted annually, upon request from CONTRACTOR to the COUNTY, following the procedure detailed in Section 7.2.B or as otherwise mutually agreed upon by COUNTY and CONTRACTOR. A review to consider adjustment of these rates may be initiated at any time during the year, but will be limited to no more than one adjustment per calendar year. This review could include both known and anticipated changes in processing costs. These rates will also be adjusted the same way that solid waste rates are adjusted, at 65% of CPI for bins and 75% of CPI for carts based on fixed vs. variable costs. The adjusted rates must be approved by the COUNTY Board of Supervisors by the end of February or as part of the Annual CPI adjustment in March, to start on July 1.

## **6. TRANSPORT AND DISPOSAL OF SOLID WASTE**

As provided in Paragraph 4.7.A, commencing with the Operative Date of this Amended and Successor Agreement and continuing throughout the Extended Term, CONTRACTOR expressly agrees to deliver to the American Avenue Disposal Site (AADS), for disposal at said Designated Disposal Site, all of the Solid Waste collected within the unincorporated areas of Fresno County.

As provided in Paragraph 4.7.B, CONTRACTOR may apply to the Director of Public Works and Planning (Director) for an exemption from the Flow Control requirement set forth in Paragraph 4.7.A. The application must provide sufficient factual justification to support the requested exemption, which in the first instance shall be granted upon the reasonable determination by the Director that CONTRACTOR'S application establishes facts sufficient to meet all of the circumstances listed in any one of the Parts (a) through (e) of Subparagraph 4.7.B.1

As provided in Subparagraph 4.7.B.2, an exemption granted to CONTRACTOR shall be valid only for a period of three (3) years following the date on which it is granted, at

which time the exemption will expire by its terms. Provided, however, that the CONTRACTOR may submit an application, together with sufficient explanatory factual justification, to support an extension of the exemption, not more than six (6) months and not less than 45 days prior to its expiration. The extension may be granted, in the discretion of the Director, based on the facts presented in the application and other relevant factors, which may include economic considerations relating to AADS operations. If any exemption granted to CONTRACTOR expires by its terms, CONTRACTOR may submit an application seeking issuance of a new exemption no sooner than 90 days following the expiration of the prior exemption. If any exemption granted to CONTRACTOR is revoked pursuant to the provisions of Paragraph 4.7C, that CONTRACTOR will not be eligible to apply for issuance of a new exemption until 24 months have passed following the revocation of the prior exemption.

- 1 As more thoroughly provided in Paragraph 4.7.C, in the event CONTRACTOR applies for and is granted an exemption, the subsequent failure by CONTRACTOR to comply with the payment and reporting requirements listed in Subparagraph 14 of Paragraph 10.2.A, may result in revocation of the exemption. The submittal by CONTRACTOR of records or reports that are untimely, or are determined by the COUNTY Representative to be insufficient or inaccurate, shall result in COUNTY giving notice to CONTRACTOR that: (i) any such deficiencies or errors must be cured within 30 days of the mailing of such notice, and (ii) that a second instance of submittal by CONTRACTOR of untimely, insufficient or inaccurate reports during any period of time encompassing the four most recent submittals by CONTRACTOR or within a period of fifteen (15) consecutive months, shall constitute grounds for revocation of that ESAP Hauler's exemption. From and after the date of delivery to CONTRACTOR of notice of such revocation of the exemption, CONTRACTOR shall

be required to deliver all Solid Waste to AADS in accordance with the provisions of Section 4.7.A.

## **7. TRANSPORTATION / PROCESSING / MARKETING OF RECYCLABLES**

CONTRACTOR will be responsible for all Recyclable Materials processing and marketing services associated with the Collection of Recyclable Materials under this Agreement. In meeting the obligation to provide processing facility capacity, CONTRACTOR may purchase, lease, subcontract, or make other arrangements with a new or existing facility for the processing and marketing of the Recyclable Materials collected in the COUNTY. Ownership or leasing arrangements and costs will be the responsibility of the CONTRACTOR. CONTRACTOR will ensure that any applicable purchase or lease agreements with property owners and local land use authorities are implemented. CONTRACTOR will have the responsibility to ensure the technical and environmental suitability of any processing site for its intended purpose.

CONTRACTOR will be compensated for Recyclable Materials processing and marketing solely through the Rates.

CONTRACTOR will be responsible for arranging for the transportation of the Recyclable Materials to the processing facility. If CONTRACTOR chooses to consolidate the Recyclable Materials to reduce transportation costs to a distant processing site, CONTRACTOR will be fully responsible for securing and operating a staging area for temporary storage, consolidation, and loading of materials into transfer vehicles for long-hauling to the processing facility.

CONTRACTOR will be required to receive and process Recyclable Materials, prepare Recyclable Materials for markets, and to market the recovered materials. The material types to be accommodated by the facility are outlined in this Exhibit A. CONTRACTOR

will market and sell Recyclables collected pursuant to the Agreement. All revenues earned from the sale of the Recyclables will be retained by CONTRACTOR.

Disposal of Residue remaining after the segregation of the Recyclable Materials will be the CONTRACTOR's responsibility. CONTRACTOR will transport the Residue to the Disposal or Transfer Facility or to another fully permitted facility of its choosing. The costs of Residue transportation and Disposal will be borne by CONTRACTOR and shall be included in the Rates. CONTRACTOR is responsible to report how much Residual was by weight of the materials processed for Recycling.

#### **8. TRANSPORT / PROCESSING: GREEN WASTE AND ORGANIC MATERIALS**

A. Green Waste. CONTRACTOR shall provide directly or indirectly for the transportation, processing and marketing of all Green Waste for use through beneficial reuse such as mulching, composting, or processing for alternative daily cover, and/or for use as biomass fuel. CONTRACTOR is responsible for payment of all costs for these services from Rate Revenues collected by CONTRACTOR pursuant to this Agreement.

B. Organic Materials. CONTRACTOR shall provide directly or indirectly for the transportation, processing and marketing of all Organic Materials for use through beneficial reuse such as composting or anaerobic digestion. CONTRACTOR is responsible for payment of all costs for these services from Rate Revenues collected by CONTRACTOR pursuant to this Agreement. The rate for CONTRACTOR to provide Organic Materials Collection and Processing Services shall be 60% of the comparable size and frequency of Solid Waste Collection rates plus the actual cost per ton for Organic Materials Processing.

#### **9. COMMUNITY CLEAN-UP SERVICES**

CONTRACTOR will provide Community Clean-Up Services for the collection of non-Excluded Waste items for all residential Cart Customers including Bulky Items such as

furniture, appliances, white goods, e-waste, mattresses, plumbing fixtures, construction and demolition debris, and related items. Each Cart Customer will receive one (1) pickup per year within each Service Area. These drop-off events shall occur once a year during each calendar year. The maximum amount of materials that each Cart Customer may place for Collection for each event is two (2) cubic yards and one (1) Freon-containing appliance. CONTRACTOR will promote and manage its own cleanups, which will be funded by the COUNTY's American Avenue Trust Fund cleanup coupon program as long as funds are available. Provided, however, that the materials collected from each Cart Customer may exceed the maximum amount specified in the preceding sentence, for the charge specified in Exhibit D to this Agreement.

CONTRACTOR will also accept material from non-Customers who present COUNTY cleanup coupons. CONTRACTOR will follow COUNTY guidelines for the use of such coupons and for reports that CONTRACTOR agrees to provide to the COUNTY.

CONTRACTOR will charge Bulky Item Special Service Rates after COUNTY's Coupon Program funding is expended. CONTRACTOR shall also provide up to 50 tons per year of roll-off services within their territory for free service for homeless encampments and litter abatement, upon request by the COUNTY. CONTRACTOR will report to the COUNTY on the tons and materials types collected as part of their Community Cleanup reports.

CONTRACTOR will then deliver the collected Bulky Items to a processing facility for recovery, or to the Disposal or Transfer Facility, depending on the type of materials collected. CONTRACTOR will use Best Efforts to ensure that all Recyclable Materials are diverted from Disposal, including reusable furniture, doors, windows and fixtures, mattresses, carpet and foam carpet pads, appliances, white goods and brown goods, telephones, small appliances, and Green Waste and Single-Stream Recyclable

Materials. CONTRACTOR will use Best Efforts to divert fifty percent (50%) of all materials collected through the Community Clean-Up Services.

**10. CHRISTMAS TREE COLLECTION**

In the Zone 1 and Zone 2a Service Rate Areas, CONTRACTOR will, without additional compensation, collect all Christmas trees discarded by all Customers during the first three (3) regularly scheduled collection days after Christmas Day for each collection route. CONTRACTOR shall deliver all Christmas trees collected during this period to a Green Waste Processing Facility. Customers shall be instructed to cut the Christmas trees into two (2)-foot sections and place the Christmas trees without flocking, decoration, or metal or plastic stands in the Green Waste Cart.

**11. ON-CALL BULKY ITEMS PICK-UP**

The COUNTY has established a coupon program from the American Avenue Trust Fund account to provide for on-call Bulky Items pick-up for home-bound residents. Once those funds are exhausted, CONTRACTOR shall provide on-call pick-up of Bulky Items to any Customer requesting the service, at the Special Service Fee specified in Exhibit D. CONTRACTOR shall use Best Efforts to ensure that all Recyclable Materials are diverted from Disposal and CONTRACTOR shall use Best Efforts to recycle or divert from Disposal fifty percent (50%) of all materials collected through the On-Call Bulky Items Pick-Up Program.

**12. FREE SIDE-YARD SERVICE FOR DISABLED AND ELDERLY CART CUSTOMERS**

Qualified individuals requiring side-yard service due to physical disability or age will be provided that service by CONTRACTOR at no additional fee. CONTRACTOR shall provide this free side-yard Service to disabled or elderly Customers that are physically unable to move Carts, as reasonably determined by CONTRACTOR in good faith.

Provided, however, that COUNTY reserves the right to direct the provision of such free side-yard Service to a Customer if the COUNTY Representative determines that CONTRACTOR's denial of such a request by that Customer was arbitrary or unreasonable. The side-yard service will include collection of Solid Waste, Recyclables, and Green Waste.

### **13. PUBLIC EDUCATION**

CONTRACTOR is required to provide Customer information and public education throughout the Term of the Agreement. The public education services shall include, but not be limited to, providing information regarding:

- Quarterly newsletter
- Program implementation information
- Change in service
- Incorrect set out notices
- Bulky Items collection
- Christmas tree Collection Services

## **EXHIBIT B**

### **PERFORMANCE STANDARDS**

#### **1. CONTRACTOR Standards**

1. Services are to be completed in a thorough and professional manner that constitutes litter-free, reliable, courteous and high-quality service.
2. CONTRACTOR shall, at all times, perform its duties using best industry practice for comparable operations.
3. Personnel shall conduct themselves in a courteous, workmanlike manner.
4. Personnel shall dress in clean uniform shirts with suitable identification.
5. Color and appearance of collection vehicles, containers, employee uniforms, and public education materials provided by CONTRACTOR will be designed to provide a standard representation of the company. If subcontractors are included, a distinct but uniform appearance of the subcontractor's equipment, vehicles, and personnel is required.

#### **2. Collection Containers**

1. CONTRACTOR shall provide industry-standard Containers for storage of materials which shall be designated and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of one (1) cubic yard or more shall meet all applicable Federal regulations for Solid Waste bin safety.
2. Containers shall be clearly labeled to indicate their designation for collection of Solid Waste, Recyclables, Green Waste or Organic Materials and shall list the types of materials to be stored in the Container for Collection. Labels on all Bins shall be subject to final approval by the

COUNTY so the labels are consistent throughout all Zones within the County.

