

NON-EXCLUSIVE WASTE HAULERS AGREEMENT

This Non-Exclusive Waste Haulers Agreement is made and entered into this ____ day of _____, 20__ (“Effective Date”), by and between the County of Fresno (“the County”) and _____ (“Contractor”). The County and Contractor may be referred to herein individually as “Party” and collectively as “the Parties”.

RECITALS

WHEREAS, it has been determined by the County’s Board of Supervisors, pursuant to the broad authority granted to local governmental agencies under Public Resources Code Section 40059, that the Collection and Disposal of Solid Waste in the unincorporated area of the County of Fresno is to be provided by private waste haulers, subject to such regulations as the County may impose; and

WHEREAS, Fresno County Ordinance Code Chapter 8.21 established the Exclusive Service Area Program (“ESAP”), pursuant to which the County has entered into contracts that establish Exclusive Service Areas that are assigned thereunder to certain specifically designated private waste haulers (“ESAP Haulers”) to provide weekly collection services as provided therein. Specifically, each ESAP Hauler provides, under its separate Agreement and within its designated Exclusive Service Area, the collection of Solid Waste placed in containers with a volume of up to ten (10) cubic yards, by residential and commercial customers for disposal or recycling as appropriate; and

WHEREAS, Fresno County Ordinance Code Chapter 8.24 establishes the County’s program for regulation of those Solid Waste Handling Services that are not governed by the provisions of Ordinance Code Chapter 8.21 and the exclusive contracts with the ESAP Haulers. Stated briefly, any transaction involving the Collection, for compensation, of Solid Waste amounting to ten (10) cubic yards or more is not governed by the provisions of Chapter 8.21 and shall remain subject to open market competition under the provisions of Chapter 8.24; and

WHEREAS, the provisions of Ordinance Code Chapter 8.24 are intended to apply to persons and entities that are engaged in the Collection, transportation, processing, recycling, composting or Disposal of Solid Waste, for compensation, with respect to transactions involving their Collection, for compensation,

1 of Solid Waste equal to or exceeding ten (10) cubic yards from any residential or commercial Customer;
2 and

3 WHEREAS, the regulatory program established by Ordinance Code Chapter 8.24 provides for the
4 issuance to each successful applicant of an appropriate waste hauler's permit and execution of a Non-
5 Exclusive Waste Hauler Agreement (NEWHA) such as this one, that binds the contracting waste hauler to
6 certain requirements for the benefit of the general public; and

7 WHEREAS, ESAP Haulers are fully and equally entitled to participate in the non-exclusive market
8 open to NEWHA Haulers, as transactions involving the collection of Solid Waste amounting to ten (10)
9 cubic yards or more is not an exclusive market and is intended to and shall remain subject to open
10 competition. However, non-ESAP Haulers may not provide collection services that are governed by
11 Chapter 8.21 and the Agreements between the County and ESAP Haulers, as each ESAP Hauler is
12 entitled to provide Solid Waste Handling Services for the collection of Solid Waste placed in containers with
13 a volume of up to ten (10) cubic yards on an exclusive basis within its designated Exclusive Service Area;
14 and

15 WHEREAS, the purpose of this Agreement is to provide, by means of Non-Exclusive Waste Hauler
16 Agreements such as this one, for the Collection, transportation, processing, recycling, composting and
17 Disposal of Solid Waste that is not governed by the provisions of Ordinance Code Chapter 8.21 and the
18 exclusive contracts with the ESAP Haulers. Contractor, as a NEWHA Hauler hereunder, shall comply with
19 all provisions of this Agreement in providing Solid Waste Handling Services, as that term is defined herein
20 and in Fresno County Ordinance Code Chapter 8.24, for any and each transaction involving the Collection
21 by Contractor, for compensation, of Solid Waste equal to or exceeding ten (10) cubic yards from any
22 residential or commercial Customer.

23 NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby
24 acknowledged, the Parties hereby agree as follows:

25 I. DEFINITIONS

26 For purposes of this Agreement, unless a different meaning clearly is required by the context, the following
27 words and phrases shall be defined as set forth in this Article I (and additional definitions relevant to this
28 Agreement are set forth in Chapter 8.24 of the Ordinance Code).