3. CONTRACTOR is to provide all Containers to Customers at no charge. Replacement containers that are new or refurbished like new shall be provided free of charge to Customers upon request of customer if previous container is rendered unserviceable by reason of normal wear and tear or other than the Customer's action.
4. All Carts shall be wheeled carts with attached lids and a handle to allow for easy movement.
5. All Cart lids shall be the following standard colors: Blue for Recyclables, Green for Green Waste and Organic Materials, and Gray, Brown or Black for Solid Waste.
6. CONTRACTOR may select the Container manufacturer.
7. CONTRACTOR to maintain, repair, clean, paint, and replace Containers as needed to maintain a clean and functional condition. All graffiti shall be removed promptly by CONTRACTOR.
8. CONTRACTOR shall, at no charge for the first such replacement during any twelve (12)-month period, replace any Cart which becomes accidentally damaged and unusable by Customer. In the event that another Cart must be replaced within that same twelve (12)- month period due to Customer's action, CONTRACTOR may charge the Customer the Special Service Fee specified in Exhibit D to this Agreement.

### 3. Vehicles

#### General

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

#### Vehicle Identification

CONTRACTOR's name, phone number, and vehicle identification number must be visibly displayed on its vehicles in letters and figures no less than three (3) inches high.

#### Cleaning and Maintenance

1. **General.** CONTRACTOR shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, clean, and operable condition at all times, and shall keep its properties, facilities, and equipment well and uniformly painted, to the reasonable satisfaction of COUNTY Representative. Vehicles shall be maintained in such a manner that no leakage of fluids from the collected materials occurs.
2. **Cleaning.** Vehicles used in the collection shall be washed so as to present a clean appearance and minimize odors. The vehicles shall be painted in a uniform manner although Solid Waste, Recycling, Green Waste and Organic Material vehicles may have different painting schemes. All graffiti shall be removed promptly. COUNTY may inspect

vehicles during normal business hours to determine compliance with sanitation requirements. CONTRACTOR shall make vehicles available to the COUNTY'S Representative and the COUNTY Department of Community Health for inspection, pursuant to its reasonable request, if it requests.

3. **Maintenance.** CONTRACTOR shall inspect each vehicle to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly; and CONTRACTOR shall perform all scheduled maintenance functions.
4. **Repairs.** 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, clean, and operable condition.
5. **Inventory.** CONTRACTOR shall furnish sufficient equipment to provide all service required under this Agreement, including, if needed, back-up Collection vehicles.
6. **Storage.** CONTRACTOR shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with COUNTY's applicable zoning regulations.

### **Operation**

All vehicles must be registered with the Department of Motor Vehicles of the State of California and inspected by the California Highway Patrol at the frequency required by the state. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety and local ordinances.

**4. Collection Schedule**

1. If the day of collection on any given route falls on New Year's Day, Thanksgiving Day, or Christmas Day, CONTRACTOR shall provide collection service for such route on such day or the next Work Day. In the event the holiday schedule of the Disposal, Transfer, Recycling and Green Waste Processing Facilities are different than the holidays stated herein, the holiday schedule will be adjusted by CONTRACTOR in consultation with the COUNTY to match those of the facility(ies).
2. CONTRACTOR shall provide one (1) pickup per week for Cart Customers from the curbside or from designated locations in the case of side-yard service for disabled or elderly customers and for customers paying a Special Service Fee for side-yard service.
3. CONTRACTOR shall provide pickups on the schedule requested by Customer (at least once weekly) for Bin Customers from a location agreed to by the CONTRACTOR and Customer.

**5. Collection Routes**

1. Collection routes shall be established and maintained in such a manner as to provide uniform and efficient Collection Services.
2. CONTRACTOR shall submit route plans to COUNTY Representative for informational purposes thirty (30) days before the Operative Date of the Extension and one (1) year prior to the end of the Extension, and whenever there is a significant routing change. The route plans shall identify the course each vehicle follows, the properties served, approximate starting and ending times for each route, and the day of week the route will be served.

3. Materials collected shall not be mixed in CONTRACTOR's collection equipment with any materials collected from another governmental jurisdiction including other cities or counties, without prior approval of COUNTY Representative which approval shall not unreasonably be withheld.

## **6. Collection Requirements**

### **Care of Private Property**

Reasonable care shall be used by CONTRACTOR's employees in handling all Collection Containers and enclosures, and all damage caused thereto by the negligence of CONTRACTOR's employees shall be promptly adjusted with the owner thereof. All Collection Containers after emptying thereof by CONTRACTOR's employees shall be returned to within five (5) feet of the location from which the same were picked up by CONTRACTOR's employees, upright with lids properly secured, and CONTRACTOR's employees shall use all reasonable means to ensure same are not deposited in a manner that blocks any driveway, sidewalk, or street. CONTRACTOR shall ensure that its employees close all gates opened by them in making collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over hedges and fences. COUNTY shall refer complaints about damage to private property to CONTRACTOR. CONTRACTOR shall repair all damage to private property caused by its employees.

### **Noise**

All collection operations shall be conducted as quietly as reasonably possible and shall conform to applicable Federal and State noise level regulations and the COUNTY Noise Ordinance. COUNTY may conduct random checks of noise emission levels to ensure

such compliance. CONTRACTOR shall promptly resolve any complaints of noise to the satisfaction of the COUNTY Representative.

### **Record of Noncollection**

If any materials Delivered for Collection are not collected by CONTRACTOR for sufficient reason, CONTRACTOR shall provide a notice of least two (2) inches by six (6) inches in size at CONTRACTOR's cost. The notice shall provide CONTRACTOR's phone number and reason(s) for CONTRACTOR's refusal to collect the materials; placed on the Container giving reference to the COUNTY Ordinance Code or CONTRACTOR's Agreement which has been violated, and which gives grounds for CONTRACTOR's refusal. CONTRACTOR shall maintain, at CONTRACTOR's place of business, a Customer complaint log listing all complaints and taggings. Said logbook shall contain the names and date and manner of disposition of each case. Such log shall be kept so that it may conveniently be inspected by COUNTY representative upon request.

### **Load Checking**

CONTRACTOR is responsible for making reasonable efforts to visually inspect materials prior to collection for Hazardous Waste or other unacceptable materials. CONTRACTOR is not responsible for collection of Hazardous Waste or other Excluded Waste.

CONTRACTOR is responsible for controlling contamination levels of Recyclable Materials and Green Waste through public education efforts and tagging of improper setouts.

### **Contaminated and Overfilled Containers**

CONTRACTOR and COUNTY anticipate that Customers will participate in CONTRACTOR's programs in a manner such that minimizes the total level of

contamination in Containers. As used herein, "contamination" refers to materials placed in a Container other than those which the Parties agree are appropriate for Collection therein as more fully set forth in this Agreement. CONTRACTOR and COUNTY also anticipate that Customers will not overfill Containers beyond capacity, or spill contents next to the Containers. COUNTY and CONTRACTOR agree to utilize the following procedures to assist in minimizing contamination or overfilling:

If CONTRACTOR documents that a particular Customer has a Container with excessive contamination, or an overfilled Container, CONTRACTOR shall service the Container, making whatever accommodations are necessary, or cleaning up the area around the overfilled Container. Where feasible, CONTRACTOR will obtain photographic evidence of the contamination or overfilling. CONTRACTOR will tag the Container with a notice that includes:

- The fact the Container required special services due to the presence of inappropriate material in the Container, or that the Container was overfilled;
- In the case of a contaminated Container, a description of the Materials that are appropriate for Collection in the Container;
- An explanation that a subsequent incident of excessive contamination or overfilling may result in the imposition of a contamination fee or overfilling fee, and, where warranted, requiring additional or larger-sized Solid Waste Containers, or additional Collections of existing Solid Waste Containers, at an additional cost to the Customer; and
- A phone number to contact CONTRACTOR to obtain additional information and/or receive responses to questions the Customer may have.

In the event the Customer in question continues to place Containers with excessive contamination out for Collection, or continues to overfill Containers, CONTRACTOR

may collect the Container, clean the surrounding area, and charge the Customer a contamination fee or overfilling fee in an amount that does not exceed the maximum rate set forth in Exhibit D. In addition, where there have been three (3) or more instances of excessive contamination or overfilling by a Customer in any twelve (12) month period, CONTRACTOR may (with approval of COUNTY) deliver additional or larger Solid Waste Containers to the Customer, or require additional weekly Collections as appropriate, and charge the Customer for such increased or additional services at rates that do not exceed the maximum rates set forth in Exhibit D.

## **7. Litter Abatement**

### **Minimization of Spills**

CONTRACTOR shall use due care to prevent materials placed in the Containers from being spilled or scattered during the Collection or transportation process. If any material is spilled during Collection, CONTRACTOR shall promptly clean up all spilled materials. Each Collection vehicle shall carry a broom and a shovel at all times for this purpose. CONTRACTOR shall not transfer loads from one (1) vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle, or approved in advance by COUNTY Representative.

### **Cleanup**

During the Collection transportation process, CONTRACTOR shall clean up litter in the immediate vicinity of any storage area (including the areas where collections bins are delivered for collection) of any materials that escape from the Collection vehicle or Collection Containers as a result of CONTRACTOR's service. CONTRACTOR shall work with Customer to resolve the spillage problem. If spillage by Customer continues, COUNTY will attempt to rectify such situations with Customer if CONTRACTOR has already attempted to do so without success.

### **Covering of Loads**

All materials shall be contained or covered during transportation to the Disposal or processing facility and shall not result in the dispersion of litter and other materials from the CONTRACTOR's vehicles. Material shall not be transported to the Disposal or processing facility in vehicle hoppers.

### **Oil or Other Vehicle Fluid Spills**

CONTRACTOR is responsible for cleaning up all oil or vehicle fluid spills immediately and must notify COUNTY Representative within twenty-four (24) hours of each such spill. All vehicles must carry an acceptable absorbent material to use in the event of spills. Repair for damages caused by oil or other vehicle spills shall be at CONTRACTOR's expense. CONTRACTOR will follow the spill procedures below:

1. Driver will determine cause and source of spill.
2. Each driver or shop employee is responsible for having enough absorbent in their vehicle to contain or prevent any hydraulic fluid or oil from entering a storm drain or sewer and to clean up small spills as they occur.
3. Driver will contain or stop the leak and clean it up without endangering self.
4. Driver will immediately notify dispatch or supervisor.
5. Driver will not leave the spill until either a supervisor or spill response personnel arrive at the scene.
6. Driver will keep all people, cars, or other vehicles from walking or driving through the spill.
7. Driver or spill response personnel will take whatever action possible to prevent the spill from entering any storm drain, grates, or other entry points.

## **8. Personnel**

### **General**

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

### **Driver Qualifications**

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

### **Background Checks**

To the extent permitted by Applicable Law, CONTRACTOR shall, prior to hiring a driver and for all presently hired drivers for whom such reports have not been previously obtained, request a report or reports from the State of California indicating whether (i) the individual is listed by the State as a sexual predator and (ii) the individual has a felony record of violence with the State. CONTRACTOR will not employ an individual as a driver if those reports show that the individual is so listed or has such a record unless the reports are demonstrated to be erroneous. Once each calendar year, CONTRACTOR shall request from the California Department of Motor Vehicles a report of violations committed by drivers employed by CONTRACTOR and shall take such action, if any, as CONTRACTOR deems appropriate based on such report. CONTRACTOR may satisfy these requirements

**with a background check performed by a third-party in the business of providing such background checks. CONTRACTOR shall be entitled to rely without further inquiry on the reports obtained from the State of California or such third-party.**

### **Safety Training**

CONTRACTOR shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection or who are otherwise directly involved in such services. CONTRACTOR shall train its employees involved in Collection to identify and not to Collect Excluded Waste.

### **No Gratuities**

CONTRACTOR shall not permit its employees to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection Services under this Agreement. CONTRACTOR may permit its employees to accept small holiday gifts of nominal value.

### **Provision of Field Supervision**

CONTRACTOR shall designate one qualified employee as supervisor of field operations. The field supervisor shall devote whatever time is necessary, but not less than fifty percent (50%) of his/her time, in the field checking on collection operations, including responding to complaints.