1 A. "AB 341" means the California legislation (Stats. 2006, Ch. 476), as it may be amended from time to
2 time, that, among other things, added Chapter 12.8 (commencing with Section 42649) to Part 3 of Division
3 30 of the Public Resources Code, imposing mandatory commercial recycling and requirements that each
4 jurisdiction implement an outreach and education program and monitor compliance with the mandatory
5 commercial recycling requirements.

6 B. "AB 1826" means the California legislation (Stats. 2014, Ch. 727), as it may be amended from time
7 to time, that, among other things, added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of
8 Division 30 of the Public Resources Code, imposing requirements that each jurisdiction implement an
9 organic waste recycling program and provide for education, outreach and monitoring of businesses subject
10 to the requirements.

11 C. "Collection" (and "Collect," "Collected," and "Collecting") means the pickup and removal by
12 Contractor from its Customers' premises of Solid Waste, or other material and transportation of such
13 material to a Processing Site or Solid Waste Facility as appropriate and consistent with Contractor's
14 obligations under the Non-Exclusive Waste Hauler Agreement.

15 D. "Construction and Demolition Debris" means the debris from used construction materials, dredging,
16 grubbing, and rubble resulting from constructing, remodeling, repair, razing, renovation, demolition,
17 excavation, or construction clean-up activities at residential, commercial, or governmental buildings, and
18 any other structure or pavement.

19 E. "Container(s)" means roll-off boxes, compactors, trailers, or similar containers used to provide Solid
20 Waste Handling Services. All Containers shall be clearly labeled with the company name and phone
21 number on a minimum of two sides with a minimum font size of four inches. This definition does not
22 include carts or bins as defined in Chapter 8.21 and utilized as part of delivery of services under an ESAP
23 Agreement.

24 F. "County Representative" means the Director of the Department of Public Works and Planning, or
25 his/her designee, who may be a County official or an agent of County specifically designated to serve as
26 the County Representative and thereby authorized by Chapter 8.24 to administer the program and enforce
27 the terms of this Agreement on County's behalf.

28 G. "Customer" means the person or entities receiving Solid Waste Handling Services pursuant to this

1 Non-Exclusive Waste Hauler Agreement.

2 H. "Discarded Material" means Solid Waste, Recyclable Materials, and Organic Materials placed by a
3 Generator in a Collection Container and/or at a location that is designated for Collection.

4 I. "Disposal," "Disposing," "Dispose," or "Disposed" means the final disposition, at a Solid Waste
5 Facility, of Solid Waste Collected by Contractor.

6 J. "Diversion" or "Diverted" means activities that reduce or eliminate the amount of Solid Waste from
7 Solid Waste Disposal including, but not limited to, recycling and composting.

8 K. "ESAP Hauler" means a Solid Waste Enterprise engaged in commercial hauling of Solid Waste in
9 the unincorporated area of the County governed by the Exclusive Service Area Program provisions of
10 Chapter 8.21. Only an ESAP Hauler can be both an ESAP Hauler and a NEWHA Hauler.

11 L. "Exclusive Services Area Program" or "ESAP" means the program established by the enactment of
12 Chapter 8.21, including the contracts described therein ("ESAP Agreements") that establish the Exclusive
13 Service Areas that are assigned thereunder to designated private waste haulers ("ESAP Haulers"), to
14 provide weekly collection services as provided therein.

15 M. "Excluded Waste" means any of the following:

16 (i) Hazardous Waste,

17 (ii) Medical and Infectious Waste

18 (iii) Volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material,

19 (iv) Waste that Contractor reasonably believes would, as a result of or upon Disposal, be a
20 violation of local, State or Federal law, regulation or ordinance, including land use
21 restrictions or conditions,

22 (v) Waste that in Contractor's reasonable opinion would present a significant risk to human
23 health or the environment, cause a nuisance or otherwise create or expose Contractor or
24 County to potential liability, and

25 (vi) Special Waste.

26 N. "Non-Exclusive Waste Hauler(s)" or "NEWHA Hauler" means a person or entity authorized to
27 engage in commercial hauling of Solid Waste in the unincorporated area of the County that is not governed
28 by the Exclusive Service Area Program provisions of Chapter 8.21. Only an ESAP Hauler can be both an

1 ESAP Hauler and a NEWHA Hauler.

2 O. "Non-Exclusive Waste Hauler Agreement" or "NEWHA" means the agreement between the County
3 and any NEWHA Hauler that is a prerequisite to the authorized provision of the Solid Waste Handling
4 Services as specified therein, including all exhibits and future amendments thereto.

5 P. "Non-Exclusive Waste Hauler Agreement Permit," or "NEWHA Permit," or "Permit" means the
6 permit required to engage in authorized commercial hauling of Solid Waste in the unincorporated area of
7 the County that is not governed by the Exclusive Service Area Program provisions of Chapter 8.21.

8 Q. "Organic Materials" or "Compostable Materials" means Discarded Materials from the Customer
9 intended for and capable of being composted, digested or otherwise processed (such as food scraps, yard
10 trimmings or compostable paper), and that are separated, set aside, handled, packaged, offered, or
11 otherwise delivered for collection by a Customer in a manner different from Solid Waste. Organic Materials
12 shall not include any Excluded Waste.

13 R. "Quarterly Remittance(s)" means the quarterly payment made to the County by each NEWHA
14 Hauler of Service Fees and County Solid Waste Surcharges, as more thoroughly provided in Article VI of
15 this Agreement.

16 S. "Recyclable Materials" or "Recyclables" means Discarded Materials from the Customer intended for
17 and capable of being recycled, and that are separated, set aside, handled, packaged, offered, or otherwise
18 delivered for collection by a Customer in a manner different from Solid Waste. Recyclable Materials shall
19 not include any Excluded Waste.

20 T. "Residual" means the non-recyclable, non-compostable materials left over after processing
21 residual waste or source-separated Recyclables or Organics. This material is typically disposed in a
22 landfill.

23 U. "Solid Waste" means Solid Waste as defined in California Public Resources Code, Division 30, Part
24 1, Chapter 2 (particularly Section 40191) and regulations promulgated thereunder, and without limitation
25 includes the following: (1) Solid Waste (2) Bulky Items; (3) vehicle parts as defined in California Code of
26 Regulations, Title 23, Division 3, Chapter 15, Section 2520(d)(3) and Section 2523(c); and (4) electronic
27 materials classified as universal wastes pursuant to CCR Title 14, Section 66260.22, et seq. Excluded from
28 the definition of Solid Waste are: Excluded Waste, Recyclable Materials kept separate from Solid Waste

for the purpose of Recycling, Organic Materials, and Construction and Demolition Debris.

V. "Solid Waste Enterprise" means any individual, partnership, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing Solid Waste Handling Services.

W. "Solid Waste Facility" includes a solid waste transfer or processing station, a composting facility or organics processing facility, a gasification facility, a transformation facility, an Engineered Municipal Solid Waste conversion facility, or a disposal facility as consistent with California Public Resources Code §40194.

X. "Solid Waste Handling Services" means the removal of Solid Waste and placement in a Collection Vehicle for transport, storage, or processing of Solid Waste for residential, commercial, institutional, or industrial users or Customers.

Y. "Source Separated" means the segregation, by the Generator, of materials designated for separate Collection for some form of recycling, processing, composting, recovery, or reuse.

Z. "Special Waste" includes any materials that under current or future statute or regulation require the application of special treatment, handling, or Disposal practices beyond those normally required for Solid Waste. "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residual and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residual, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires.

II. SCOPE OF SERVICES AND BASIC REQUIREMENTS

A. Contractor hereby acknowledges its understanding that, in order to maintain its eligibility to provide Solid Waste Handling Services to the extent not governed by Ordinance Code Chapter 8.21 and the contracts with ESAP Haulers, it is required by Ordinance Code Chapter 8.24 that Contractor must apply for and obtain from the County Representative, and at all times maintain in good standing, the appropriate Permit authorizing Contractor's activities as a Non-Exclusive Waste Hauler within the unincorporated area of Fresno County.

1 B. Contractor may be required to make its Collection Vehicles available for inspection by the County
2 Representative or designee, and to pass such inspection, as a condition to the initial issuance of the
3 requisite Permit.

4 C. As provided in Ordinance Code Chapter 8.24, any Solid Waste Enterprise, as that term is defined
5 therein, is required to execute an agreement in form substantially identical to this Agreement, in order to
6 attain eligibility for issuance by the County Representative of the requisite Permit. Contractor hereby
7 acknowledges its understanding that failure by Contractor to comply fully with the requirements of this
8 Agreement may result in suspension or revocation of such Permit, as more thoroughly provided both herein
9 below and in Ordinance Code Chapter 8.24.