### **General Supervision**

The Collection Services are under the general supervision of COUNTY Representative, and CONTRACTOR shall promptly comply with any COUNTY orders, directions and instructions that are consistent with the terms of this Agreement. COUNTY reserves the right to inspect any and all of CONTRACTOR's equipment during normal business hours without prior notice.

**9. Recyclable, Green Waste and Organic Materials Processing and Marketing  
General Operations and Maintenance Standards**

CONTRACTOR covenants to comply with CONTRACTOR's performance obligations throughout the term of the Agreement and to perform CONTRACTOR's performance obligations with respect to Recyclable, Green Waste and Organic Materials processing and marketing services in accordance with accepted practice for comparable processing facilities, sound management and operations practice, the facility's operation and maintenance manual, plans and specifications, permits, applicable law (including OSHA standards), provisions hereof, and covenants, conditions and restrictions pertaining to the site.

CONTRACTOR shall be responsible for maintaining and renewing all necessary permits, licenses, and clearances necessary to provide the transportation and processing of Solid Waste, Recyclable Materials, Green Waste and Organic Materials. CONTRACTOR shall maintain and renew permits; provided, however, CONTRACTOR shall not be responsible for any delays in maintaining or renewing, or failure to maintain or renew, the permits, if CONTRACTOR has exercised due diligence in maintaining and/or renewing the permits, and such failure is caused by any action or inaction of the issuing or renewing authority.

CONTRACTOR shall meet all applicable regulations and industrial codes either as stated or as in standard industry practice.

CONTRACTOR shall have the responsibility for the sale of recovered materials and collection of payment thereof.

**Maintenance and Repair**

CONTRACTOR shall maintain the facility and site in good working order and repair, including maintaining spare parts inventory and performing periodic maintenance in

accordance with operations and maintenance manual, manufacturer's recommendations, accepted practice for comparable facilities, and sound management and operations practice. CONTRACTOR shall maintain the aesthetic appearance of the facility and site in a clean manner in accordance with the plans and specifications, with due regard for reasonable control of odors, dust, and noise.

### **Safety**

CONTRACTOR shall conduct facility operations in a safe manner, in accordance with applicable laws, requirements of insurance carried, and standard industry practices in the waste management, composting, organic handling, and materials recovery industry.

### **Right to Enter and Inspect Facility**

COUNTY, and its designated representative, shall have the right, but not the obligation to, enter, observe, and inspect the processing facility during the receiving hours; meet with the facility manager or his/her representative during such time; and meet with other employees upon request, which request shall not be unreasonably denied. Upon COUNTY request, CONTRACTOR shall make personnel available to accompany COUNTY employees on inspections. CONTRACTOR shall ensure that its employees cooperate with COUNTY and respond to COUNTY's reasonable inquiries. Other than financial records, CONTRACTOR shall make operational and business records related to this Agreement available to COUNTY during receiving hours upon COUNTY request.

### **Personnel**

CONTRACTOR shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for facility operations and to perform CONTRACTOR's obligation under this Agreement. CONTRACTOR shall train such staff to perform their

work in a safe and efficient manner in accordance with the health and safety plan in the facility's operations and maintenance manual.

### **Recovery Standards**

CONTRACTOR shall use reasonable business efforts to maximize the recovery of delivered materials in a manner acceptable to receive diversion credit under AB 939 and for the COUNTY, CONTRACTOR, and all Customers to remain in compliance with other applicable State laws, particularly AB341, AB1826 and SB1383.

### **Finished Product Standard**

The processed Recyclables and/or the finished product shall maintain physical and chemical specifications such as to comply with all applicable laws, ordinances, regulations, and permit conditions.

### **Transportation of Residue**

CONTRACTOR shall transport and deliver all Residue to a Disposal Facility after its delivery to the processing facility within the timeframes required by the facility's permits and in no event longer than required by Applicable Law. CONTRACTOR shall select routes from the facility to the disposal facility, which minimize inconvenience and disturbance to the public and comply with permits and applicable law. CONTRACTOR shall enclose or cover all vehicles transferring residue from the facility to prevent spillage.

### **Weighing**

CONTRACTOR shall record tonnages of materials received and diverted, and the recorded data must indicate the CONTRACTOR's name and tonnage delivered.

### **Substitute Scales**

If CONTRACTOR possesses its own scales, scales shall be installed and maintained in accordance with applicable law. To the extent that CONTRACTOR's scales are

inoperable, being tested, or otherwise unavailable, CONTRACTOR shall substitute portable scales until the permanent scales are replaced or repaired. CONTRACTOR shall arrange for the scale to be repaired or temporarily substitute scales to be used as soon as possible, and in any event, within forty-eight (48) hours after failure of the permanent scales.

### **Estimating Volumes**

Pending substitution of portable scales, CONTRACTOR shall estimate the quantity of materials being delivered to the processing facility and residue and recovered materials being transported from the processing facility, on the basis of delivery truck and transfer trailer volumes, tare weight, broker's weigh records, and data obtained through historical information from the processing facility and purchasers of recovered materials using a methodology acceptable to COUNTY. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable.

### **Testing of Scales**

CONTRACTOR shall test and calibrate all scales in accordance with applicable law, but at least every twelve months. Prior to any test, CONTRACTOR shall provide at least five (5) days notice thereof to the COUNTY. Upon COUNTY request, it shall provide the COUNTY with copies of the test results.

## EXCLUSIVE SERVICE AREA NO. 11 NARRATIVE DESCRIPTION OF TERRITORY

P. G. & E.'s Balch Camp on the North Fork of the Kings River would be the Northern boundry. The Kings River main fork between Camp 4 ½ and Kirch Flat campground is the River Rafting base camp area. Snowline Lodge on Kings Canyon Highway going East until the road ends in Kings Canyon National Park.

This area would encompass Snowline Lodge area, Armenian Church

Camp, Sequoia Lake YMCA, Boyden Cave & Convict Flat campground and Cedar Grave NPS on the South Fork of the Kings River drainage.

### NOTES:

**Originally Sequoia Disposal** – 8/30/05 – Agenda Item #14  
Assigned to Tule Trash Co. - 4/24/12 – Agenda Item #33

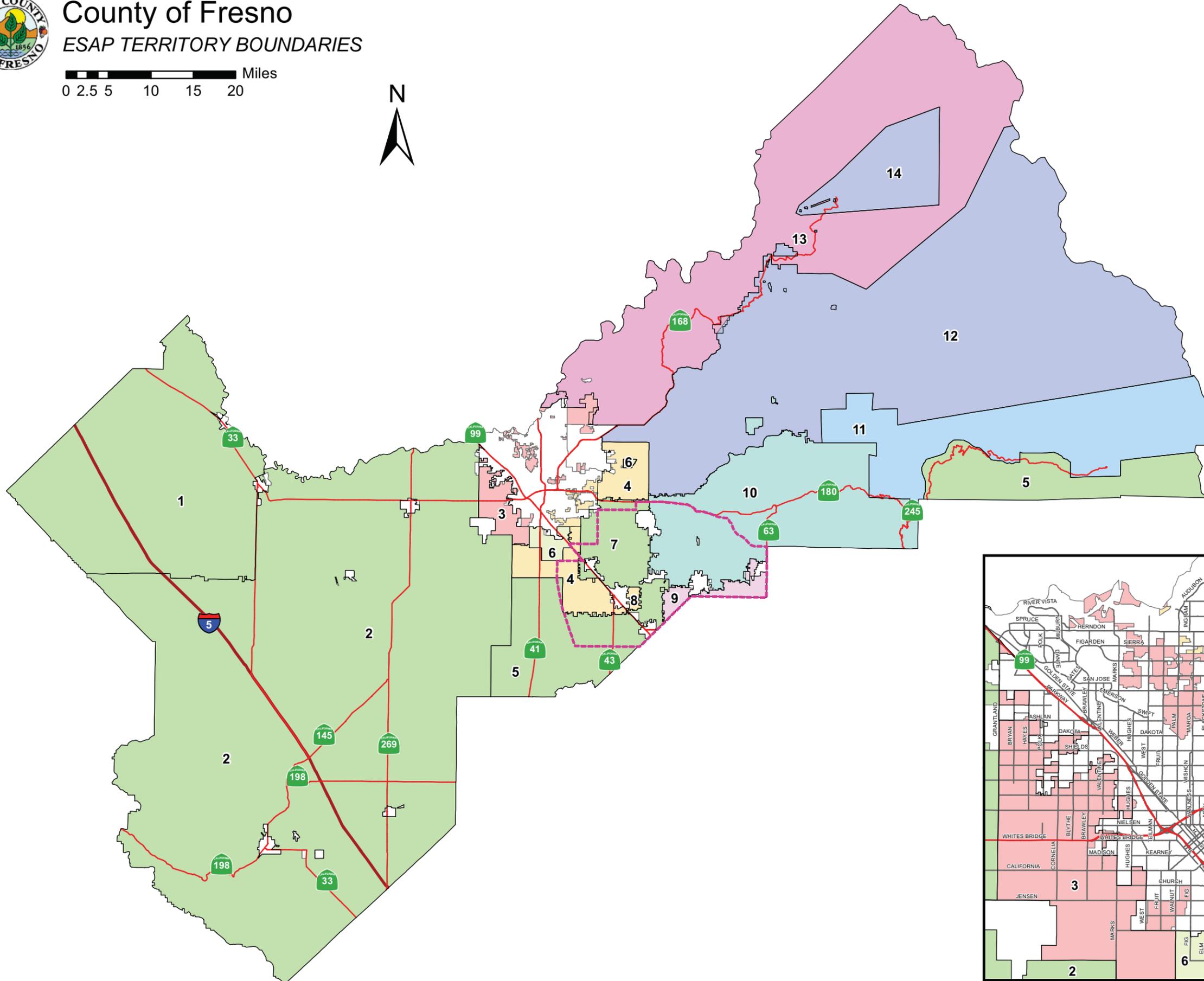
Agreement #05-419  
Assignment Agreement #12-170



# County of Fresno

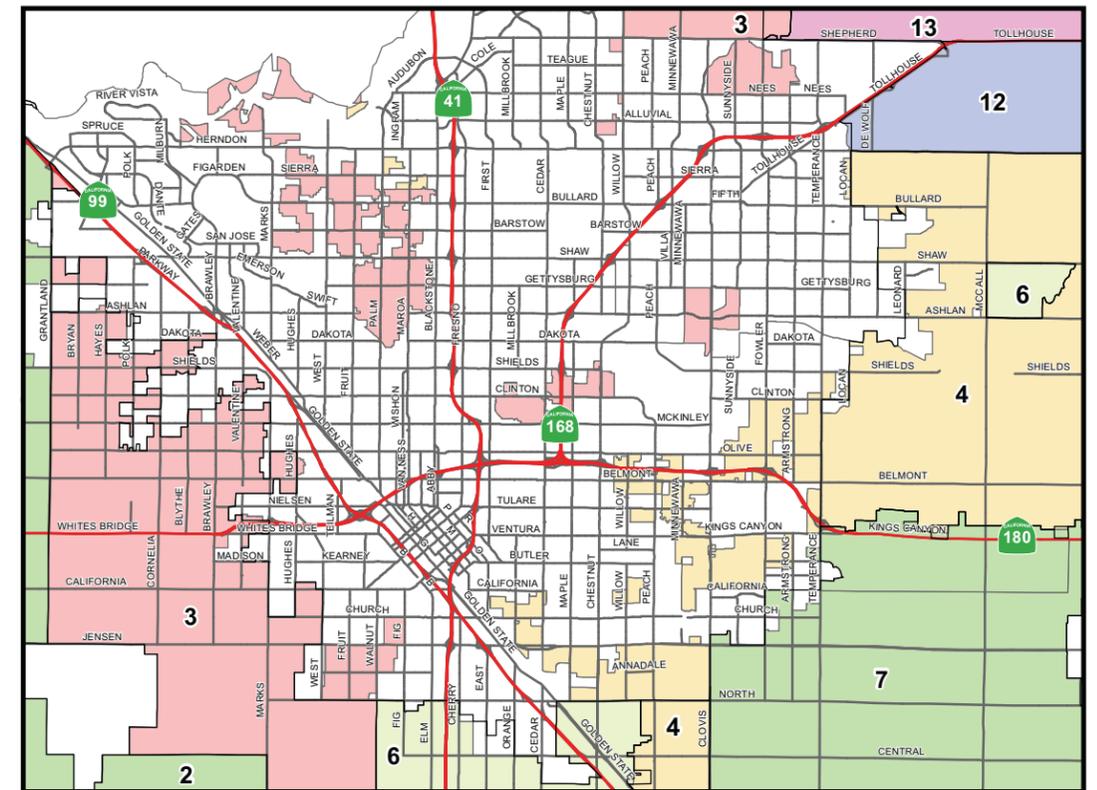
## ESAP TERRITORY BOUNDARIES

0 2.5 5 10 15 20 Miles



Hauler's Territory Boundaries		
AGT#	HAULER	
05 - 413	Mid Valley Disposal ( 2 )	
05 - 418 - 1	( 1 )	
13 - 466	( 5 )	
14 - 567	( 7 )	
05 - 412	Allied Waste Services ( 3 )	
05 - 409	Waste-Management ( 4 )	
16 - 541	( 8 )	
05 - 408	Industrial Waste & Salvage ( 6 )	
05 - 416	Peña's Disposal ( 9 )	
05 - 414	Miramonte Sanitation ( 10 )	
12 - 170	Tule Trash ( 11 )	
05 - 417	Granite Solid Waste ( 12 )	
07 - 241	( 14 )	
05 - 410	Western Solid Waste ( 13 )	
( Dashed Pink Line )	SER	
Incorporated Cities		
( White Box )	(Not included in program)	