10 D. This Agreement, together with issuance to Contractor of the requisite Permit as provided in
11 Sections A and B of this Article II, and Contractor's continued maintenance of the effectiveness of said
12 Permit in good standing, provide authorization to Contractor to provide Solid Waste Handling Services, on a
13 non-exclusive basis within the unincorporated area of the County of Fresno, for compensation remitted to
14 Contractor by its residential and commercial Customers, for any and each transaction involving the
15 Collection from such Customers of Solid Waste equal to or exceeding ten (10) cubic yards.

16 III. MAINTENANCE OF PERMIT AND APPEAL PROCEDURES

17 A. Unless suspended or revoked for the reasons provided in this Article III, the Permit must be
18 renewed by Contractor on or before the third anniversary of its issuance, by written application to the
19 County Representative, the procedure for which may include, but is not necessarily limited to inspection by
20 the County Representative or designee of the Contractor's Collection Vehicles that are used in the
21 performance of the Solid Waste Handling Services authorized to be provided by Contractor hereunder.

22 B. Upon any failure by Contractor to renew the requisite Permit prior to the renewal deadline, the
23 Permit shall expire by its terms at 12:01 a.m. on the next calendar day. Expiration of the Permit shall result
24 in automatic and immediate termination of Contractor's authorization to provide Solid Waste Handling
25 Services thereunder, and shall constitute grounds for termination of this Agreement, upon thirty (30)
26 calendar days' written notice to Contractor of County's intent to terminate this Agreement and Contractor's
27 rights to provide Solid Waste Handling Services pursuant hereto. The Permit may be reinstated at County's
28 discretion, upon written application by Contractor to the County Representative within thirty (30) calendar

1 days following its expiration, together with Contractor's submittal to County of any reports or payments
2 required hereunder from Contractor that are overdue at the time of such reinstatement application.

3 C. Contractor agrees that, during the term of this Agreement, Contractor's Collection Vehicles will be
4 made available for inspection at a site designated by the County Representative, upon five (5) business
5 days advance request, and Contractor hereby acknowledges that the Parties contemplate that such
6 inspections shall take place no less often than annually. Any Collection Vehicle that fails to pass such
7 inspection shall not be utilized by Contractor in providing Solid Waste Handling Services hereunder until the
8 deficiency is cured and such vehicle(s) passes a subsequent inspection by the County Representative or
9 designee.

10 D. Contractor's Permit may be suspended for the following reasons:

11 (1) a significant percentage of its Collection Vehicles fail to pass inspection, or

12 (2) violation of any provision of this Agreement, including but not limited to failure to remit timely any
13 payment or report when due under this Agreement.

14 Contractor shall be given notice, by certified mail, return receipt requested, of any such violation or
15 deficiency, or any delinquency in payment, and the date of any scheduled hearing on the proposed
16 suspension or revocation of its Permit. Subject only to the provisions of the immediately following Section
17 III.E., if Contractor fails to cure any delinquency in payment within thirty (30) calendar days following the
18 County's mailing of such notice, then Contractor's Permit shall be suspended, effective on the fifth calendar
19 day following mailing to Contractor of notice of the suspension of its Permit.

20 E. A Contractor will be provided the opportunity for a hearing on the proposed suspension or
21 revocation of its Permit in accordance with Ordinance Code Section 8.24.100, and may appeal any ruling
22 approving the suspension or revocation of its Permit to the Director of the County's Department of Public
23 Works and Planning ("Director"). Such appeal must be in writing and provide a detailed explanation of the
24 basis for such appeal. Such appeal must be delivered, personally or by certified or registered mail to the
25 office of the Director, and such appeal must be delivered within twenty (20) days after the County's mailing
26 of the notice of proposed suspension or revocation, or it shall be rejected as untimely. A hearing on any
27 timely delivered appeal will be scheduled by the Director or his/her designee within a reasonable period of
28 time following receipt thereof, and written notice of the hearing date shall be mailed to Contractor at least

twenty (20) days prior thereto. Failure by Contractor to pursue this appeal procedure shall be deemed a failure by Contractor to exhaust its available administrative remedies, upon which County may rely as an absolute defense to any subsequent claim or legal action initiated by Contractor regarding the revocation of its Permit.