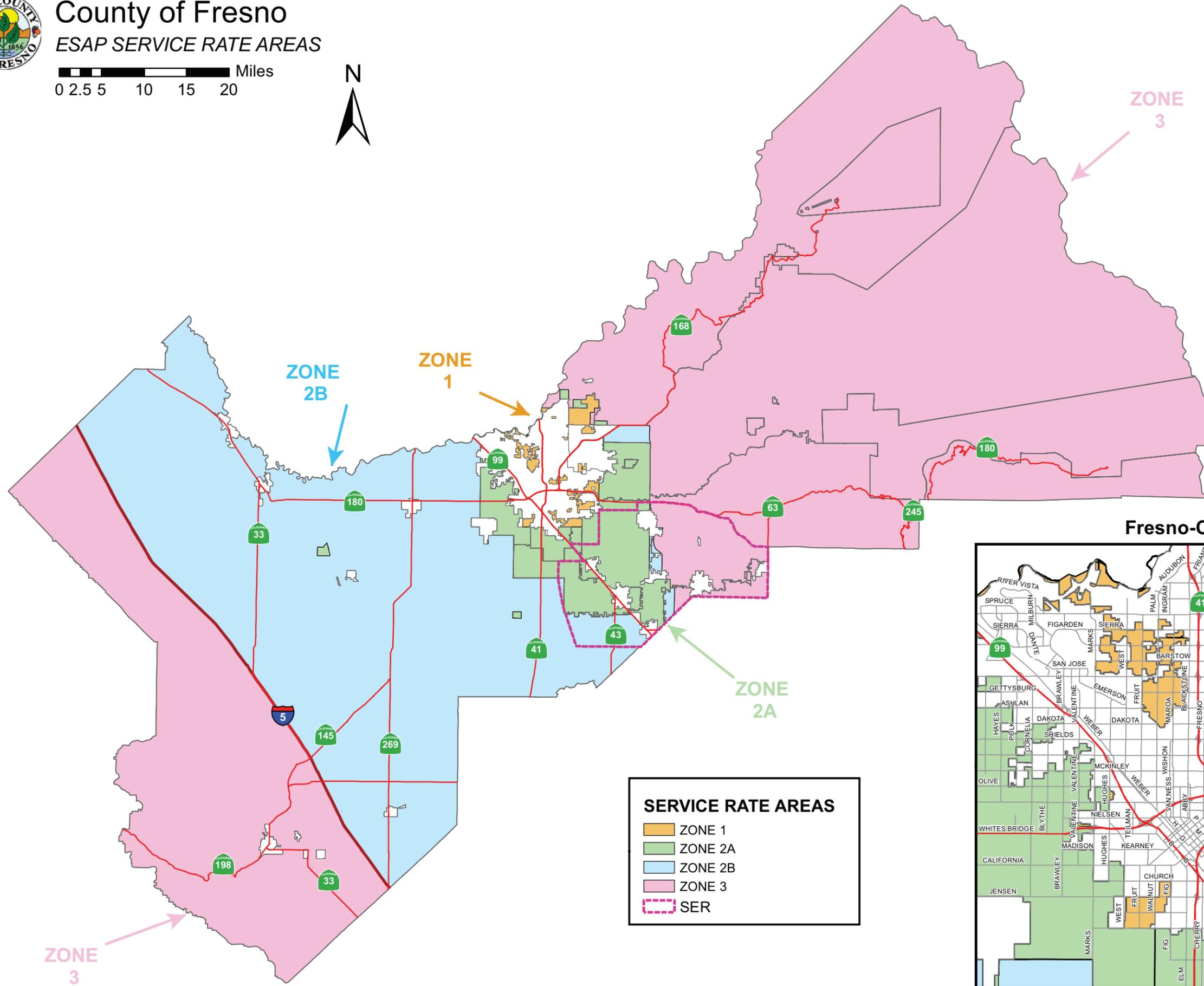
Exhibit 1





# County of Fresno ESAP SERVICE RATE AREAS

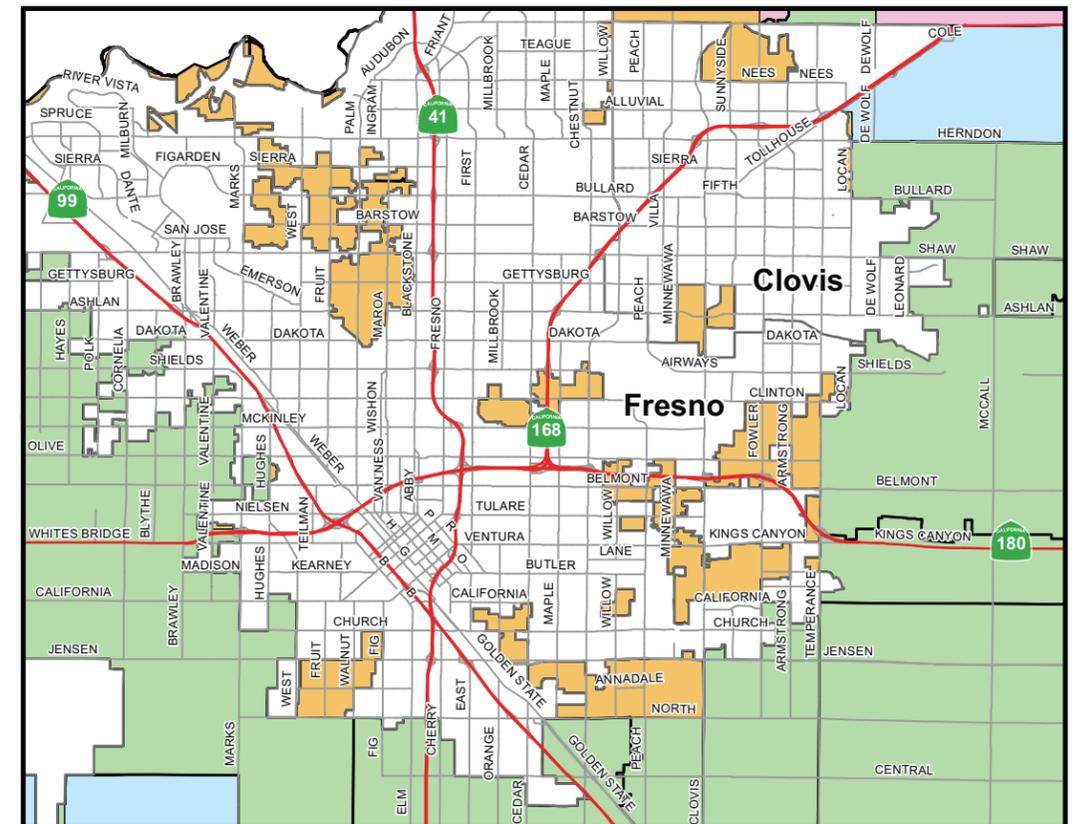
0 2.5 5 10 15 20 Miles



**SERVICE RATE AREAS**

- ZONE 1
- ZONE 2A
- ZONE 2B
- ZONE 3
- SER

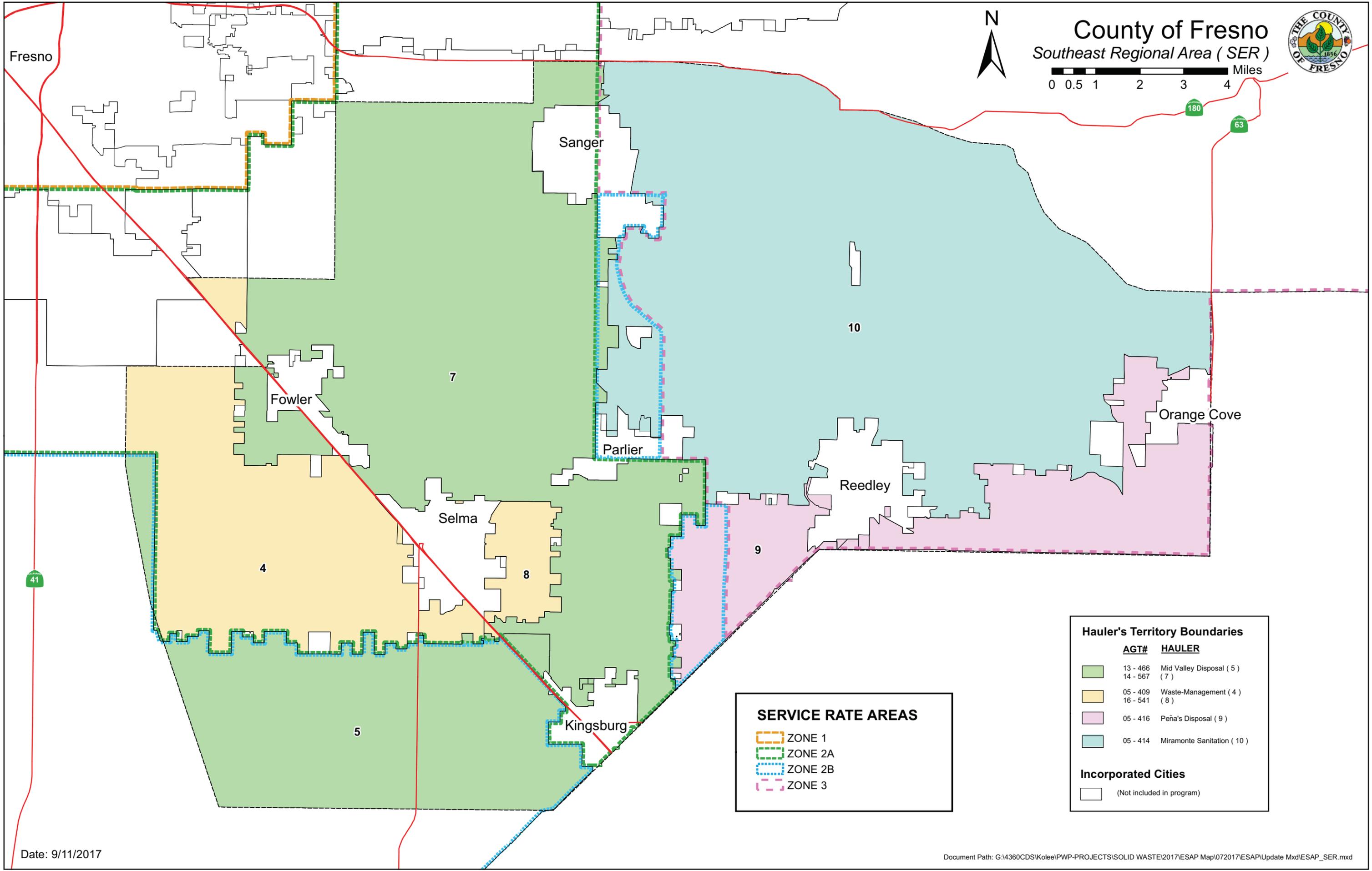
**Fresno-Clovis Metropolitan Area**



# County of Fresno Southeast Regional Area ( SER )



0 0.5 1 2 3 4 Miles



**SERVICE RATE AREAS**

- ZONE 1
- ZONE 2A
- ZONE 2B
- ZONE 3

**Hauler's Territory Boundaries**

AGT#	HAULER
13 - 466 14 - 567	Mid Valley Disposal ( 5 ) ( 7 )
05 - 409 16 - 541	Waste-Management ( 4 ) ( 8 )
05 - 416	Peña's Disposal ( 9 )
05 - 414	Miramonte Sanitation ( 10 )