F. Final Revocation of Contractor's Permit shall constitute grounds for immediate termination of this Agreement. Contractor's Permit may be revoked for the following reasons:

(1) due to violation of applicable law or regulation by Contractor, or

(2) if Contractor's Permit remains suspended for more than ninety (90) days following the effective date of the suspension of such Permit under Section III.D.

In the event of the final revocation of a Permit following the Director's denial of an appeal by Contractor, the County Representative shall notify the Contractor within forty-eight (48) hours in writing of the decision and the reasons therefor. Such notification may be made in person or by registered/certified mail. Any notice of final revocation shall include, without limitation, the effective date of revocation of that Contractor's Permit to collect Solid Waste.

G. If County terminates this Agreement for any of the reasons set forth in this Article III, Contractor's obligation to remit payments due hereunder, for Solid Waste collected by Contractor prior to the final termination date, shall survive the termination of this Agreement.

IV. TRANSPORT AND DISPOSAL OF SOLID WASTE

The Parties acknowledge that County is responsible under California law to provide for the collection of Solid Waste within its jurisdictional boundaries and has the authority to control by ordinance the disposition of Solid Waste collected in the unincorporated area of the County. It is agreed between County and Contractor, commencing on the Effective Date and continuing throughout the term of this Agreement, as follows:

A. Flow Control – Delivery of Solid Waste to Designated Solid Waste Facility

Contractor expressly agrees to deliver, to such permitted Solid Waste Facility as may be designated by the County, from and after the date of County's written notification to Contractor of such designation (unless exempted from such requirement pursuant to the immediately following Section IV.B), all of the Solid Waste Collected by Contractor within the unincorporated area of Fresno County pursuant to this Agreement.

1 B. Application for Limited Exemption from Flow Control Requirement

2 Any Contractor may make an application to the County Representative for an exemption from the Flow
3 Control requirement set forth in the immediately preceding Section IV.A.

- 4 1. The application for exemption must provide sufficient justification to support the requested
5 exemption, which may in the County Representative's discretion be granted on the basis of extreme
6 economic inefficiencies attributable to geographical hardship or other extenuating circumstances.
7 An exemption may be rejected on the sole basis of Contractor's demonstrated failure to comply with
8 the reporting requirements set forth in Article V of this Agreement.
- 9 2. An exemption granted to any Contractor shall be in writing, and shall be valid only for a period of
10 two (2) years following the date on which it is granted, at which time the exemption will expire by its
11 terms. Provided, however, that the Contractor may submit an application, together with sufficient
12 explanatory supporting justification, to support an extension of the exemption, not more than 120
13 days and not less than 60 days prior to its expiration. If any exemption granted to a Contractor
14 expires by its terms, that Contractor may submit an application seeking issuance of a new
15 exemption no sooner than 90 days following the expiration of the prior exemption. If any exemption
16 granted to a Contractor is revoked pursuant to the provisions of the immediately following Section
17 IV.C, then Contractor will not be eligible to apply for issuance of a new exemption until 36 months
18 have passed following the revocation of the prior exemption.

19 C. Revocation of Exemption

20 Breach of any provision of this Agreement, including but not limited to the reporting and payment
21 requirements listed in the immediately following Articles V and VI, respectively, may result in revocation of
22 the exemption; and in the event of such revocation, the Contractor shall be required, from and after the date
23 of delivery of notice of such revocation, to deliver all Solid Waste to the Solid Waste Facility designated by
24 the County in accordance with the provisions of this Agreement.

25 V. RECORDS AND REPORTING

26 A. Financial and Operational Records

27 Contractor shall maintain accurate and complete accounting records containing the underlying financial and
28 operating data relating to and showing the basis for computation of all revenues associated with providing

collection, transportation, processing, recycling, composting, and Disposal of Solid Waste pursuant to the provisions of this Agreement. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

At a minimum, the following operational records relating to each of the following shall be maintained by Contractor for a period of three (3) years following the date of expiration or termination of this Agreement:

1. Customer account information and billing records.
2. Tonnage of material collected, identified by type (e.g., Solid Waste, Recyclable Material, Organic Material, or Construction and Demolition Debris), listed by the Processing Site or Solid Waste Facility to which such materials were delivered. To the extent possible, Contractor also shall maintain in its records information that separately accounts for the respective amounts of tonnage collected by Contractor from its residential and commercial Customers.
3. Tonnage (if any) of Recyclable Materials, Organic Material, or Construction and Demolition Debris (C&D) Diverted from Disposal by Contractor, together with supporting documentation.
4. Diversion level (if applicable), which shall equal tonnage Diverted by Contractor divided by the tonnage Collected by Contractor multiplied by 100, listed separately by month for the previous quarter. Tonnage Diverted shall reflect Discarded Materials Processed less Residual Disposed.
5. Residual levels of processed or composted materials.
6. Weight tickets from: (i) each Solid Waste Facility documenting the tonnage of Solid Waste Collected by Contractor within the County's unincorporated area and delivered to such Solid Waste Facility; (ii) Processing Sites documenting the tonnage of Discarded Materials collected within the County's unincorporated area and delivered to the approved Processing Sites; and (iii) permitted Solid Waste Facilities documenting the tonnage of Residual delivered to such facilities by vehicle, date and time.
7. Names, service addresses, contact information and service levels for Customers required to comply with AB 341 and AB 1826, including State agencies, schools, and County facilities.

The information listed above shall be provided by Contractor to the County upon request.

B. Customer Records

Contractor shall maintain accurate and complete records containing the number and types of accounts served by Contractor. The records shall contain, at a minimum, the Customer's name, type of business,

1 phone number, collection address or location, date of Collection, itemized listing of services performed, type
2 of material Collected, tonnage Collected, and the amount charged to provide services. The information
3 shall be provided to the County upon request.

4 C. Quarterly Report

5 Quarterly reports shall be submitted in hard copy based upon COUNTY format, and shall be provided
6 electronically in software acceptable to COUNTY, unless otherwise directed by County Representative.

7 The Contractor's Quarterly Report shall provide the following information:

- 8 1. Total Tonnage. Total tonnage Collected by Contractor within the County's unincorporated area
9 during the previous quarter, listed separately by material type and by month.
- 10 2. Diverted Tonnage. Tonnage Collected by Contractor within the County's unincorporated area that
11 was Diverted during the previous quarter, listed separately by material type and by month.
- 12 3. Disposed Tonnage. Tonnage Collected by Contractor within the County's unincorporated area that
13 was Disposed during the previous quarter, listed separately by month.
- 14 4. Diversion Level. Tonnage Diverted by Contractor divided by the tonnage Collected by Contractor
15 multiplied by 100, listed separately by month for the previous quarter. Tonnage Diverted shall
16 reflect Discarded Materials processed less Residual Disposed.
- 17 5. C&D. Tonnage generated from construction and demolition permitted sites, noting the permit
18 number, the site address, the tonnage hauled, the date hauled, and the facilities to which the
19 material was hauled.
- 20 6. Disposal and Processing Locations. Contractor shall provide a list of the names and addresses
21 identifying where Discarded Materials collected within the County's unincorporated area during the
22 previous quarter were Diverted and Disposed. Such list shall include the amount of Discarded
23 Materials tonnage Diverted and/or Disposed at each location during the previous quarter, listed
24 separately by month.
- 25 7. Revenues. Gross revenues (e.g., cash receipts) earned on all Collection, transportation,
26 processing, recycling, composting and Disposal services provided to Customers within the County's
27 unincorporated area during the previous quarter, listed separately by month.
- 28 8. Account Information. In table format, the number of Customers within the County's unincorporated

1 area served by Contractor and the number of Containers serviced per month listed by Container
2 type (e.g., Drop Box or Compactor) and Container size, and listed separately by Discarded Material
3 type, and regularly scheduled service and unscheduled (on-call) service.

- 4 9. Contractor Officers and Board Members. Provide a list of Contractor's officers and members of its
5 board of directors (only required to be provided with the first quarter report each year, or in the event
6 of a change in Contractor's officers or board members).

7 The County reserves the right to request additional reports from Contractor, and upon the County's request,
8 Contractor shall provide information required above for the time period requested by the County. It is the
9 desire of the County to track the above required information on an ongoing basis throughout the term of this
10 Agreement.

11 VI. REQUISITE PAYMENT OF SERVICE FEE AND OTHER FEES

12 Contractor's Quarterly Remittance hereunder requires that Contractor make the following payments to
13 County on a quarterly basis, which payments shall be due and payable on or before: May 15 (for the
14 preceding first quarter consisting of January 1 through March 31); August 15 (for the preceding second
15 quarter consisting of April 1 through June 30); November 15 (for the preceding third quarter consisting of
16 July 1 through September 30); and February 15 (for the preceding fourth quarter consisting of October 1
17 through December 31). The payment of each Quarterly Remittance shall be accompanied by a summary
18 breakdown of the amount of Contractor's payment attributable to each of the following components:

19 A. Service Fee

20 In consideration of the rights granted to Contractor under this Agreement, and to cover related costs to be
21 incurred by County including program administration, Contractor shall pay to the County each quarter a
22 Service Fee in an amount equal to 10% of actual gross revenues remitted to Contractor by its Customers
23 for the services provided by Contractor under this Agreement.

24 B. Solid Waste Management Surcharge

25 Contractor shall pay to the County the surcharge for Solid Waste management program activities, as listed
26 in the County of Fresno Master Schedule of Fees, Charges and Recovered Costs, currently in the amount
27 of \$3.41 per ton, for each ton Collected by Contractor from its Customers pursuant to the provisions of this
28 Agreement. (This surcharge is incorporated into the tipping fee at the American Avenue Disposal Site, and

1 thus requires no separate payment if that facility is used.)

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3 C. Southeast Regional Area Surcharge

4 Contractor shall pay to the County the surcharge that funds all closure/post-closure maintenance costs for
5 the Southeast Regional Disposal Site, as listed in the County of Fresno Master Schedule of Fees, Charges
6 and Recovered Costs, currently in the amount of \$3.50 per ton; provided, that this surcharge is applicable
7 only as to Solid Waste Collected pursuant to this Agreement within the Southeast Regional Solid Waste
8 Commission Area, as identified in the map attached hereto as Exhibit "A".

9 VII. TERM

10 The term of this Agreement shall be three (3) years, unless earlier terminated under Article III of this
11 Agreement due to the expiration or revocation of Contractor's requisite Permit. Before the expiration of
12 such term, it shall be the Contractor's responsibility to enter into a successor agreement with the County
13 (and to apply for renewal and at all times maintain in good standing the viability of its Permit), in order for
14 Contractor to retain its authorization to provide those certain Solid Waste Handling Services as specified
15 herein.

16 VIII. COMPLIANCE WITH LAWS

17 In providing the Solid Waste Handling Services authorized to be provided by Contractor hereunder,
18 Contractor shall at all times comply with all applicable Federal, State, and local laws, ordinances,
19 regulations, and Fresno County Charter Provisions in effect at the time of Contractor's performance of such
20 services. In addition, by execution of this Agreement, Contractor hereby expressly acknowledges that
21 Contractor has reviewed and is familiar with the provisions of Fresno County Ordinance Code Chapters
22 8.20 through 8.25.

23 IX. RELATIONSHIP OF PARTIES

24 The Parties intend that Contractor shall perform the Solid Waste Handling Services as authorized herein as
25 an independent contractor engaged by the County and not as an officer or employee of the County, nor as
26 a partner of or joint venturer with the County. No employee or agent of Contractor shall be or shall be
27 deemed to be an employee or agent of the County. Except as expressly provided herein, Contractor shall
28 have the exclusive control over the manner and means of providing the Solid Waste Handling Services as

1 authorized herein and all persons performing such services. Contractor shall be solely responsible to the
2 County for the acts and omissions of its officers, employees, subcontractors, and agents. Neither
3 Contractor nor any of its officers, employees, subcontractors, and agents shall obtain any rights to
4 retirement benefits, workers' compensation benefits, or any other benefits which accrue to County
5 employees by virtue of their employment with the County. Neither Contractor nor any of its employees shall
6 provide, directly or indirectly, any gifts or gratuities to any County employee or representative.

7 X. HOLD HARMLESS

8 Contractor agrees to indemnify, save and hold harmless, and at County's request, defend County, its
9 officers, agents, and employees from any and all costs and expenses including attorney fees and litigation
10 costs, damages, liabilities, claims and losses which shall be caused by or may arise from the exercise by
11 Contractor of any rights herein granted, and from all costs and expenses, attorney fees, claims, demands
12 and causes of action that may be incurred by or brought against County, its successors or assignees,
13 caused by, arising out of, or in any way connected with the exercise by Contractor of any rights herein
14 granted.