**Incorporated Cities**

(Not included in program)

**EXHIBIT D**

**SCHEDULE OF MAXIMUM CART RATES**

(\$ per month, per customer) --Adjusted for American Avenue Tip Fee Increase July 2017  
(SER Rates effective February 28, 2018)

Zone 1

Cart Size	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay (1) (02/28/2018)
30-gal cont	\$26.14	\$0.03	\$26.17	\$0.20
60-gal cont	\$31.44	\$0.06	\$31.50	\$0.36
90-gal cont	\$39.12	\$0.09	\$39.21	\$0.54

Zone 2 (a)

Cart Size	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay (1) (02/28/2018)
30-gal cont	N/A	N/A	N/A	N/A
60-gal cont	\$40.39	\$0.06	\$40.45	\$0.36
90-gal cont	\$46.06	\$0.09	\$46.15	\$0.54

Zone 2 (b)

Cart Size	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay (1) (02/28/2018)
30-gal cont	N/A	N/A	N/A	N/A
60-gal cont	\$34.48	\$0.06	\$34.54	\$0.36
90-gal cont	\$41.04	\$0.09	\$41.13	\$0.54

Zone 3

Cart Size	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	New Rate (includes 6% reduction) <sup>(2)</sup>	SER Overlay (1) (02/28/2018)
				N/A	N/A
60-gal cont	\$48.74	\$0.06	\$48.80	\$45.87	\$0.36
90-gal cont	\$55.12	\$0.09	\$55.21	\$51.90	\$0.54

**Notes:**

- SER Rate is only applicable to residents within the SER Territory (Map Attached). To Calculate the SER Rate, a hauler will need to add current rate to SER overlay. SER Overlay are not subject to CPI Increases
- Zone 3 rates reflect a 6% reduction as proposed.
- The rate to provide Organic Materials Collection and Processing Services shall be 60% of the comparable size and frequency of Solid Waste Collection Rates plus the actual cost per ton for Organic Materials Processing.
- Any Bin service provided to residences (including 1, 2, and 3 cy Bins) will be reported as Commercial service for reporting purposes.
- All rates will be subject to Consumer Price Index (CPI) increase every July. The CPI will be adjusted by the applicable percentage, which is 75% for Cart Rates. Presented as \$ per month per customer - adjusted for AADS increase in Tip Fee July 2017.

## EXHIBIT D

### SCHEDULE OF MAXIMUM CART RATES

**Notes (Cont'd):**

6. Haulers are required to pay all fees and Surcharges. Existing fees and Surcharges include:
  - a. AB 939 Service Fee equal to three percent (3%) of Rate Revenues for the first and second year and an AB 939 Service Fee equal to four percent (4%) of Rate Revenues for the third and all subsequent years of the Extension Term.
  - b. Hauler shall pay the COUNTY Solid Waste Surcharges, for Solid Waste generated in the COUNTY, which as of the date of execution of this Agreement are currently in the following amounts:
    - Southeast Regional (SER) Surcharge. Three Dollars and Fifty Cents (\$3.50) per-ton closure/post-closure maintenance fee for Solid Waste generated and collected within the Southeast Regional Solid Waste Commission Area as identified in Fresno County Ordinance Code Section 8.20.035; and
    - Solid Waste Management Program Activities (SWMPA) Surcharge. Three Dollars and Forty-One Cents (\$3.41) per-ton surcharge for Solid Waste management program activities (NOTE: this surcharge is incorporated into American Avenue Landfill tipping fee).

EXHIBIT D-1

SCHEDULE OF MAXIMUM BIN RATES

(\$ per month, per customer) --Adjusted for American Avenue Tip Fee Increase July 2017 (SER Rates effective February 28, 2018)

Service Description	Service Rate Area															
	Zone 1				Zone 2 (a)				Zone 2 (b)				Zone 3			
	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay <sup>(2)</sup> (02/28/2018)	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay <sup>(2)</sup> (02/28/2018)	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay <sup>(2)</sup> (02/28/2018)	Current Rates (03/2017)	AADS Rate Adjustment	New Rate (07/2017)	SER Overlay <sup>(2)</sup> (02/28/2018)
1 cu yd, 1 pickup/wk	\$69.59	\$0.19	\$69.78	\$1.14	\$79.61	\$0.19	\$79.80	\$1.14	\$80.94	\$0.19	\$81.13	\$1.14	\$80.35	\$0.19	\$80.54	\$1.14
1 cu yd, 2 pickups/wk	\$128.72	\$0.38	\$129.10	\$2.28	\$138.70	\$0.38	\$139.08	\$2.28	\$137.67	\$0.38	\$138.05	\$2.28	\$141.01	\$0.38	\$141.39	\$2.28
1 cu yd, 3 pickups/wk	\$187.82	\$0.57	\$188.39	\$3.41	\$202.14	\$0.57	\$202.71	\$3.41	\$205.55	\$0.57	\$206.12	\$3.41	\$208.46	\$0.57	\$209.03	\$3.41
1 cu yd, 4 pickups/wk	\$246.91	\$0.75	\$247.66	\$4.55	\$270.87	\$0.75	\$271.62	\$4.55	\$279.04	\$0.75	\$279.79	\$4.55	\$281.06	\$0.75	\$281.81	\$4.55
1 cu yd, 5 pickups/wk	\$306.05	\$0.94	\$306.99	\$5.69	\$343.04	\$0.94	\$343.98	\$5.69	\$359.74	\$0.94	\$360.68	\$5.69	\$354.82	\$0.94	\$355.76	\$5.69
1 cu yd, 6 pickups/wk	\$365.15	\$1.13	\$366.28	\$6.83	\$418.43	\$1.13	\$419.56	\$6.83	\$449.40	\$1.13	\$450.53	\$6.83	\$431.72	\$1.13	\$432.85	\$6.83
1.5 cu yd, 1 pickup/wk <sup>(1)</sup>	\$80.84	\$0.28	\$81.12	\$1.71	\$92.51	\$0.28	\$92.79	\$1.71	\$89.96	\$0.28	\$90.24	\$1.71				
1.5 cu yd, 2 pickups/wk	\$149.63	\$0.57	\$150.20	\$3.41	\$163.86	\$0.57	\$164.43	\$3.41	\$154.38	\$0.57	\$154.95	\$3.41				
1.5 cu yd, 3 pickups/wk	\$218.42	\$0.85	\$219.27	\$5.12	\$239.96	\$0.85	\$240.81	\$5.12	\$229.39	\$0.85	\$230.24	\$5.12				
1.5 cu yd, 4 pickups/wk	\$287.19	\$1.13	\$288.32	\$6.83	\$321.91	\$1.13	\$323.04	\$6.83	\$314.08	\$1.13	\$315.21	\$6.83				
1.5 cu yd, 5 pickups/wk	\$355.97	\$1.41	\$357.38	\$8.53	\$407.13	\$1.41	\$408.54	\$8.53	\$407.21	\$1.41	\$408.62	\$8.53				
1.5 cu yd, 6 pickups/wk	\$424.75	\$1.70	\$426.45	\$10.24	\$495.57	\$1.70	\$497.27	\$10.24	\$505.54	\$1.70	\$507.24	\$10.24				
2 cu yd, 1 pickup/wk	\$91.28	\$0.38	\$91.66	\$2.28	\$105.68	\$0.38	\$106.06	\$2.28	\$99.12	\$0.38	\$99.50	\$2.28	\$112.77	\$0.38	\$113.15	\$2.28
2 cu yd, 2 pickups/wk	\$170.12	\$0.75	\$170.87	\$4.55	\$189.02	\$0.75	\$189.77	\$4.55	\$171.07	\$0.75	\$171.82	\$4.55	\$206.38	\$0.75	\$207.13	\$4.55
2 cu yd, 3 pickups/wk	\$249.00	\$1.13	\$250.13	\$6.83	\$277.77	\$1.13	\$278.90	\$6.83	\$253.22	\$1.13	\$254.35	\$6.83	\$282.98	\$1.13	\$284.11	\$6.83
2 cu yd, 4 pickups/wk	\$327.88	\$1.51	\$329.39	\$9.10	\$372.97	\$1.51	\$374.48	\$9.10	\$349.16	\$1.51	\$350.67	\$9.10	\$388.56	\$1.51	\$390.07	\$9.10
2 cu yd, 5 pickups/wk	\$406.74	\$1.89	\$408.63	\$11.38	\$471.33	\$1.89	\$473.22	\$11.38	\$454.71	\$1.89	\$456.60	\$11.38	\$491.95	\$1.89	\$493.84	\$11.38
2 cu yd, 6 pickups/wk	\$485.60	\$2.26	\$487.86	\$13.65	\$572.64	\$2.26	\$574.90	\$13.65	\$561.68	\$2.26	\$563.94	\$13.65	\$599.85	\$2.26	\$602.11	\$13.65
3 cu yd, 1 pickup/wk	\$111.19	\$0.57	\$111.76	\$3.41	\$133.94	\$0.57	\$134.51	\$3.41	\$121.98	\$0.57	\$122.55	\$3.41	\$147.05	\$0.57	\$147.62	\$3.41
3 cu yd, 2 pickups/wk	\$209.17	\$1.13	\$210.30	\$6.83	\$243.13	\$1.13	\$244.26	\$6.83	\$212.23	\$1.13	\$213.36	\$6.83	\$273.49	\$1.13	\$274.62	\$6.83
3 cu yd, 3 pickups/wk	\$307.16	\$1.70	\$308.86	\$10.24	\$358.91	\$1.70	\$360.61	\$10.24	\$316.52	\$1.70	\$318.22	\$10.24	\$366.79	\$1.70	\$368.49	\$10.24
3 cu yd, 4 pickups/wk	\$405.16	\$2.26	\$407.42	\$13.65	\$482.52	\$2.26	\$484.78	\$13.65	\$432.73	\$2.26	\$434.99	\$13.65	\$503.99	\$1.70	\$505.69	\$13.65
3 cu yd, 5 pickups/wk	\$503.17	\$2.83	\$506.00	\$17.06	\$609.76	\$2.83	\$612.59	\$17.06	\$551.04	\$2.83	\$553.87	\$17.06	\$638.93	\$2.83	\$641.76	\$17.06
3 cu yd, 6 pickups/wk	\$601.14	\$3.39	\$604.53	\$20.48	\$740.32	\$3.39	\$743.71	\$20.48	\$678.95	\$3.39	\$682.34	\$20.48	\$777.27	\$3.39	\$780.66	\$20.48
4 cu yd, 1 pickup/wk	\$122.02	\$0.75	\$122.77	\$4.55	\$164.02	\$0.75	\$164.77	\$4.55	\$146.64	\$0.75	\$147.39	\$4.55	\$189.10	\$0.75	\$189.85	\$4.55
4 cu yd, 2 pickups/wk	\$230.61	\$1.51	\$232.12	\$9.10	\$291.11	\$1.51	\$292.62	\$9.10	\$257.38	\$1.51	\$258.89	\$9.10	\$353.47	\$1.51	\$354.98	\$9.10
4 cu yd, 3 pickups/wk	\$339.15	\$2.26	\$341.41	\$13.65	\$445.45	\$2.26	\$447.71	\$13.65	\$384.44	\$2.26	\$386.70	\$13.65	\$475.18	\$2.26	\$477.44	\$13.65
4 cu yd, 4 pickups/wk	\$447.75	\$3.02	\$450.77	\$18.20	\$599.72	\$3.02	\$602.74	\$18.20	\$528.33	\$3.02	\$531.35	\$18.20	\$646.40	\$3.02	\$649.42	\$18.20
4 cu yd, 5 pickups/wk	\$556.32	\$3.77	\$560.09	\$22.75	\$757.95	\$3.77	\$761.72	\$22.75	\$675.12	\$3.77	\$678.89	\$22.75	\$818.47	\$3.77	\$822.24	\$22.75
4 cu yd, 6 pickups/wk	\$664.91	\$4.52	\$669.43	\$27.30	\$919.89	\$4.52	\$924.41	\$27.30	\$832.28	\$4.52	\$836.80	\$27.30	\$994.99	\$4.52	\$999.51	\$27.30
5 cu yd, 1 pickup/wk*	\$140.23	\$0.94	\$141.17	\$5.69	\$200.57	\$0.94	\$201.51	\$5.69	\$171.39	\$0.94	\$172.33	\$5.69				
5 cu yd, 2 pickups/wk	\$266.07	\$1.89	\$267.96	\$11.38	\$365.37	\$1.89	\$367.26	\$11.38	\$302.67	\$1.89	\$304.56	\$11.38				
5 cu yd, 3 pickups/wk	\$391.89	\$2.83	\$394.72	\$17.06	\$549.51	\$2.83	\$552.34	\$17.06	\$456.98	\$2.83	\$459.81	\$17.06				
5 cu yd, 4 pickups/wk	\$517.69	\$3.77	\$521.46	\$22.75	\$740.32	\$3.77	\$744.09	\$22.75	\$624.26	\$3.77	\$628.03	\$22.75				
5 cu yd, 5 pickups/wk	\$643.54	\$4.71	\$648.25	\$28.44	\$935.88	\$4.71	\$940.59	\$28.44	\$801.52	\$4.71	\$806.23	\$28.44				
5 cu yd, 6 pickups/wk	\$769.36	\$5.66	\$775.02	\$34.13	\$1,135.91	\$5.66	\$1,141.57	\$34.13	\$991.17	\$5.66	\$996.83	\$34.13				
6 cu yd, 1 pickup/wk	\$174.76	\$1.13	\$175.89	\$6.83	\$237.07	\$1.13	\$238.20	\$6.83	\$196.10	\$1.13	\$197.23	\$6.83	\$261.98	\$1.13	\$263.11	\$6.83
6 cu yd, 2 pickups/wk	\$331.03	\$2.26	\$333.29	\$13.65	\$439.59	\$2.26	\$441.85	\$13.65	\$347.89	\$2.26	\$350.15	\$13.65	\$491.95	\$2.26	\$494.21	\$13.65
6 cu yd, 3 pickups/wk	\$487.30	\$3.39	\$490.69	\$20.48	\$653.50	\$3.39	\$656.89	\$20.48	\$529.47	\$3.39	\$532.86	\$20.48	\$659.17	\$3.39	\$662.56	\$20.48
6 cu yd, 4 pickups/wk	\$643.53	\$4.52	\$648.05	\$27.30	\$880.88	\$4.52	\$885.40	\$27.30	\$720.18	\$4.52	\$724.70	\$27.30	\$889.48	\$4.52	\$894.00	\$27.30
6 cu yd, 5 pickups/wk	\$799.76	\$5.66	\$805.42	\$34.13	\$1,113.84	\$5.66	\$1,119.50	\$34.13	\$927.93	\$5.66	\$933.59	\$34.13	\$1,125.63	\$5.66	\$1,131.29	\$34.13
6 cu yd, 6 pickups/wk	\$956.05	\$6.80	\$962.85	\$41.00	\$1,351.98	\$6.80	\$1,358.78	\$41.00	\$1,150.12	\$6.80	\$1,156.92	\$41.00	\$1,367.63	\$6.80	\$1,374.43	\$41.00

Notes:

- 1.5 and 5 cubic-yard bins are provided at the discretion of the hauler. None of the Mountain service rate area haulers have proposed to provide these odd-sized containers, therefore, no rate is proposed in the Mountain service rate area.
- SER Rate is only applicable to residents within the SER Territory (Map Attached). To Calculate the SER Rate, a hauler will need to add current rate to SER overlay. SER Overlay are not subject to CPI Increases.

## EXHIBIT D-1

### SCHEDULE OF MAXIMUM BIN RATES

**Notes (Cont'd.):**

3. The rate to provide Organic Materials Collection and Processing Services shall be 60% of the comparable size and frequency of Solid Waste Collection rates plus the actual cost per ton for transfer and/or Organic Materials Processing. Any Bin service provided to residences (including 1, 2 and 3 cy Bins) will be reported as Commercial service for reporting purposes.
4. All rates will be subject to Consumer Price Index (CPI) increase every July. The CPI will be adjusted by the applicable percentage, which is 65% for Bin Rates. Presented as \$ per month per customer - adjusted for AADS Increase in Tip Fee July 2017.
5. Haulers are required to pay all fees and Surcharges. Existing fees and Surcharges include:
  - a. AB 939 Service Fee equal to three percent (3%) of Rate Revenues for the first and second year and an AB 939 Service Fee equal to four percent (4%) of Rate Revenues for the third and all subsequent years of the Extension Term.
  - b. Hauler shall pay the COUNTY Solid Waste Surcharges, for Solid Waste generated in the COUNTY, which as of the date of execution of this Agreement are currently in the following amounts:
    - Southeast Regional (SER) Surcharge. Three Dollars and Fifty Cents (\$3.50) per-ton closure/post-closure maintenance fee for Solid Waste generated and collected within the Southeast Regional Solid Waste Commission Area as identified in Fresno County Ordinance Code Section 8.20.035; and
    - Solid Waste Management Program Activities (SWMPA) Surcharge. Three Dollars and Forty-One Cents (\$3.41) per-ton surcharge for Solid Waste management program activities (NOTE: this surcharge is incorporated into American Avenue Landfill tipping fee).

**EXHIBIT D-2**

**SCHEDULE OF MAXIMUM SPECIAL SERVICE RATES**

**SPECIAL SERVICES RATES SUMMARY**

**Notes:** Special Services are various Collection Services that CONTRACTOR is not required to provide under this Agreement, but which CONTRACTOR shall offer to its Customers upon the Customer's request. This Schedule provides the maximum rates that CONTRACTOR may charge for the services specified. These maximum rates are the same as those offered by all other exclusive providers of Collection Services within the Service Rate Area. CONTRACTOR may charge Customers less than these rates. The Notes section of this Schedule provides further clarification of what these rates include. CONTRACTOR and any one or more of its Customers may agree to any reasonable charge for unspecified Special Services for which no specific charge is established on this Schedule.

<b>Service Description</b>	<b>Zone 1</b>	<b>Zone 2a</b>	<b>Zone 2b</b>	<b>Zone 3</b>
<b>Additional Container Pickup (1):</b>				
<b>30-gal. cart</b>	\$6	\$10	\$10	\$25
<b>60-gal. cart</b>	\$10	\$10	\$15	\$30
<b>90-gal. cart</b>	\$10	\$11	\$18	\$35
<b>1 CY bin</b>	\$16	\$20	\$40	\$40
<b>1.5 CY bin</b>	\$20	\$25	\$42	\$45
<b>2 CY bin</b>	\$21	\$25	\$40	\$45
<b>3 CY bin</b>	\$25	\$30	\$50	\$50
<b>4 CY bin</b>	\$40	\$45	\$55	\$55
<b>5 CY bin</b>	\$45	\$50	\$60	\$60
<b>6 CY bin</b>	\$45	\$55	\$65	\$75
<b>300 gal. tub</b>				\$60
<b>Late Set Out Pickup (2):</b>				
<b>30-gal. cart</b>	\$10	\$15	\$15	\$20
<b>60-gal. cart</b>	\$10	\$15	\$15	\$20
<b>90-gal. cart</b>	\$15	\$15	\$18	\$20
<b>1 CY bin</b>	\$20	\$25	\$30	\$30
<b>1.5 CY bin</b>	\$25	\$25	\$30	\$30
<b>2 CY bin</b>	\$25	\$30	\$30	\$30
<b>3 CY bin</b>	\$30	\$35	\$35	\$35
<b>4 CY bin</b>	\$35	\$40	\$40	\$40
<b>5 CY bin</b>	\$50	\$60	\$60	\$60
<b>6 CY bin</b>	\$55	\$70	\$75	\$75
<b>300 gal. tub</b>				\$60
<b>Extra Day Pickup (3):</b>				
<b>30-gal. cart</b>	\$10	\$10	\$10	\$25
<b>60-gal. cart</b>	\$15	\$15	\$15	\$30
<b>90-gal. cart</b>	\$18	\$25	\$25	\$35
<b>1 CY bin</b>	\$32	\$35	\$40	\$55
<b>1.5 CY bin</b>	\$37	\$40	\$45	\$60

Service Description	Zone 1	Zone 2a	Zone 2b	Zone 3
<b>Extra Day Pickup (Cont'd.) (3):</b>				
2 CY bin	\$45	\$50	\$55	\$65
3 CY bin	\$51	\$60	\$70	\$75
4 CY bin	\$55	\$66	\$70	\$75
5 CY bin	\$70	\$80	\$90	\$103
6 CY bin	\$70	\$83	\$95	\$120
300 gal. tub				\$100
<b>Non-Standard Container Sizes</b>				
1.5 CY bin (Serviced once wk, per container per month)	\$80	\$91	\$91	\$91
5 CY bin (Serviced once wk, per container per mo.)	\$149	\$201	\$217	\$217
300 gal. tub				\$90
Side yard charge per household per mo. (4)	\$10	\$10	\$15	\$15
On-call bulky items pickup per CY per pickup	\$25	\$25	\$35	\$35
Maximum access charge per container per mo. (5)	\$30	\$30	\$30	\$30
Key or code charges per container per mo. (6)	\$15	\$15	\$15	\$15
Enclosure charges per container per mo. (7)	\$15	\$15	\$15	\$15
Gate service charges per container per mo. (8)	\$15	\$15	\$15	\$15
Drive-in charge per account per mo. 0.25 mile or under (9)	\$15	\$15	\$15	\$15
Cart switch, per switch (10)	\$30	\$30	\$30	\$30
Bin switch, per switch (10)	\$55	\$60	\$60	\$60
Replacement of damaged carts, per cart flat fee (11)	\$60	\$60	\$60	\$75
Locking bin charge, per mo. for wk collection	\$25	\$25	\$25	\$25
Enclosure clean up, per event	\$20	\$20	\$20	\$20
Cart cleaning, per container	\$25	\$25	\$25	\$25
Bin cleaning, per container	\$25	\$25	\$25	\$25
Overfilled cart, per event	\$10	\$10	\$25	\$25
Overfilled bin, per event	\$20	\$20	\$25	\$25
Cart customer extra recycling, per 90 gal. container per mo. (12)	\$5	\$5	\$11	\$25
Bin customer extra recycling, per CY per mo. (12)	\$20	\$20	\$20	\$20
Green waste collection (in Zone 2b)			NS	
Resume/Reactivation Fee per event	\$25	\$25	\$25	\$25
Late Fee per mo.	\$3	\$3	\$3	\$3

Service Description	Zone 1	Zone 2a	Zone 2b	Zone 3
Interest on Unpaid Late Balance, % or min./mo.	1.5% or \$3/mo.	1.5% or \$3/mo.	1.5% or \$3/mo.	1.5% or \$3/mo.
Elevation surcharge above 4,000 foot elevation (13)				up to 40% surcharge
Off-road surcharge (14)				up to 15% Surcharge

**Legend:**

wk. = week; mo. = month; gal. = gallon; CY = cubic yard;

N/A = blacked out; min. = minimum payment;

NS = Not submitted (Contractor may negotiate price directly with Customer)

**Notes for Special Services:**

- (1) "Additional Container Pickup" charge is allowed when the Customer requires the CONTRACTOR to empty containers above and beyond the number of containers that the Customer subscribes to. CONTRACTORS may not charge the same rate (as the first container) to empty additional containers if they are already on site at the service location (home or business location).
- 2) "Late Set Out Pickup" charge is allowed when the Customer requires the CONTRACTOR to return to the service location to empty a container on same day as regular service due to late set out of the container by the Customer, if hauler is still in the area.
- (3) "Extra Day Pickup" charge is allowed when the Customer requires the CONTRACTOR to empty the container on a different day other than the regular service day.
- (4) "Side yard charge" is allowed when the Customer requires the driver to empty a container that is more than 10 feet from where the collection vehicle has access to the service location (such as a curb or enclosure at the home or business).
- (5) Charges for key, enclosure, gate, long walk, and drive-in service charges are not cumulative pickup charges. The CONTRACTOR's rates for a Customer requiring one or more of the five special services will be a maximum rate (as specified in the table) per pickup for any combination of the following five service categories.
- (6) "Key or code charge" is allowed when the Customer requires the driver to carry a key and unlock a lock to empty the container. Key or code charges do not apply if a Customer's lock is left in the unlocked position.
- (7) "Enclosure charge" is allowed when the Customer requires that the driver remove a container from an enclosure for to empty it and replace it when emptied.
- (8) "Gate service charge" is allowed when the Customer requires the driver to open a closed or locked gate in order to empty a container.
- (9) "Drive-in charge" is allowed when the Customer requires the CONTRACTOR to drive up long driveways (in excess of 40 feet up to 0.25 mile) to empty a container. Over 0.25 mile negotiated between customer and hauler.

(10) "Cart or bin switch" charges are allowed when a Customer requests a change in the size of a cart or bin more than once per year per container. All Customers may switch the size of any cart or bin once per year without charge.

(11) "Replacement of damaged" a charge is allowed when a Customer requires the replacement of a cart that was accidentally damaged by Customer or due to Customer negligence. The replacement charge shall be at a flat rate for a cart of any size (30, 60 or 90 gallons) due to Customer negligence. CONTRACTOR shall replace any cart which is stolen or becomes unusable by reason of normal wear and tear or damage by Collection operations at no charge for the replacement during any twelve (12)-month period.

(12) All Bin Customers are eligible for recycling collection services equal to the amount of solid waste collection services that they subscribe to at no extra charge. All Cart Customers are eligible for up to 90 gallons of recycling collection service at no extra charge regardless of their level of solid waste collection service (30, 60 or 90 gallons). CONTRACTOR may charge for recycling collection services in excess of the equivalent amount of solid waste collection services that a customer subscribes to (e.g., if the customer subscribes to 1 CY of solid waste collection and would like 2 CY of recycling collection, the Customer would receive 1 CY yard of recycling collection at no extra charge and the CONTRACTOR may charge for 1 CY of recycling collection).

(13) Elevation Surcharge for Customers above 4,000 foot elevation.

(14) Off road surcharge for Customers on roads that are not improved, roads that are not maintained (such as dirt, gravel and/or paved, non-County roads), and/or easement roads.

(15) Haulers are required to pay all fees and Surcharges. Existing fees and Surcharges include:

- a. AB 939 Service Fee equal to three percent (3%) of Rate Revenues for the first and second year and an AB 939 Service Fee equal to four percent (4%) of Rate Revenues for the third and all subsequent years of the Extension Term.
- b. Hauler shall pay the COUNTY Solid Waste Surcharges, for Solid Waste generated in the COUNTY, which as of the date of execution of this Agreement are currently in the following amounts:
  - Southeast Regional (SER) Surcharge. Three Dollars and Fifty Cents (\$3.50) per-ton closure/post-closure maintenance fee for Solid Waste generated and collected within the Southeast Regional Solid Waste Commission Area as identified in Fresno County Ordinance Code Section 8.20.035; and
  - Solid Waste Management Program Activities (SWMPA) Surcharge. Three Dollars and Forty-One Cents (\$3.41) per-ton surcharge for Solid Waste management program activities (NOTE: this surcharge is incorporated into American Avenue Landfill tipping fee).

As provided in Section 7.2.C, each rate will be adjusted annually by 75 percent (75%) of the CPI for Cart Rates, 65 percent (65%) of the CPI for Bin Rates and 65 percent (65%) of the CPI for all other Special Service rates.

**EXHIBIT D-3**

**SCHEDULE OF MAXIMUM COMMUNITY CLEAN-UP RATES**

<b>Once-Per-Year Drop-Off</b>	
<b>Service Rate Area</b>	<b>Monthly Special Service Fee</b> (\$ per month, per customer)
Zone 1	\$1.67
Zone 2a	\$1.76
Zone 2b	\$1.76

**Zone 3**

**ON-CALL RENT-A-BIN RATES**

<b>Rent-a-Bin Size</b>	<b>Cost per Pick-up</b>
1 cubic yard	\$100.00
2 cubic yard	\$120.00
3 cubic yard	\$140.00
4 cubic yard	\$160.00
6 cubic yard	\$180.00

**Notes for Community Cleanups:**

- (1) This Schedule provides the maximum rates that Contractor may charge monthly for annual community drop-off events for all residents in Zones 1, 2a and 2b in the first fiscal year after all funds in the County coupon program are exhausted from the American Avenue Trust Fund account, as referenced in Exhibit A.9.
- (2) This Schedule includes an on-call bulky item rate for residents in Zone 3, as CONTRACTOR does not provide drop-off events in that area.
- (3) CONTRACTOR and any one or more of its Customers may agree to any reasonable charge for additional materials beyond the maximum amount of materials that each Cart Customer may place for Collection for each year which is two (2) cubic yards and one (1) Bulky Item, which may be a Freon-containing appliance.

**EXHIBIT D-3**

**SCHEDULE OF MAXIMUM COMMUNITY CLEAN-UP RATES**

**Notes for Community Cleanups (Cont'd.):**

- (4) Haulers are required to pay all fees and Surcharges. Existing fees and Surcharges include:
- a. AB 939 Service Fee equal to three percent (3%) of Rate Revenues for the first and second year and an AB 939 Service Fee equal to four percent (4%) of Rate Revenues for the third and all subsequent years of the Extension Term.
  - b. Hauler shall pay the COUNTY Solid Waste Surcharges, for Solid Waste generated in the COUNTY, which as of the date of execution of this Agreement are currently in the following amounts:
    - Southeast Regional (SER) Surcharge. Three Dollars and Fifty Cents (\$3.50) per-ton closure/post-closure maintenance fee for Solid Waste generated and collected within the Southeast Regional Solid Waste Commission Area as identified in Fresno County Ordinance Code Section 8.20.035; and
    - Solid Waste Management Program Activities (SWMPA) Surcharge. Three Dollars and Forty-One Cents (\$3.41) per-ton surcharge for Solid Waste management program activities (NOTE: this surcharge is incorporated into American Avenue Landfill tipping fee).
- (5) As provided in Section 7.2.C, each Community Cleanup Fee will be adjusted annually by 65 percent (65%) of the CPI applied to the above rates, beginning the second year after the County coupon program is exhausted.

## EXHIBIT E

### LIQUIDATED DAMAGES

In the event that CONTRACTOR fails to perform fully any of CONTRACTOR's obligations under this Agreement (other than "Events of Default" stipulated in Article 10) the CONTRACTOR shall be in breach ("Event of Breach") of this Agreement. Upon delivery of written notice to CONTRACTOR and as provided in Article 10, the COUNTY may impose the following Liquidated Damages upon CONTRACTOR, in addition to any other available remedies COUNTY may have. CONTRACTOR shall include the Liquidated Damages due to COUNTY in the Quarterly Remittance to the COUNTY.

- (1) Excessive Complaints—When CONTRACTOR (or COUNTY Representative through the CONTRACTOR's Customer logs) receives complaints from more than five percent (5%) of its Customer base within a six (6)-month period, CONTRACTOR will be assessed twenty-five dollars (\$25.00) each twenty-four (24) hours until each complaint is addressed. "Complaints" shall mean substantive and credible Customer notifications to the hauler or to COUNTY Representative 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). Multiple complaints by one Customer will count only as one (1) complaint for the purposes of this provision. The six (6)- month period will commence on **January 1, and July 1, respectively**, of each year. The term "addressed" will be based on COUNTY Representative's determination whether Customer's complaint has been resolved.

- (2) Submittal of Fees and Filing Required Reports—The AB 939 Service Fee will be remitted to COUNTY and included with CONTRACTOR's quarterly report, which will be due forty-five (45) days after the end of the respective quarter. If payment is not made at that time, a letter will be sent to CONTRACTOR requesting payment within fifteen (15) business days. If the AB 939 Service Fee is not remitted to COUNTY at that time, a one-time, ten percent (10%) late penalty fee will be assessed.
- (3) Customer Charges—If CONTRACTOR overcharges a Customer the approved Rate, then the charge applied to CONTRACTOR will be twenty-five dollars (\$25.00) per occurrence where the number of Customers overcharged in that single Customer billing period is less than twenty five (25), and fifty dollars (\$50.00) per occurrence where the number of Customers overcharged is twenty five (25) or more.

Provision of Records—If CONTRACTOR fails to provide records to COUNTY within two (2) weeks of receipt of written notice, the charge will be five hundred dollars (\$500.00). If CONTRACTOR fails to submit the requested records after the specified period, then the CONTRACTOR will be assessed fifty dollars (\$50.00) each twenty-four (24) hours until the requested records are submitted

**EXHIBIT F**

**QUARTERLY REMITTANCE EXAMPLE AND REVENUE REPORTING  
FORM**

Quarterly Remittance Example pursuant to Article 6.3E and for illustrative purposes only:

1. Rate Revenues for the quarter equals \$100,000.00 which is the sum of \$90,000.00 from current quarterly billings and \$10,000.00 from past due accounts.
  
2. AB 939 Service Fee=0.03 x Rate Revenues (Actually collected for each month of the preceding quarter)  

$$=0.03 \times \$100,000.00$$

$$=\$3,000.00$$
  
3. Liquidated Damages due for the quarter are \$100.00
  
4. COUNTY Solid Waste surcharges due for the quarter are \$516.00 (100 tons at \$3.50 per ton and 100 tons at \$3.41 per ton for Solid Waste generated and Collected in the County and Disposed in a facility outside of the County)
  
5. Quarterly Remittance = \$1,000.00 + \$100.00 + \$516.00 = \$1,616.00

**Quarterly Revenue and Fee Reporting Form for Fresno County**

Each quarter provide the following information on the COUNTY's provided invoice form, along with all relevant and requested supporting data and quarterly remittance, by each quarter's due date. The quarterly remittance is due to the COUNTY by the 45<sup>th</sup> day following the end of the preceding quarter.

Month (of Quarter)	Tons	Rate	Solid Waste Fee	SER Tons	SER Rate	SER Fee
Month 1						
Month 2						
Month 3						
<b>Quarter Total</b>						

**EXHIBIT G**  
**CPI ADJUSTMENT**

Pursuant to Article 7.2C and for **illustrative purposes only**

New Rate=current Rate x [((current CPI/12 month previous CPI)-1]  
x CPI adjustment factor)+1]

**Example:**

Based on following information:

Current CPI is 123

12 month previous CPI is 118.8

65% or 0.65 CPI adjustment  
factor for Bins 75% or 0.75 CPI  
adjustment factor for Carts  
\$100 current Bin Rate per month

\$21.19 current Cart Rate per month

**Step 1:**

$123(\text{Current CPI}) / 118.8 (12 \text{ month previous CPI}) - 1 = 0.035(\text{Change in CPI})$

**Step 2:**

$0.65(\text{CPI adjustment factor for Bins}) \times 0.035(\text{Change in CPI}) = 0.023(\text{Rate adjustment amount})$

$0.75(\text{CPI adjustment factor for Carts}) \times 0.035(\text{Change in CPI}) = 0.026(\text{Rate adjustment amount})$

**Step 3:**

$1 + 0.023(\text{Rate adjustment amount}) \times \$100(\text{current Bin Rate per month}) = \$102.30(\text{new Rate})$   
 $1 + 0.026(\text{Rate adjustment amount}) \times \$21.19(\text{current Cart Rate per month}) = \$21.74(\text{new Rate}).$

## EXHIBIT H

### ADJUSTMENT OF DISPOSAL TIPPING FEE

Pursuant to Article 7.2E, and for illustrative purposes only:

Tipping fee component shall be calculated as follows:

Adjusted Disposal Tipping Fee Component equals:

$(\text{Current Disposal Tipping Fee Component}) \times [(\text{New Disposal Tipping Fee/Old Disposal Tipping Fee}) / (1 - \text{AB 939 Service Fee Percentage})]$

Calculation performed in following steps:

**Step 1:** Tipping fee adjustment:

$\text{Tipping fee adjustment} = \text{New Disposal tipping fee} / \text{Old Disposal tipping fee}$

**Step 2:** AB 939 Service Fee adjustment is calculated by subtracting the AB 939 Service Fee percentage from 1.

$\text{AB 939 Service Fee adjustment} = 1.0 - \text{AB 939 Service Fee percentage}$

**Step 3:** Total tipping fee adjustment is calculated by dividing tipping fee adjustment by the AB 939 Service Fee adjustment.

$\text{Total tipping fee adjustment} = \text{tipping fee adjustment (step 1)} / \text{AB 939 Service Fee adjustment (step 2)}$

**Step 4:** Adjusted Disposal Tipping fee Component is calculated by multiplying the current Disposal Tipping Fee Component by the total tipping fee adjustment.

$\text{Adjusted Disposal Tipping Fee Component} = \text{current Disposal Tipping Fee Component} \times \text{Total Tipping Fee adjustment (step 3)}$

The following sample calculation is based on the information listed below.

The Rate for Bin Service, three (3) cubic yards collected once per month is \$100.00 per month.

The current tipping fee component for this Rate is \$20.00.

The COUNTY Solid Waste disposal tipping fee increases from \$30.00 to \$32.00 per ton.

The AB 939 Service Fee is 3% of Rate Revenues collected quarterly and remitted for the preceding quarter.

## EXHIBIT H (CONTINUED)

### ADJUSTMENT OF DISPOSAL TIPPING FEE

Adjusted Disposal Tipping Fee Component is calculated using the following steps.

**Step 1:**

$$\$32.00 \text{ (New Disposal Tipping Fee)} / \$30.00 \text{ (Old Disposal Tipping Fee)} = 1.067$$

**Step 2:**

$$1.00 - 0.03 \text{ (AB 939 Service Fee Percentage)} = 0.97$$

**Step 3:**

$$1.067 \text{ (tipping fee adjustment)} / 0.97 \text{ (AS 939 Service Fee adjustment)} = 1.099$$

**Step 4:**

$$\$20.00 \text{ (current Disposal Tipping Fee Component)} \times 1.099 \text{ (total tipping fee adjustment)} = \$21.99$$

This calculation expressed as a mathematical equation is as follows:

$$= [(\$20.00 \times [\$32.00 / \$30.00]) / (1 - 0.03)] = \$21.99$$

## EXHIBIT I

### CALCULATION FOR SER FEE COMPONENT OF RATES

#### Sample of Cart Calculation Methodology

1. Divide SER Fee by 2,000 pounds per ton =  $(\$3.50 \text{ per ton}) / 2,000 \text{ pounds per ton} = \$0.00175 \text{ per pound}$
2. Number of weeks per month = 4.33
3. Multiply number of gallons times 0.742669849 pounds of solid waste per gallon times number of weeks per month =  $35 \text{ gallons} \times 0.742669849 \times 4.33 = 112.5516156 \text{ pounds of solid waste per month}$
4. Multiply pounds of solid waste per month times SER dollars per pound to determine SER \$ per month component of overall Rate =  $112.5516156 \text{ pounds} \times \$0.00175 \text{ per pound} = \$0.20 \text{ SER component of Rate per month for 35 gallons.}$
5. Do similar calculations for other Cart sizes.

#### Sample of Bin Calculation Methodology

1. Divide SER Fee by 2,000 pounds per ton =  $(\$3.50 \text{ per ton}) / 2,000 \text{ pounds per ton} = \$0.00175 \text{ per pound}$
2. Number of weeks per month = 4.33
3. Multiply number of cubic yards times 150 pounds of solid waste per cubic yard times number of weeks per month =  $2 \text{ cubic yards} \times 150 \times 4.33 = 1299 \text{ pounds of solid waste per month}$
4. Multiply pounds of solid waste per month times SER dollars per pound to determine SER \$ per month component of overall Rate =  $1299 \text{ pounds} \times \$0.00175 \text{ per pound} = \$0.20 \text{ SER component of Rate per month for 2 cubic yards}$
5. Do similar calculations for other Bin Cart sizes.

Note: The numbers in the charts below may vary slightly depending on the number of significant digits used in calculations.

#### Volume to Weight Conversion Factors <sup>(1)</sup>

150	pounds of solid waste per cubic yard
201.974	gallons per cubic yard
0.742669849	pounds of solid waste per gallon

#### Carts

\$3.50	dollars per ton
\$0.00175	dollars per pound

#### Calculation

Gallons	35	64	96
Pounds of solid waste per month	112.5516156	205.8087	308.713003
Disposal fee portion of rate/month	\$0.20	\$0.36	\$0.54

**EXHIBIT I (CONTINUED)**

**CALCULATION FOR SER FEE COMPONENT OF RATES**

<b>Bins</b>							
Calculation							
Cubic yards/1 x per week	1	1.5	2	3	4	5	6
Pounds of solid waste per month	650	975	1,300	1,950	2,600	3,250	3,900
Disposal fee portion of rate	\$1.14	\$1.71	\$2.28	\$3.41	\$4.55	\$5.69	\$6.83
Cubic yards/2 x per week	1	1.5	2	3	4	5	6
Pounds of solid waste per month	1,300	1,950	2,600	3,900	5,200	6,500	7,800
Disposal fee portion of rate	\$2.28	\$3.41	\$4.55	\$6.83	\$9.10	\$11.38	\$13.65
Cubic yards/3 x per week	1	1.5	2	3	4	5	6
Pounds of solid waste per month	1,950	2,925	3,900	5,850	7,800	9,750	11,700
Disposal fee portion of rate	\$3.41	\$5.12	\$6.83	\$10.24	\$13.65	\$17.06	\$20.48
Cubic yards/4 x per week	1	1.5	2	3	4	5	6
Pounds of solid waste per month	2,600	3,900	5,200	7,800	10,400	13,000	15,600
Disposal fee portion of rate	\$4.55	\$6.83	\$9.10	\$13.65	\$18.20	\$22.75	\$27.30
Cubic yards/5 x per week	1	1.5	2	3	4	5	6
Pounds of solid waste per month	3,250	4,875	6,500	9,750	13,000	16,250	19,500
Disposal fee portion of rate	\$5.69	\$8.53	\$11.38	\$17.06	\$22.75	\$28.44	\$34.13
Cubic yards/6 x per week	1	1.5	2	3	4	5	6
Pounds of solid waste per month	3,900	5,850	7,800	11,700	15,600	19,500	23,400
Disposal fee portion of rate	\$6.83	\$10.24	\$13.65	\$20.48	\$27.30	\$34.13	\$41.00

**EXHIBIT J****AB 341 REPORTS****2016 - 2019 Reporting for the Annual Electronic Report (EAR)****Fresno County AB 341 Mandatory Commercial Recycling (MCR)**

Each year provide the following **AB 341** Monitoring Data for the Electronic Annual Report (EAR).

<b>Businesses</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Total Number Subject to AB 341				
Total Number Not Recycling				
What follow-up did the COUNTY do annually for those not recycling?				
<b>Each year provide the following to COUNTY staff either electronically or hard copy:</b>				
1. A list of businesses and multifamily dwellings with amount of waste generated [by bin/cart size/collection frequency] and those NOT recycling				
2. Education and Outreach provided by COUNTY and provided by each hauler <ul style="list-style-type: none"> <li>• Update on websites and other electronic media</li> <li>• Copies of print material mailed/distributed including letters, flyers, etc.</li> <li>• Place and date of direct contact activity such as site visits, presentations, events, etc.</li> </ul>				
1. Monitoring activities provided by COUNTY and provided by each hauler <ul style="list-style-type: none"> <li>• What was done to inform those not recycling about the law and how to recycle? If the jurisdiction has an enforcement program for the Mandatory Commercial Recycling program then please provide information about what enforcement was conducted.</li> <li>• If applicable, please describe any challenges encountered in implementing monitoring related to the jurisdiction's commercial recycling program. If not applicable, enter N/A.</li> <li>• Provide the amount of organic material that is being diverted by covered businesses/multifamily complexes. If this tonnage information is not available, explain why</li> </ul>				
2. Other Monitoring Activities <ul style="list-style-type: none"> <li>• Audits</li> <li>• Waste assessments</li> <li>• Tagging (# of tags and outcome)</li> <li>• Other</li> </ul>				
3. Enforcement activities provided by COUNTY				

## EXHIBIT K

## AB 1826 REPORTS

## AB 1826 Mandatory Commercial Organics Recycling (MORe)

Each year provide the following AB 1826 Monitoring Data for the Electronic Annual Report (EAR).				
Businesses	2016	2017	2018	2019
Total Number Subject to AB 1826				
Total Number Not Recycling Organics				
What follow-up did the COUNTY do annually for those not recycling organics?				
Multifamily				
	2016	2017	2018	2019
* Total Number Subject to AB 1826 (if they have Green Waste, landscaping pruning, non-hazardous wood waste)				
Total Number Not Recycling Organics				
<i>* A jurisdiction may also implement food waste collection</i>				
Each year provide the following to COUNTY staff either electronically or hard copy:				
1. A list of businesses and multifamily dwellings with amount of waste generated [by bin/cart size/collection frequency] and those NOT recycling organics				
2. Education and Outreach provided by COUNTY and provided by each hauler <ul style="list-style-type: none"> <li>• Update on websites and other electronic media</li> <li>• Copies of print material mailed/distributed including letters, flyers, etc.</li> <li>• Place and date of direct contact activity such as site visits, presentations, events, etc.</li> </ul>				
3. Monitoring activities provided by COUNTY and provided by each hauler <ul style="list-style-type: none"> <li>• What was done to inform those not recycling about the law and how to recycle? If the jurisdiction has an enforcement program for the Mandatory Commercial Organics Recycling program then please provide information about what enforcement was conducted.</li> <li>• If applicable, please describe any challenges encountered in implementing monitoring related to the jurisdiction's commercial organics recycling program. If not applicable, enter N/A.</li> <li>• If available, provide the amount of organic material that is being diverted by covered businesses/multifamily complexes: ____ Tons</li> </ul>				
4. Other Monitoring Activities <ul style="list-style-type: none"> <li>• Audits</li> <li>• Waste assessments</li> <li>• Tagging (# of tags and outcome)</li> <li>• Other</li> </ul>				
5. Enforcement activities provided by COUNTY				