15 XI. INSURANCE

16 Without limiting the County's right to obtain indemnification from Contractor or any third parties, Contractor,
17 at its sole expense, shall procure and maintain in full force the following insurance policies throughout the
18 term of this Agreement:

19 A. Commercial General Liability Commercial General Liability Insurance with limits of not less than One
20 Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of Two Million Dollars
21 (\$2,000,000.00). This policy shall be issued on a per occurrence basis. County may require specific
22 coverage including completed operations, products liability, contractual liability, Explosion-Collapse-
23 Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of
24 this contract.

25 B. Automobile Liability Comprehensive Automobile Liability Insurance with limits for bodily injury of not
26 less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars
27 (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00),
28 or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage

1 should include owned and non-owned vehicles used in connection with this Agreement.

2 ///

3 C. Worker's Compensation A policy of Worker's Compensation insurance as may be required by the
4 California Labor Code.

5 Contractor shall obtain endorsements to the Commercial General Liability insurance naming the County of
6 Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only
7 insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall
8 apply as primary insurance and any other insurance, or self-insurance, maintained by County, its officers,
9 agents and employees shall be excess only and not contributing with insurance provided under
10 Contractor's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty
11 (30) days advance written notice given to County.

12 Within ten (10) days from the date Contractor executes this Agreement, Contractor shall provide certificates
13 of insurance and endorsements as stated above for all of the foregoing policies, as required herein, to the
14 County of Fresno, Department of Public Works and Planning, Attn: Deputy Director of Resources and
15 Administration - NEWHA, 2220 Tulare Street, 6th Floor, Fresno, CA 93721-2120, stating that all such
16 insurance policies have been obtained and the coverage provided thereunder is in full force; that the
17 County of Fresno, its officers, agents and employees will not be responsible for any premiums on the
18 policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents,
19 and employees, individually and collectively, as additional insured, but only insofar as the operations under
20 this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and
21 any other insurance, or self-insurance maintained by County, its officers, agents and employees shall be
22 excess only and not contributing with insurance provided under Contractor's policies herein; and that this
23 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice
24 given to County.

25 In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, the County
26 may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence
27 of such event. All policies shall be with admitted insurers licensed to do business in the State of California.
28 Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A

1 FSC VIII or better.

2 ///

3 XII. WAIVER

4 The waiver by County of any violation by Contractor of any provision of this Agreement shall not
5 be deemed to be a waiver of any violation of any other provision, nor of any subsequent violation
6 of the same or any other provision. The subsequent acceptance by County of any monies that
7 become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent
8 violation by Contractor of any provision of this Agreement.

9 XIII. NOTICES

10 Notices from Contractor to the County relating to this Agreement shall be sent to the County of
11 Fresno, Department of Public Works and Planning, Attn: Deputy Director of Resources and
12 Administration - NEWHA, 2220 Tulare Street, 6th Floor, Fresno, CA 93721-2120.

13 Contractor's contact person to whom notices from the County relating to this Agreement are
14 requested to be sent, together with Contractor's legal status (e.g., corporation, partnership, sole
15 proprietorship, etc.), and Contractor's principal place of business, are all listed in Addendum "1" to
16 this Agreement, which is attached hereto and incorporated by this reference as though fully set
17 forth herein.

18 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date
19 set forth above.

20
21 CONTRACTOR
22 Print Firm Name

COUNTY OF FRESNO
Department of Public Works and Planning

23 _____
24 By: _____

By: _____

25 _____
26 Print (or type) Name

Print (or type) Name

27 _____
28 Print (or type) Title

Print (or type) Title

ADDENDUM 1

CONTRACTOR'S FIRM NAME AND LEGAL STATUS

NOTE: If Contractor is a corporation, the legal name of the corporation shall be set forth above together with the name and signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Contractor is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Contractor is an individual, his or her signature shall be placed above, together with a copy of any fictitious business name statement pursuant to which the Contractor conducts its business. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be submitted by Contractor together with the original of this Agreement executed on behalf of such Contractor; otherwise, the proposed Agreement will be disregarded as irregular and unauthorized, and will not be approved by the County.

BUSINESS ADDRESS: _____ Zip Code

MAILING ADDRESS: _____ Zip Code

BUSINESS PHONE: (____)_____ FAX NUMBER: (____)_____

NOTICES

The name (and address, if different than that listed above as Contractor's principal place of business) of the individual designated as **Contractor's contact person, to whom notices from the County relating to this Agreement are requested to be sent**, is as follows:

