

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

THIS AMENDED AND SUCCESSOR AGREEMENT ("Agreement") is made and entered into in Fresno, California, on this 31st day of October, 2017, between the County of Fresno, a political subdivision of the State of California, (hereinafter called "COUNTY"), and Peña's Disposal, Inc., a California corporation, (hereinafter called "CONTRACTOR"), with reference to the following facts.

**WITNESSETH:**

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

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

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

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

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

WHEREAS, as part of the ESAP, on August 30, 2005, COUNTY and CONTRACTOR (collectively "the Parties") entered into an Exclusive Service Area

1 Program Agreement (Agreement No. 05-416, hereinafter "the Original Contract"), which  
2 provided for a twelve (12) year Base Term with CONTRACTOR's performance  
3 thereunder to commence on the operative date of February 27, 2006; and

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

6 WHEREAS, CONTRACTOR has accepted COUNTY's offer to extend their  
7 contractual relationship for such additional ten year term ("Extension Term"), and the  
8 Parties further have agreed to certain modifications to the terms and conditions of the  
9 Original Contract, all of which shall take effect as of the commencement of the ten-year  
10 Extension Term on February 28, 2018; and

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

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

15 WHEREAS, the COUNTY of Fresno Board of Supervisors previously has  
16 determined, and by its approval and execution of this Agreement hereby reiterates, that  
17 the public health, safety and welfare of its residents require that certain Solid Waste  
18 Collection Services, as specified in this Agreement, be provided by an Exclusive  
19 Service Area contract.

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

## 22 **ARTICLE 1**

### 23 **DEFINITIONS**

24 For purposes of this Agreement the following words or phrases shall have the  
25 following meanings unless any such word is otherwise specifically defined herein or  
26 unless it is obvious from the context hereof that another meaning is necessarily  
27 intended. To the extent of any inconsistency between the definitions of the following  
28 terms provided in this Article and the use or definition of those terms that may appear in

related COUNTY ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

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

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

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

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

**“AB 1826”** means Chapter 727, Statutes of 2014 [Chesbro, AB 1826], commonly referred to as “AB 1826”, as amended, supplemented, superseded, and replaced from time to time, that, among other things, added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code imposing requirements that each jurisdiction implement an organic waste recycling program and provide for education, outreach and monitoring of businesses subject to the requirements.

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

**“Applicable Law”** means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the

1 collection and disposition of Solid Waste, Recyclable Materials, Green Waste and  
2 Organic Materials, including those that are in force and effective as of the Effective  
3 Date, as well as such additions and changes thereto as become effective by means of  
4 their enactment, amendment, issuance or promulgation at any time after the Effective  
5 Date and during the Term of this Agreement.

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

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

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

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

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

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

28 **“Cart”** means wheeled Containers of approximate thirty (30)-, sixty (60)-, and ninety

(90)-gallon capacity provided by CONTRACTOR to Customers for Collection of Solid Waste, Recyclables, Green Waste and Organic Materials.

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

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

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

1. Enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or
2. Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of COUNTY or of CONTRACTOR, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

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

**“Collection” (and “Collect,” “Collected,” and “Collecting”)** means the pickup and removal by CONTRACTOR from its Customers’ premises of Solid Waste, Recyclable Materials, Green Waste, Organic Materials or other material specified in this Agreement and transportation of such material to a Disposal or Transfer Facility, Green Waste or Organic Materials Processing Facility, or a Recycling Facility, as appropriate and

consistent with CONTRACTOR's obligations hereunder.

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

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

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

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

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

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

**"Containers"** means Bins and Carts used to provide Solid Waste, Recyclables, Green Waste or Organic Materials Services.

**"CONTRACTOR"** means the Party identified as CONTRACTOR on page 1 of this Agreement.

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

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

5 **“COUNTY Representative”** means the Director of the Department of Public Works and  
6 Planning, or his/her designee, who may be a COUNTY official or an agent of COUNTY  
7 specifically designated to serve as the COUNTY Representative and authorized to  
8 enforce the terms of this Agreement on COUNTY’s behalf, as further set forth in Section  
9 11.15, below.

10 **“COUNTY Solid Waste Surcharges”** means the charges imposed by the COUNTY on  
11 all Solid Waste generated within the Southeast Regional Solid Waste Commission area  
12 for closure and post-closure maintenance of the closed COUNTY landfill(s) in the  
13 Southeast Regional Solid Waste Commission area and the charges imposed by the  
14 COUNTY on all Solid Waste generated and Collected in the County, including the  
15 fifteen (15) incorporated cities, for which the Solid Waste is Disposed in non-COUNTY  
16 operated facilities and used for Countywide Solid Waste management program  
17 activities.

18 **“CPI Adjustment Factor”** means 75 percent (75%) for Cart Rates and 65 percent  
19 (65%) for Bin Rates, of one hundred percent (100%) of the percentage of CPI by which  
20 each Rate is adjusted annually.

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

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

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

27 **“Director”** means the Director of the Department of Public Works and Planning of  
28 Fresno County.

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

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

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

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

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

16 **“Excluded Waste,”** means

- 17 • Hazardous Waste,
- 18 • Medical and Infectious Waste,
- 19 • Volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or  
20 material,
- 21 • Household Hazardous Waste,
- 22 • Waste that CONTRACTOR reasonably believes would, as a result of or upon  
23 disposal, be a violation of Federal, State, or local law, regulation or ordinance,  
24 including land use restrictions or conditions,
- 25 • Waste that in CONTRACTOR's reasonable opinion would present a significant  
26 risk to human health or the environment, cause a nuisance or otherwise create or  
27 expose CONTRACTOR or COUNTY to potential liability, and
- 28 • Special Waste.



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

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

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

17 **“Green Waste”** means biodegradable materials including branches (less than three [3]  
18 inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants,  
19 leaves, prunings, shrubs, weeds, wood (uncoated and untreated), wood chips, yard  
20 trimmings, Christmas trees (placed in Carts/Bins, with no stands, flocking, and/or  
21 decorations, and cut into two [2]-foot sections), provided that larger items such as tree  
22 stumps and intact dead trees are considered Bulky Items as defined herein. Green  
23 Waste shall not include Excluded Waste.

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

28 **"Hazardous Waste"** shall have the meaning set forth in California Code of Regulations,

1 Title 14, Division 7, Chapter 3, Article 4, (most notably Section 17225.32) and Health  
2 and Safety Code Section 25117, or in CERCLA, or in their successor laws and  
3 regulations as may be amended from time to time, whichever definition is in the opinion  
4 of the COUNTY more inclusive.

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

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

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

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

15 **“Operative Date”** means the date from and after which CONTRACTOR shall be  
16 responsible to provide Collection Services to Customers in accordance with the terms of  
17 this Amended and Successor Agreement, which shall be no later than sixty (60) days  
18 after the Effective Date of this Amended and Successor Agreement. The Operative  
19 Date shall be specified by COUNTY in a letter to CONTRACTOR, sufficiently in  
20 advance thereof to allow CONTRACTOR’s compliance with the requirement in Section  
21 5.1 to provide thirty (30) days’ notice to Customers. It shall be CONTRACTOR’s  
22 responsibility to make all necessary and appropriate preparations, between the Effective  
23 Date and the Operative Date, to ensure that CONTRACTOR’s readiness to provide all  
24 Services to Customers as required hereunder by the Operative Date.

25 **“Organic Materials” or “Compostable Materials”** food waste, Green Waste,  
26 landscape and pruning waste, nonhazardous wood waste, and food-soiled paper that is  
27 mixed in with food waste.

28 **“Organic Materials Processing”** means the fully permitted facility(ies) selected by

1 CONTRACTOR for handling, processing, and preparing Organic Materials for  
2 marketing.

3 **“Original Contract”** means the ESAP Agreement entered into between the Parties on  
4 August 30, 2005 (Agreement No. 05-416) for performance by CONTRACTOR of solid  
5 waste collection services within a designated Exclusive Service Area as specified  
6 therein, which provided for a twelve (12) year Base Term with CONTRACTOR's  
7 performance thereunder to commence on the operative date of February 27, 2006.

8 **“Party” or “Parties”** means COUNTY or CONTRACTOR individually, or COUNTY and  
9 CONTRACTOR.

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

14 **“Quarterly Remittance(s)”** means the quarterly payment made to the COUNTY by the  
15 CONTRACTOR as specified in Article 6.

16 **“Rate Revenues”** means the revenues billed to and received from Customers by  
17 CONTRACTOR for provision of Collection Services, Special Services, and from  
18 Community Clean-Up Services under Article 3, subject to the COUNTY's approved and  
19 published maximum rate schedules. The term “Rate Revenues” includes all such  
20 revenues received under this Agreement, regardless of whether the Solid Waste  
21 collected by CONTRACTOR for which such payment was received is ultimately  
22 landfilled in Fresno County or at a disposal site located in another county.

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

26 **"Recyclable Materials" or "Recyclables"** means discarded materials from the  
27 Customer intended for and capable of being Recycled, and that are separated, set  
28 aside, handled, packaged, offered, or otherwise Delivered for Collection by a Customer

1 in a manner different from Solid Waste. Exhibit A includes the list of Recyclable  
2 Materials that may be set out for Collection by Customers receiving Single-Stream  
3 Recycling Service. Recyclable Materials and Recyclables shall not include Excluded  
4 Waste. The Parties intend that Solid Waste and Solid Waste Handling, as those terms  
5 are defined herein, shall be broadly interpreted and include, without limitation, any  
6 activity relating to the collection of Recyclables and Recyclable Materials that is  
7 solicited, arranged, brokered, or provided by any person or combination of persons  
8 utilizing a bin, barrel, or other container in exchange for the payment, directly or  
9 indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any  
10 form or amount ("fee for service recycling").

11 **"Recycle", "Recycled", "Recycling"** means the process of Collection, sorting,  
12 cleansing, treating and reconstituting of Recyclable Materials that would otherwise be  
13 disposed of, and returning them to the economy in the form of raw materials for new,  
14 reused, repaired, refabricated, remanufactured, or reconstituted products. The  
15 Collection, transportation, or Disposal of Solid Waste that is neither intended for nor  
16 capable of effective and advantageous reuse does not constitute Recycling, as that  
17 term is defined and employed in this Agreement.

18 **"Recycling Facility"** means the fully permitted facility(ies) selected by CONTRACTOR  
19 for handling, processing, and preparing Recyclable Materials for marketing.

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

28 **"Residual" or "Residue"** means materials which remain after processing Recyclable

1 Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not  
2 limited to, materials such as rocks, contaminated paper, putrescibles, and other debris.  
3 All such Residue shall be subject to the provisions of Section 4.8 as they pertain to  
4 materials delivered by CONTRACTOR to be processed for Recycling.

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

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

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

13 **“Self-Haul” or “Self-Hauler”** means that any residential or commercial generator of  
14 Solid Waste may itself (for a commercial generator, this means performance of its  
15 Disposal Services by an individual listed on its payroll as an employee), but not through  
16 an agent, transport and dispose of those Collection Materials generated within the  
17 unincorporated area of the COUNTY by the household or business enterprise of that  
18 generator only. Any such “Self-Hauler” who elects to forego the Collection Services  
19 offered by CONTRACTOR shall be obligated to comply with all applicable legal  
20 requirements governing such transport and disposal, including but not limited to  
21 COUNTY reporting requirements.

22 **“Service Rate Area” or “Service Rate Areas”** means the four territorial zones within  
23 the County’s unincorporated area identified in Exhibit C-1 (designated therein as “Zone  
24 1”, “Zone 2a”, “Zone 2b” and “Zone 3”). When used in the plural in this Agreement, the  
25 term refers to all four zones identified in Exhibit C-1 considered collectively, and when  
26 used in the singular the term shall be deemed to refer solely to the specific “Service  
27 Rate Area” zone that may encompass CONTRACTOR’s Exclusive Service Area.

28 **“Single-Stream Recycling”** means the use of a single Container to collect two or more

types of Recyclables.

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

**"Solid Waste Handling Services"** means the collection, transportation, storage, transfer, or processing of Solid Waste for residential, commercial, institutional, or industrial users or customers.

**"Special Services"** means those 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 for the charges specified in Exhibit D-2. Examples of such optional Special Services may include on-call Bulky Items pick-up (in addition to the required Bulky Items pick-up provided as part of periodic Community Clean-Up Services), or side-yard services for Customers other than the disabled and elderly. The Special Services that CONTRACTOR offers to its customers will be the same as those offered by other exclusive provider(s) of Collection Services within the Service Rate Area. Those Special Services that CONTRACTOR chooses to offer to its Customers, and the Special Service Fees to be charged therefor, are listed in Exhibit D-2 hereto.

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

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

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

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

18 **“Uncontrollable Circumstance”** means an act of God, including landslides, lightning,  
19 fires, storms, floods, pestilence, and earthquakes; explosions, sabotage, civil  
20 disturbances, acts of a public enemy, wars, blockades, eminent domain, condemnation  
21 or other taking, or other events of a similar nature, not caused or maintained by the  
22 COUNTY or CONTRACTOR, which event is not reasonably within the control of the  
23 CONTRACTOR, and only to the extent such event has a material adverse effect on the  
24 ability of the CONTRACTOR to perform Collection Services. Events that could or  
25 should have been prevented through reasonable precaution, including compliance with  
26 agreements and applicable laws, shall not be considered Uncontrollable Circumstances.  
27 Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out,  
28 picketing, or other concerted job action conducted by the CONTRACTOR’s employees

or directed at the CONTRACTOR, or a subcontractor, shall not be considered an Uncontrollable Circumstance.

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

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

## **ARTICLE 2**

### **CONTRACTOR’S REPRESENTATIONS AND WARRANTIES**

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

CONTRACTOR understands and acknowledges that, in entering into this Agreement and performing obligations set forth therein, COUNTY is relying on the representations and warranties made or confirmed herein by CONTRACTOR, including but not limited to those listed in this Article 2. In the event any of such representations or warranties are not satisfied or are found by reasonable and good faith determination of COUNTY to be materially inaccurate or untrue, such occurrence or determination shall constitute a Material Breach and grounds for termination of this Agreement, at COUNTY’s option, under Article 10. Provided, however, that if COUNTY elects to declare CONTRACTOR’s default on the basis of a violation of this Article 2, such default may be subject to the cure provisions set forth in Article 10.

#### **2.2 BUSINESS STATUS**

CONTRACTOR is a corporation duly organized, validly existing, and in good standing under the laws of the State of California. CONTRACTOR is registered with the California Secretary of State and is qualified to transact business in the State of California., and CONTRACTOR agrees to deliver to COUNTY the name and California-



1 based address of CONTRACTOR's agent for receipt of service of process.  
2 CONTRACTOR has the corporate power to own its properties and to carry on its  
3 business as now owned and operated and as required by this Agreement.  
4 CONTRACTOR must also be a business lawfully permitted by the COUNTY to conduct  
5 Collection Services, as prescribed by the terms and conditions of this Agreement.  
6 CONTRACTOR agrees that this Agreement is not made in the interest of, or on behalf  
7 of, any undisclosed person, partnership, company, association, organization, or  
8 corporation. CONTRACTOR has not unlawfully colluded, conspired, connived, or  
9 agreed directly or indirectly with any person, partnership, company, association,  
10 organization, or corporation to secure any improper advantage against COUNTY, or in  
11 contravention of the public interest.

### 12 **2.3 CORPORATE AUTHORIZATION**

13 CONTRACTOR has the authority to enter into and perform its obligations under this  
14 Agreement. The Board of Directors of CONTRACTOR has taken all actions required by  
15 law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this  
16 Agreement. Each individual signing this Agreement represents and warrants that he or  
17 she is duly authorized to execute and deliver this Agreement on behalf of  
18 CONTRACTOR. This Agreement shall constitute a valid and binding obligation of  
19 CONTRACTOR enforceable in full accordance with its terms, except only to the extent  
20 limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws  
21 of general application relating to or affecting enforcement of creditors' rights.

### 22 **2.4 NO CONFLICT**

23 CONTRACTOR warrants and represents that neither the execution nor the delivery by  
24 CONTRACTOR of this Agreement nor the performance by CONTRACTOR of its  
25 obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or  
26 governmental regulation applicable to CONTRACTOR; (ii) conflicts with, violates, or  
27 results in a breach of any term or condition of any judgment, decree, agreement  
28 (including, without limitation, the certificate of incorporation of CONTRACTOR), or

instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (iii) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of CONTRACTOR.

## **2.5 NO LITIGATION**

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

## **2.6 NO LEGAL PROHIBITION**

CONTRACTOR has no knowledge of any applicable law in effect on the Operative Date that would prohibit the performance by CONTRACTOR of this Agreement and the transactions contemplated hereby.

## **2.7 CONTRACTOR'S INVESTIGATION**

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

## **2.8 INFORMATION SUPPLIED BY CONTRACTOR**

The information supplied by CONTRACTOR in all written submittals made in connection with procurement of CONTRACTOR's services, including CONTRACTOR's proposal, and negotiation and execution of this Agreement, and all representations and warranties

made by CONTRACTOR throughout this Agreement are true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

## **2.9 INSURANCE AND PERFORMANCE ASSURANCE REQUIREMENTS**

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

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

## **2.10 CONTRACTOR'S REPRESENTATIVE**

As required by Section 11.15, CONTRACTOR shall, by the Operative Date, designate in writing a responsible officer who shall serve as the representative of CONTRACTOR and who shall have authority in all daily operational matters related to the Agreement. COUNTY may rely upon action taken by such designated representative as the action of CONTRACTOR except for actions not taken within the scope of this Agreement. The Managing Agent (or such other officer as may have been specifically designated by CONTRACTOR), shall be the initial designated representative of CONTRACTOR. CONTRACTOR shall notify COUNTY Representative prior to, or at the time of a change, in the designated representative.

## **2.11 WAIVER OF CERTAIN RIGHTS**

CONTRACTOR hereby waives any right it may possess to contest the legal right,

1 power, or the authority of COUNTY to enter into and implement this Agreement; and the  
2 Parties agree to cooperate if CONTRACTOR elects, pursuant to Section 11.17, to  
3 defend the legal validity of this Agreement, and authorization for specific provisions  
4 hereof, in the event of any legal challenge thereto brought or made in any manner by a  
5 third party.

6 **2.12 AGREEMENTS REGARDING CONTINUATION RIGHTS AND**  
7 **ACKNOWLEDGEMENT OF RELIANCE THEREON**

8 CONTRACTOR acknowledges having received from COUNTY, in or about September  
9 2003, its five (5)-year notice under California Public Resources Code Section 49520,  
10 dated September 25, 2003. Such five (5)-year notice was intended by COUNTY to  
11 initiate the period within which solid waste enterprises operating pursuant to duly  
12 authorized permit and otherwise lawfully (including CONTRACTOR), throughout the  
13 three (3)-year period prior thereto, could exercise any "continuation rights" that may  
14 have existed in their favor under such statutory provision. CONTRACTOR further  
15 acknowledges that its voluntary participation in COUNTY's program for creation and  
16 implementation of Exclusive Service Areas provides a benefit to CONTRACTOR that  
17 exceeds and thus fully satisfies any statutory five (5)-year "continuation rights" to which  
18 CONTRACTOR may have been entitled in the absence of its participation in COUNTY's  
19 program, by granting CONTRACTOR the exclusive right to provide such services in its  
20 Exclusive Service Area, throughout the anticipated Base Term (and any Extension)  
21 hereof, so long as CONTRACTOR satisfactorily performs its duties and obligations  
22 under this Agreement. In consideration thereof, CONTRACTOR specifically agrees as  
23 follows:

24 (1) that CONTRACTOR forever shall and hereby expressly does forego any right it  
25 otherwise may have to provide such services in any portion of the County other than the  
26 Exclusive Service Area within which CONTRACTOR is granted the exclusive right to  
27 provide such services hereunder; (2) that CONTRACTOR's rights to provide, within the  
28 unincorporated area of the County, any of the services specified in this Agreement, shall

1 be governed solely by the provisions of this Agreement, the anticipated Base Term of  
2 which extends far beyond and is intended by the Parties to supersede the minimum  
3 continuation rights that otherwise may be provided by statute; and (3) that any of  
4 CONTRACTOR's rights to provide such services within the unincorporated area of the  
5 County (including CONTRACTOR's Exclusive Service Area) shall cease and forever  
6 terminate upon termination or expiration of this Agreement or any Extension hereof.  
7 CONTRACTOR understands that COUNTY, and the other providers to other Exclusive  
8 Service Areas within the County, have relied upon CONTRACTOR's agreement to  
9 voluntarily relinquish and disclaim any subsequent claim on the basis of such limited  
10 continuation rights that CONTRACTOR otherwise might claim against them under  
11 statute, in favor of the substantially greater rights (in terms of both duration and  
12 territorial exclusivity) conferred on CONTRACTOR by the terms of this Agreement.  
13 Provided, however, and notwithstanding the foregoing, nothing in this Section 2.12 is  
14 intended as a waiver of any statutory continuation rights that may exist in  
15 CONTRACTOR's favor against any city, municipal corporation or public entity (other  
16 than COUNTY), as to any portion of CONTRACTOR's Exclusive Service Area that may  
17 be annexed, incorporated or otherwise acquired by such public entity during the Base  
18 Term or any Extension hereof.

### 19 **2.13 ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES**

20 Pursuant to specific delegations of authority from the State of California under Sections  
21 40001, 40002, 40057, and 40059 of the Public Resources Code, together with other  
22 provisions of California law, during a period of time predating the approval and  
23 execution of the Original Contract the COUNTY requested and considered the collective  
24 advice of the current commercial and residential haulers concerning recommended  
25 boundaries for the Exclusive Service Area boundaries. CONTRACTOR participated in  
26 the process created by and under the supervision of the COUNTY. The  
27 recommendations were strictly advisory and the COUNTY reserved full authority to  
28 accept, reject or modify those recommendations, to establish Exclusive Service Area

boundaries of its choosing, or to continue to operate without Exclusive Service Areas consistent with its obligations under applicable law. CONTRACTOR stipulates that it participated in the COUNTY's process in good faith, and CONTRACTOR hereby warrants its good faith belief in its disclosures and representations regarding its Customer base in the unincorporated area of the COUNTY, as of May 2004, in connection therewith.

### **ARTICLE 3**

#### **COLLECTION SERVICES AGREEMENT**

##### **3.1 AGREEMENT TERM AND EXTENSIONS**

###### **A. Base Term**

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

###### **B. Extension**

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

##### **3.2 COLLECTION SERVICES AGREEMENT**

###### **A. Services Provided**

1. COUNTY hereby grants CONTRACTOR, and CONTRACTOR shall have

1 throughout the duration of this Agreement, the exclusive right within the  
2 geographical boundaries of the Exclusive Service Area specified in Exhibit C to  
3 engage in Collection, transportation, processing, transport for transfer and  
4 Disposal, and material sales related to the following:

5 2. Solid Waste placed in Carts by residential and commercial Customers.

6 3. Solid Waste placed in Bins by residential and commercial Customers.

7 4. Single-Stream Recyclables placed in Carts or Bins by residential and  
8 commercial Customers.

9 5. Other Recyclables placed for Collection by residential and commercial  
10 Customers.

11 6. Green Waste placed in Carts by residential Customers.

12 7. Organic Materials placed for Collection by Customers.

13 8. Community Clean-Up Services for the collection of non-Excluded Waste  
14 items for all residential Cart Customers. These drop-off events are to occur once  
15 during each calendar year. The maximum amount of materials to be collected  
16 from each Cart Customer shall be limited to two (2) cubic yards, and one (1)  
17 Bulky Item (which may be a Freon-containing appliance). Provided, however,  
18 that if CONTRACTOR is providing Collection Services in the Zone 1 Service  
19 Rate Area, the materials collected from each Cart Customer in the Zone 1  
20 Service Rate Area may exceed the maximum amount specified in the preceding  
21 sentence, for an appropriate charge as specified in Exhibit D-3 to this  
22 Agreement.

23 9. It is hereby further agreed, in connection with and to facilitate  
24 CONTRACTOR's provision of the recycling services specified in Subparagraphs  
25 3 and 4 above, that COUNTY hereby appoints CONTRACTOR to act as its  
26 Authorized Recycling Agent (as that term is defined in Public Resources Code  
27 Section 40105) within the geographical boundaries of the Exclusive Service Area  
28 specified in Exhibit C. The Parties specifically intend and agree that the scope of

1 this Agreement and the right to provide Collection Services granted to  
2 CONTRACTOR hereunder includes the sole and exclusive right to offer or  
3 provide the recycling services detailed in this Agreement within the geographical  
4 boundaries of the Exclusive Service Area specified in Exhibit C in exchange for a  
5 fee or other consideration, in any form or amount.

6 **B. Compensation**

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

13 **3.3 PROVISION OF SERVICE**

14 **A. General**

15 The work to be done by CONTRACTOR pursuant to this Agreement shall include the  
16 furnishing of all labor, supervision, vehicles, Containers, other equipment, materials,  
17 supplies, and all other items necessary to perform all Collection Services, and the  
18 payment of all related expenses including all taxes, utility charges, etc. The Collection  
19 Services shall be performed in a thorough and professional manner that constitutes  
20 reliable, high-quality and litter-free service. CONTRACTOR shall at all times provide  
21 Collection Services using standard industry practice for comparable operations,  
22 performed at all times in full accordance with Exhibit A ("Scope of Services") and Exhibit  
23 B ("Performance Standards"). Unless otherwise specifically stated in this Agreement,  
24 the Rates are the only compensation to CONTRACTOR for provision of Collection  
25 Services. CONTRACTOR shall comply, and assist its Customers in achieving  
26 compliance, with State goals detailed in Section 3.8 consistent with the provisions of  
27 Section 3.8.

28 ///



**B. Hours of Collection**

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

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

**3.4 EXCEPTIONS TO COLLECTION SERVICES AGREEMENT**

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

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

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

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

5           4.       Debris Box and Compactor Services which are provided at least on a  
6           weekly basis by private companies with such permits as are required and issued  
7           by the COUNTY operating within the COUNTY on a non-exclusive basis.

8           COUNTY agrees that CONTRACTOR may provide such services on a non-  
9           exclusive basis in the unincorporated areas of the COUNTY pursuant to  
10          Ordinance Code Chapter 8.24.

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

### 15       **3.5    AB 939 SERVICE FEE AND COUNTY SOLID WASTE SURCHARGES**

#### 16       **A.    Amount**

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

19        CONTRACTOR shall pay to the COUNTY an AB 939 Service Fee equal to four percent  
20        (4%) of Rate Revenues for the third and all subsequent years of the Extension Term.

21        The COUNTY reserves the right to modify the AB 939 Service Fee at any time during  
22        the Term (including any Extension Term) of this Agreement. The COUNTY shall give  
23        the CONTRACTOR at least ninety (90) days' written notice prior to the date on which  
24        any such charge becomes effective, but in no event less notice than is necessary to  
25        permit CONTRACTOR to request an increase in the Rates in an amount that would fully  
26        offset the amount of the increase in the AB 939 Service Fee.

#### 27       **B.    Payment by CONTRACTOR**

28        CONTRACTOR shall compute and pay the AB 939 Service Fee on the basis of the

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

22 **C. COUNTY Solid Waste Surcharges**

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

- 26 1. Three Dollars and Fifty Cents (\$3.50) per-ton closure/post-closure  
27 maintenance fee for Solid Waste generated and collected within the Southeast  
28 Regional Solid Waste Commission Area as identified in Fresno County

Ordinance Code Section 8.20.035; and

2. 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).

### **3.6 GROWTH IN ACCOUNTS**

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

### **3.7 TITLE TO COLLECTED MATERIALS**

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

### **3.8 STATE GOALS**

CONTRACTOR acknowledges that it shall provide a package of Collection Services, including Single-Stream Recycling and Green Waste and Organic Materials Collection with related public education, rate incentives and Customer service programs that are designed to achieve and maintain a level of Diversion for the COUNTY that is in compliance with the State's goals of:

1. Fifty percent (50%) Diversion under AB939.
2. Each jurisdiction implementing an outreach and education program and monitor compliance of businesses with the mandatory commercial recycling requirements under AB 341.
3. Each jurisdiction implementing an organic waste recycling program and providing for

1 education, outreach and monitoring of businesses subject to the requirements of  
2 AB1826.

3 4. A fifty 50 percent (50%) reduction by 2020 and a seventy-five percent (75%)  
4 reduction by 2025 in the level of the statewide disposal of organic waste from the  
5 2014 level as required under SB 1383.

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

21 This Section of the Agreement reflects the Parties' understanding that there are  
22 practical limits to what each can do to ensure compliance with the State's waste  
23 diversion and recycling goals. Even with the most comprehensive public education and  
24 outreach program, consumer behavior can be influenced, but cannot be completely  
25 managed or controlled. The Parties further agree and acknowledge that (i) effective  
26 waste processing requires the availability of adequate processing capacity; (ii) the  
27 availability of markets to receive processed material is essential, and (iii) neither party to  
28 this Agreement is in a position to unconditionally guarantee the availability of either

1 processing capacity or markets. It is accordingly agreed between the Parties that  
2 CONTRACTOR will have fulfilled its compliance obligation to the COUNTY under this  
3 Section if it has offered the programs and services described in this Agreement to each  
4 of its Customers subscribing for Collection Services; and has conducted waste audits;  
5 and has prepared and mailed the public education and outreach materials authorized by  
6 the COUNTY, as more thoroughly provided in the preceding provisions of this Section.  
7 In such event, it is agreed that CONTRACTOR shall not be considered to be in breach  
8 of its obligations under this Agreement, and that no Event of Default will be declared  
9 hereunder, based solely upon CONTRACTOR's failure to achieve the waste reduction,  
10 diversion or recycling goals specified by the laws referenced in this Section.

### 11 **3.9 EMERGENCY SERVICES**

12 Notwithstanding any other provisions of this Agreement (including but not limited to  
13 CONTRACTOR's scope of services under Article 3 and basis for compensation under  
14 Articles 6 and 7), COUNTY reserves the right, in the event of a declared emergency for  
15 an Uncontrollable Circumstance and if CONTRACTOR is unable or unwilling to provide  
16 such services, to use COUNTY staff, agents, contractors, and/or subcontractors as  
17 necessary to clear debris from the CONTRACTOR's Exclusive Service Area.  
18 CONTRACTOR agrees to not contest COUNTY's use of other parties to collect,  
19 transport, and dispose of any debris resulting from such emergency. In the event of  
20 such a declared emergency, CONTRACTOR shall upon notice from the COUNTY make  
21 all reasonable effort to provide vehicles and crews to assist in clearing and/or  
22 transporting debris, and CONTRACTOR's reasonable compensation therefor (including  
23 a reasonable margin of profit under the circumstances), shall be determined through  
24 good-faith negotiation between the Parties. Provided, however, that in the absence of  
25 mutual agreement between the Parties on an equitable compensation amount, then the  
26 amount shall be determined by arbitration under the rules of the American Arbitration  
27 Association and shall be limited to that amount shown to equal the out-of-pocket costs  
28 incurred by CONTRACTOR in providing such vehicles and/or crews, including a

reasonable margin of profit under the circumstances.

### **3.10 INFORMATION MANAGEMENT SYSTEMS**

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

## **ARTICLE 4**

### **SCOPE OF SERVICES**

#### **4.1 CART SERVICE**

The following services are to be provided by CONTRACTOR to Cart Customers. All materials are to be collected at the curb or a centralized service location, on a weekly basis on the same day (except as necessary to accommodate holidays, Uncontrollable Circumstances, or permitted changes in Collection dates), 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 to be provided shall include the minimum level of Single-Stream Recycling Service as well as a minimum level of Green Waste Service as specified in Exhibit A.

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

Collection of Solid Waste using approximate sixty (60)- or ninety (90)-gallon Carts with the provision of approximate thirty (30)-gallon Carts at Customer request in the Zone 1 Service Rate Area.

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

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

##### **C. Green Waste Collection**

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

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.

#### **4.2 BIN SERVICE**

The following services are to be provided by CONTRACTOR to residential or commercial Bin Customers. Services shall include the minimum level of Single-Stream Recycling, Green Waste and Organic Materials Services specified in Exhibit A. 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. The current maximum size Bin Rate is for six (6) cubic yards of service on Exhibit D-1. To offer to service containers over six (6) and less than ten (10) cubic yards, CONTRACTOR must first apply to the Director for an approved rate. Unless and until such approval is sought and obtained, CONTRACTOR can charge no more than the approved maximum rate for six (6) cubic yards.

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

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

##### **B. Recyclables Collection**

Collection of the Single Stream and other Recyclables specified in Exhibit A, using approximate ninety (90)-gallon Carts as the default size for basic service, or approximate sixty (60)-gallon Carts at Customer request. Upon request from Customer or COUNTY, CONTRACTOR shall provide Recyclable Materials Collection service to Customers up to the equivalent volume of Solid Waste Collection service subscribed by Customer at no additional charge to Customer. In the event a Customer requests Recyclable Materials Collection service in excess of their subscribed level of Solid Waste Collection service, CONTRACTOR may charge Customer for that additional recycling service up to fifty percent (50%) of the Rate for the equivalent level of Solid



1 Waste Collection service approved under this Agreement after adjusting the service  
2 level to allow for the amount of service that must be provided at no charge. For  
3 example, if CONTRACTOR provides two (2) cubic yards of Solid Waste and four (4)  
4 cubic yards of Recyclables services, the first two (2) cubic yards of Recyclables service  
5 is free and the additional two (2) cubic yards may be charged up to 50% of the Solid  
6 Waste Collection rate.

7 **C. Green Waste Collection**

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

13 **D. Mandatory Commercial Recycling**

14 AB 341 imposed mandatory commercial recycling requirements statewide on all  
15 businesses, which includes public entities. Under AB341, a business that generates four  
16 cubic yards or more of commercial solid waste per week or is a multifamily residential  
17 dwelling of five units or more shall arrange for recycling services. It is understood and  
18 acknowledged between the Parties that businesses can use one or any combination of  
19 the following practices to reuse, recycle, compost or otherwise divert solid waste from  
20 disposal: 1) Self-haul; 2) Subscribe to a hauler's recycling service; 3) Arrange for the  
21 pickup of recyclable materials independent of waste hauling services; or 4) Subscribe to  
22 a recycling service that may include mixed waste processing that yields diversion  
23 results comparable to source separation.

24 In addition, each jurisdiction must implement an outreach and education program and  
25 monitor compliance with the statewide mandatory commercial recycling requirements.  
26 CONTRACTOR shall, within no more than sixty (60) days after the Operative Date,  
27 make available collection and processing of Recyclable Materials for Customers that  
28 must comply with the State-imposed commercial recycling requirements as mandated

1 by AB 341. CONTRACTOR also shall identify in its Quarterly Report those Customers  
2 that fail or refuse to comply with the mandatory commercial recycling requirements of  
3 AB 341.

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

5 CONTRACTOR shall, within no more than six (6) months after the Operative Date,  
6 make available collection and processing of Organic Materials for at least 25% of  
7 CONTRACTOR's Customers that must comply with AB1826 and/or SB1383 (including  
8 Green Waste). Currently those laws apply to Commercial Customers. During the life of  
9 this Agreement it is expected that those laws will include requirements for Residential  
10 Customers as well. Within no more than three (3) months after the Operative Date,  
11 CONTRACTOR shall submit to the COUNTY Representative its implementation plan  
12 for the provision of such services (for commercial, multi-family and single-family  
13 residential). That implementation plan shall detail how quickly the CONTRACTOR will  
14 roll out the required Organic Materials Collection and Processing program for all of the  
15 Customers that need to comply with State goals in its Service Area and all other  
16 Customers, not to exceed 5 years from the Effective Date. The rate for  
17 CONTRACTOR to provide Organic Materials Collection and Processing Services shall  
18 be calculated on the following basis: 60% of the maximum Rates hereunder for Solid  
19 Waste Collection of comparable size and frequency, plus the actual cost per ton for  
20 transfer and/or Organic Materials Processing. Prior to the implementation of this  
21 service, the CONTRACTOR and the COUNTY will meet and confer to establish the  
22 maximum Rates for Organic Material Collection, transfer and Processing services for  
23 both Commercial and Residential Customers services for both commercial and  
24 residential customers based on the use of an Organic Material Processing Facility  
25 mutually agreed upon by the CONTRACTOR and the COUNTY in determining the  
26 actual cost per ton. The COUNTY will solicit proposals from all ESAP haulers and  
27 Organic Material Processing Facilities that serve Fresno COUNTY communities and/or  
28 businesses to arrange a Master Service Agreement for such processing services and a

commitment that all ESAP haulers could use that processing service at a price not to exceed the maximum Rate in the Master Service Agreement. 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.

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

CONTRACTOR shall provide Community Clean-Up Services for the collection of non-Excluded Waste items for all residential Cart Customers. The maximum amount of materials that will be collected from each Cart Customer shall be limited to two (2) cubic yards (including white goods and e-waste), and one (1) Freon-containing appliance. These drop-off events shall occur once a year during each calendar year within each exclusive Service Area Boundary. 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 such funds are available. Provided, however, that if the materials collected from each Cart Customer exceed the maximum amount previously specified in this Section 4.3, then CONTRACTOR shall impose upon that Customer the additional charge specified in Exhibit D-3 to this Agreement. CONTRACTOR will also accept material from non-Customers who present COUNTY cleanup coupons.

1 CONTRACTOR will follow COUNTY guidelines for the use of such coupons and for  
2 reports that CONTRACTOR agrees to provide to the COUNTY on all tons and materials  
3 types collected. CONTRACTOR will charge Bulky Item Special Service Rates after  
4 COUNTY's Coupon Program funding is expended. CONTRACTOR shall also provide  
5 up to 50 tons per year of roll-off services, per Exclusive Service Area Boundary (as  
6 identified in Exhibit C), and within such Exclusive Service Area Boundary within its  
7 territory for free service for homeless encampments and/or litter abatement, upon  
8 request by the COUNTY.

9 CONTRACTOR shall make Best Efforts to recycle or divert from Disposal fifty percent  
10 (50%) of all materials collected through Community Clean-Up Services.

#### 11 **4.4 ON-CALL BULKY ITEM PICK-UP**

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

#### 18 **4.5 CHRISTMAS TREE COLLECTION**

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

#### 26 **4.6 FREE SIDE-YARD SERVICE**

27 CONTRACTOR shall provide free side-yard Service to disabled or elderly Customers  
28 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.

#### **4.7 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 with the Operative Date of this Amended and Successor Agreement and continuing throughout the Extended Term, as follows:

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

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

B. Application for Limited Exemption from Flow Control Requirement

At any time between the Effective Date and the one-year anniversary of the Operative Date, CONTRACTOR may make an application to the Director of Public Works and Planning (Director) for an exemption from the Flow Control requirement set forth in the immediately preceding Paragraph 4.7A.

1. 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 the applicant/CONTRACTOR's application establishes facts sufficient to meet any of the following circumstances:

- a. Extreme economic inefficiencies attributable to geographical hardship;
- b. The applicant/CONTRACTOR owns or operates a landfill and has established, to the satisfaction of the COUNTY Representative, a history of timely and accurate compliance with the reporting and payment requirements to the COUNTY

1 under this Amended and Successor Agreement over the course of the Extended Term;

2 c. The applicant/CONTRACTOR provides, in support of its application for  
3 an exemption, a copy of its separate agreement with the operator of a legally permitted  
4 transfer station that either: (i) establishes to the COUNTY's satisfaction that all Solid  
5 Waste delivered by that CONTRACTOR to said transfer station will be disposed of by  
6 the transfer station operator at AADS; or (ii) requires compliance with the  
7 CONTRACTOR's reporting requirements and payment obligations to the COUNTY  
8 under this Amended and Successor Agreement, by the CONTRACTOR and/or the  
9 operator of the transfer station with regard to such Solid Waste, and expressly identifies  
10 the COUNTY as a third party beneficiary of such separate agreement, at least with  
11 respect to that particular provision of the agreement between the hauler and the transfer  
12 station operator; or

13 d. CONTRACTOR may utilize a Third-Party Transfer Station and a Third-  
14 Party Landfill that meet all of the following: (i) CONTRACTOR may choose to deliver  
15 Solid Waste collected in the COUNTY to a Third Party Transfer Station located in  
16 Fresno COUNTY, or a facility approved by the Director; (ii) CONTRACTOR provides  
17 reports to the COUNTY in a frequency and format requested by the COUNTY, as well  
18 as all other information reasonably required by COUNTY for reporting on Solid Waste  
19 disposal tonnage to the California Department of Resources Recycling and Recovery or  
20 its successor agency; (iii) CONTRACTOR remits payment to the COUNTY of all  
21 COUNTY Solid Waste Surcharges that become due and payable to COUNTY from  
22 CONTRACTOR under Section 3.5, Paragraph C of this Agreement, in the same amount  
23 as would be paid by CONTRACTOR if CONTRACTOR's Solid Waste were delivered to  
24 AADS; and (iv) CONTRACTOR's Solid Waste is delivered to a Third Party Landfill  
25 which, in turn, is obligated to deliver or cause its affiliates to deliver the same amount of  
26 tonnage of Solid Waste delivered to the Third-Party Landfill to a landfill operated by the  
27 CONTRACTOR or an affiliate of CONTRACTOR.

28 e. Extenuating circumstances which are not encompassed by any of the

preceding Subdivisions a. through d. of this Subparagraph 4.7.B.1, but which in the determination of the Director provide sufficient justification for approval of such exemption application.

Any 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 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 the immediately following Paragraph 4.7C, 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.

C. Revocation of Exemption

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 CONTRACTOR'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 collected by CONTRACTOR under this Agreement to AADS in accordance with the provisions of Section 4.7.A.

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

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

#### **4.9 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 transfer and/or Organic Materials Processing, pursuant to (and as more thoroughly set forth in) Section 4.2, Paragraph E.

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

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

**4.11 COUNTY FACILITIES**

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

**ARTICLE 5**

**OTHER COLLECTION SERVICES**

**5.1 CUSTOMER INFORMATION AND PUBLIC EDUCATION**

CONTRACTOR is responsible for distribution of public education materials, including the reproduction and mailing of start-up information kits for new Customers (describing CONTRACTOR’s services), quarterly newsletter and residential, multi-family and commercial information based on COUNTY templates. Exhibit A specifies the minimum standards for CONTRACTOR’s performance of these activities. CONTRACTOR shall distribute public education materials and notices as directed by the COUNTY. CONTRACTOR will provide via direct mail to all County residents who subscribe to services within their specific Zones, at least thirty (30) days’ notice of the following: changes to services and rates; community clean-up program; and information related to

1 local, state, or federally mandated requirements (e.g., AB341, AB1826, and SB1383).  
2 COUNTY will be responsible to notice non-subscribing residents and businesses of  
3 local, State, and Federal mandates and compliance with these mandates. All  
4 information and materials (including telephone messages, as provided in Section 5.2)  
5 shall be conveyed, at a minimum, in both English and Spanish for the CONTRACTORS  
6 operating in Zones 1, 2a and 2b Service Rate Areas. CONTRACTOR further  
7 acknowledges its responsibility, and the important role of the CONTRACTOR's  
8 consumer information and public education efforts, in causing the COUNTY to reach  
9 and maintain State goals detailed in Section 3.8.

## 10 **5.2 CUSTOMER SERVICE AND ACCESSIBILITY**

11 CONTRACTOR shall maintain and provide to all Customers a telephone number for  
12 Customer service, and shall provide all telephonic services specified in this Section 5.2,  
13 at a minimum, in both English and Spanish. CONTRACTOR shall install and maintain  
14 telephone equipment, and shall have on staff a sufficient number of dedicated service  
15 representatives to handle the volume of calls typically experienced on the busiest days.  
16 Such dedicated customer service representatives shall be available to answer calls from  
17 8 a.m. to 5 p.m., Monday through Friday. CONTRACTOR shall also maintain an after-  
18 hours telephone message system to record calls received outside CONTRACTOR's  
19 normal business hours. CONTRACTOR shall provide the COUNTY a means of  
20 contacting a representative of the CONTRACTOR on a twenty-four (24) hour basis.

## 21 **5.3 SERVICE COMPLAINTS AND RESOLUTION**

### 22 **A. Customer Complaint Log**

23 CONTRACTOR shall maintain a written log of all oral and written service complaints  
24 registered with CONTRACTOR from Customers within COUNTY ("Complaint Log").  
25 CONTRACTOR shall be responsible for prompt and courteous attention to, and prompt  
26 and reasonable resolution of, all Customer complaints. CONTRACTOR shall record in  
27 the Complaint Log all written and oral complaints, noting the name and address of  
28 complainant, date and time of complaint, nature of complaint, identity of supervisor, and

1 nature and date of resolution. COUNTY has the right under this Agreement to inspect  
2 the Complaint Log upon written request. Unless the COUNTY Representative provides  
3 CONTRACTOR with express written authorization for its disposal, such log shall be  
4 retained by CONTRACTOR for three (3) years following the end of the year in which the  
5 complaint was made; provided, however, that any log incidental to an assessment of  
6 Liquidated Damages, a breach, a default, or a cause of termination shall be retained  
7 until the end of the remaining Term of this Agreement, or three (3) years following the  
8 end of the year in which the complaint was made, whichever is later.

9 **B. Resolution of Complaints**

10 CONTRACTOR shall respond to all Customer complaints within twenty-four (24) hours,  
11 Saturdays, Sundays, and holidays excluded, as specified in Exhibit A. CONTRACTOR  
12 shall make every reasonable effort to resolve all complaints within five (5) Working  
13 Days, with the exception of missed Customer pickups. If a complaint involves a missed  
14 pick up of Solid Waste, Recyclables, Green Waste or Organic Materials provided by the  
15 Customer for Collection in accordance with COUNTY Ordinances, CONTRACTOR shall  
16 Collect the Solid Waste, Recyclables, Green Waste or Organic Materials in question by  
17 the same day if the complaint is received by 12:00 p.m. (noon), or by 12:00 p.m. (noon),  
18 the following Working Day if the complaint is received after 12:00 p.m. (noon).

19 **5.4 CHANGE IN COLLECTION OPERATIONS, ADMINISTRATION, OR SCHEDULE**

20 **A. COUNTY Notice**

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

Customers shall constitute a Change in Service.

## **B. Customer Notice**

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

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

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

### **A. General**

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

### **B. Ownership of Hazardous Waste**

The Parties agree and intend that upon Collection, all Collection Materials (which specifically does not include Hazardous Waste or other Excluded Waste) shall become the property of CONTRACTOR. All other materials (including Hazardous and other Excluded Waste) shall remain the property of the Customer or other generator(s) that disposed of such materials, and such person(s) shall remain solely responsible for such

materials, including without limitation for their transportation and proper disposal, retrieval of such materials from any location to which CONTRACTOR may have transported them, and for any and all damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the generation, transportation, handling, cleanup, remediation or disposal of such materials, whether under California Health and Safety Code Section 25189.5 or other Applicable Law.

### **C. Hazardous Waste Disposal Responsibility**

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

## **5.6 CHANGE IN SCOPE**

### **A. General**

COUNTY may require a Change in Scope, consisting of changes in, or modifications to, existing Collection Services, request that CONTRACTOR provide new services, or may consider a CONTRACTOR's request for a Change in Scope.

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

### **B. Good Faith Negotiation**

In the event of a Change in Scope, the Parties agree to negotiate in good faith to

determine the applicable distribution for the reasonable costs of reviewing the proposed Change in Scope, and for the resulting increase or decrease in Rates. CONTRACTOR shall promptly provide any documentation requested by COUNTY and reasonably necessary to identify and quantify any added or reduced expenses related to the Change in Scope. Either Party may, at its own cost, seek independent third-party assistance in determining the nature of any costs or savings. Any increase or decrease in Rates will require approval by the Board of Supervisors. COUNTY will make a good faith effort to present to the Board of Supervisors the submitted rate adjustment request within four (4) months from the resolution date of negotiation provided that CONTRACTOR submits the request and provides all supporting information in a timely manner. All determinations of added or reduced expenses shall be based on reasonable industry standards and averages for providing such services established in the locality within which the Collection Services are provided hereunder. If a Change in Scope results in a reduction or shift in equipment needs, CONTRACTOR, including any applicable parent or any affiliates, shall make every reasonable effort to redeploy or sell vehicles, Containers, equipment, and materials that are not fully amortized in order to minimize capital expenditures. With regard to any Change in Scope, COUNTY reserves the right to adjust CONTRACTOR's compensation through a mutually agreeable alternative method.

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

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

change in the Rate, to which CONTRACTOR's charges to Customers hereunder shall be subject.

## **ARTICLE 6**

### **BILLING, COLLECTION, AND REMITTANCE**

#### **6.1 BILLING RESPONSIBILITIES**

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

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

##### **B. Specific Requirements**

In billing the Rates, CONTRACTOR shall:

1. Levy Special Service Fees as provided in Exhibit D. Special Service Fees shall not be levied except at the Customer's request for services for which fees shall be charged and after prior notification to the Customer of the amount to be charged therefor.
2. Not bill for side-yard service for eligible Customers as specified in Article 4 and Exhibit A.

All Bin Customers shall be billed monthly, and may be invoiced in advance of service, at CONTRACTOR's discretion. Cart Customers may be billed in advance, either on a monthly basis or on a two (2)- or three (3)-month basis, at CONTRACTOR's discretion. In the event that a customer receives Collection Service without being billed, CONTRACTOR may charge for no more than three months of service once that customer is identified and notice is sent to Customer. CONTRACTOR shall inform COUNTY prior to noticing Customer, and the due date specified in such notice for payment by the Customer of such previously unbilled Rate charges shall be no less than 60 days after date of mailing of the notice to Customer. Except as provided in this

paragraph for previously unbilled Rate charges, CONTRACTOR shall not impose any other retroactive Rate charges on any Customer.

## **6.2 RECEIPT OF PAYMENT**

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

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

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

### **A. Reported Revenues**

All revenues collected during that month by CONTRACTOR from its Customers resulting from the imposition of any and all Rates (including payments for both current and past due accounts) shall be reported in the Quarterly Statement as "Reported Revenues." Provided, that the AB 939 Service Fee shall be based only on Rate Revenues actually collected by CONTRACTOR for all the Rates CONTRACTOR may charge its Customers for Collection, Disposal and processing Services provided within its Exclusive Service Area(s) that CONTRACTOR is required to provide hereunder and Special Services provided within its Exclusive Service Area(s), including Rates for Community Cleanup Services and Organic Materials Collection and Processing Services. The AB 939 Service Fee shall not reflect any accounts receivable (i.e., delinquent accounts and bad debts) or other uncollected amounts (e.g., Special Service Fees and Community Clean-Up Event Service charges that have not yet been collected). Documentation shall be provided to support all Reported Revenues including, at a minimum, the total number of accounts for each applicable charge, the total number of Customers billed for each such amount, and all revenues collected from



any Community Clean-Up Event Services, and Special Service Fees.

**B. AB 939 Service Fee**

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

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

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

**C. Southeast Regional Fee**

Fresno County Ordinance Code Section 8.20.075 authorizes the COUNTY to collect a fee from permitted haulers to cover the costs for closure and post-closure maintenance of closed COUNTY landfills in the Southeast Regional Solid Waste Commission Area. The charges imposed by the COUNTY will be on all Solid Waste generated within the Southeast Regional Solid Waste Commission area. The Southeast Regional Fee Component of each Rate for Customers within the Southeast Regional Solid Waste Commission Area will be calculated as provided in Exhibit I, which is attached hereto and incorporated by this reference, and which explains the manner in which the adjusted Southeast Regional Fee Component is to be determined.

**D. Liquidated Damages**

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

**E. Other Payments**

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

**F. Quarterly Remittance**

The Quarterly Remittance to COUNTY shall be calculated as follows:

Quarterly Remittance = COUNTY fees (AB 939 Service Fee and COUNTY Solid Waste

1 Surcharges) + Liquidated Damages or Other Payments (if applicable). An illustration of  
2 the manner in which the Quarterly Remittance is calculated is set forth in Exhibit F  
3 attached hereto and incorporated by this reference.

#### 4 **6.4 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT** 5 **PAYMENTS**

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

13 It is understood and hereby acknowledged by the Parties that CONTRACTOR may not  
14 impose a retroactive Rate charge on any Customer, except in accordance with and  
15 under the limited circumstances expressly authorized by the last paragraph of Section  
16 6.1.

#### 17 **6.5 AUDIT OF BILLINGS AND FINANCIAL REPORTS**

##### 18 **A. Scope of Audit.**

19 COUNTY may at its sole discretion select a qualified independent firm to perform an  
20 audit of CONTRACTOR's records and data directly relevant to matters relating to  
21 CONTRACTOR's performance of its obligations under this Agreement, as set forth in  
22 this Paragraph 6.5.A. Upon demand, the CONTRACTOR shall permit the firm specified  
23 by COUNTY to audit and inspect all financial, statistical and accounting records,  
24 pertaining to CONTRACTOR's billing records and all revenues associated with  
25 CONTRACTOR's delivery of Collection Services. CONTRACTOR shall, upon request  
26 and written notification by COUNTY, permit the audit and inspection of all of such  
27 records and data by the firm specified by COUNTY. The frequency and timing of the  
28 audits shall be determined at COUNTY's discretion, but shall not exceed a maximum of

three (3) audits during the Base Term and two (2) during the Extension Term. COUNTY shall be responsible for payment of all audits during the Base Term of the Agreement and any Extension of the Agreement. COUNTY shall provide CONTRACTOR thirty (30) days' notice of each audit. COUNTY shall determine the scope of any audits consistent with the purposes specified below and may elect to conduct either one or both of the following types of audit:

1. **Audit of Billings.** The auditor shall review the billing practices of CONTRACTOR with relation to delivery of Collection Services. The independent auditor would utilize randomized Customer sampling, across service sectors. The intent of this audit is to use sampling to verify that CONTRACTOR's charges to its Customers do not exceed the maximum Rates and that all customer types are receiving the type and level of service for which they are billed. Complete customer listings, by type, from which randomized case audits would be selected, would be provided through the CONTRACTOR.
2. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and data submitted by CONTRACTOR pursuant to Article 8. The purpose of this audit is to verify that CONTRACTOR is correctly calculating Rate Revenues, and is properly remitting AB 939 Service Fees and Liquidated Damages.

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

**B. Confidentiality.** CONTRACTOR understands that although all materials reviewed by the COUNTY pursuant to this Section 6.5 are intended for sole use by the COUNTY,

1 they are potentially subject to disclosure under the provisions of the California Public  
2 Records Act ("CPRA"). Provided, however, that if any document provided by  
3 CONTRACTOR for review by the independent auditor to assist with the audit process is  
4 identified by CONTRACTOR at the time it is provided to the specified auditing firm as  
5 "confidential" and/ or "trade secret" information, then COUNTY shall be given access to  
6 review such document(s) at the local office of the CONTRACTOR.

7 For any document(s) marked "confidential" and/ or "trade secret" (hereinafter  
8 "Confidential Documents"), COUNTY may not obtain and retain copies thereof. It is  
9 agreed between the Parties hereto that any subsequent access and review by COUNTY  
10 personnel with regard to any such Confidential Document(s) shall take place only at the  
11 CONTRACTOR's local office, and any copies of such Confidential Document(s) shall at  
12 all times remain in the sole custody and control of the independent auditor, unless and  
13 until such Confidential Document(s) become subject to production under Applicable  
14 Law, whether pursuant to the CPRA or by means of a subpoena or its legal equivalent.  
15 In such event, COUNTY and its independent auditor may undertake such analysis as  
16 COUNTY deems appropriate, pertaining to any request for disclosure made by a  
17 member of the public pursuant to the CPRA, which is addressed in the immediately  
18 following Section 6.5.C.), or by means of a subpoena or its legal equivalent.

19 C. Public Accessibility to Records Pursuant to the CPRA

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

26 1. If COUNTY or the independent auditor receives any Records/Documents from  
27 the CONTRACTOR that are not labeled as "confidential" or "trade secret," such  
28 Records/Documents shall not be determined exempt from disclosure to the public under

1 the CPRA on that basis, and will be made available to the requesting party in  
2 accordance therewith, unless determined to be exempt from disclosure on some other  
3 basis.

4 2. If COUNTY or the independent auditor receives any Records/Documents from  
5 the CONTRACTOR that are labeled as "confidential" or "trade secret," then COUNTY or  
6 the independent auditor, as applicable, will promptly notify CONTRACTOR, in writing, of  
7 any request made by any member of the public for access to such Records/Documents.  
8 CONTRACTOR shall promptly respond to COUNTY or the independent auditor, as  
9 applicable, in writing (but in no event more than three (3) calendar days from the date  
10 that COUNTY or the independent auditor notifies CONTRACTOR of the request), by  
11 informing COUNTY or the independent auditor, as applicable, as to whether  
12 CONTRACTOR is agreeable or objects to the release of such Records/Documents to  
13 the member of the public. If CONTRACTOR objects to such release, then the response  
14 provided by CONTRACTOR to COUNTY or the independent auditor, as applicable,  
15 must describe in detail the factual and legal grounds for such objection, by identifying  
16 the specific facts and citing the relevant legal authorities in support of CONTRACTOR's  
17 position that the Records/Documents should not be released. If CONTRACTOR fails to  
18 timely object to the release of the Records/Documents to the requesting member of the  
19 public in accordance with this Subparagraph 6.5.C.2, then CONTRACTOR shall be  
20 deemed to have waived any and all rights, if any, to claim that the Records/Documents  
21 are confidential or otherwise exempt from disclosure to members of the public under the  
22 applicable provisions of the CPRA.

23 1. If the Records/Documents that are the subject of a request under the  
24 CPRA may arguably include any Confidential Documents as defined in the immediately  
25 preceding Paragraph 6.5.B, then COUNTY shall review such Confidential Documents at  
26 the local office of the CONTRACTOR. In such a case, COUNTY shall consult with the  
27 independent auditor in considering the grounds upon which CONTRACTOR based its  
28 objection to the release of such Records/Documents, but COUNTY, in its reasonable

1 judgment, shall determine whether to direct the independent auditor to release or not to  
2 release such Records/Documents.

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

18         3. It is understood and acknowledged by the Parties that CONTRACTOR'S  
19 labeling or characterization of any Records/Documents as confidential, or  
20 CONTRACTOR'S requesting that COUNTY and/or the independent auditor treat any  
21 Records/Documents as confidential or otherwise exempt from disclosure to any  
22 member of the public cannot, in and of itself, confer upon such Records/Documents  
23 "confidential" status under Applicable Law, or otherwise exempt such  
24 Records/Documents from disclosure to members of the public under the CPRA.

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1 **ARTICLE 7**

2 **CONTRACTOR COMPENSATION AND CUSTOMER RATES**

3 **7.1 RATES**

4 **A. General Provisions**

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

16 **B. Determination of Maximum Rates Dependent on Applicable Schedule**

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

20 **7.2 ADJUSTMENT OF RATES**

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

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

26 **B. Unforeseen Circumstance Rate Adjustment**

27 Either Party hereto may, subject to the terms of this Section 7.2, initiate a request for  
28 consideration of a Rate adjustment in the Service Rate Area encompassing

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

14 **1. Eligible Items**

15 Eligible Items are divided into two general classifications, as explained in Parts (a) and  
16 (b) of this Subparagraph 7.2.B.1. Eligible Items include (but are not limited to) those  
17 events, listed in Part (a) of this Subparagraph, that will justify approval of an Unforeseen  
18 Circumstances Rate Adjustment, to the extent the request is supported by Substantial  
19 Evidence. While it is neither possible, nor reasonable to attempt, to provide an  
20 exhaustive listing of all other events that may, in the reasonable exercise of the  
21 discretion of the Board of Supervisors, justify approval of an Unforeseen Circumstances  
22 Rate Adjustment, examples of such Items are listed in Part (b) of this Subparagraph.  
23 Part (b) of this Subparagraph shall apply to all requested rate adjustments submitted  
24 under this Paragraph 7.2.B for all Eligible Items, to the extent such request is not  
25 covered by Part (a) of this Subparagraph. For purposes of clarification, to the extent  
26 any request submitted under this Paragraph 7.2.B is not based on an event properly  
27 classified as either a Change in Scope, Change in Law or Pass-Through Expense (each  
28 of which is covered by Part (a) of this Subparagraph), then Part (b) shall be applicable



1 to COUNTY's consideration of such request, and in such cases the extent to which  
2 Substantial Evidence may provide support for a requested Rate Adjustment is merely  
3 one of the factors the Board of Supervisors, in the reasonable exercise of its discretion,  
4 may consider relevant to its determination.

5 (a) The following events will support CONTRACTOR's application to  
6 COUNTY for consideration of an annual Unforeseen Circumstance Rate  
7 Adjustment, or COUNTY's initiation of such a review. Subject only to the  
8 irrebuttable presumption applicable solely to Pass-Through Expenses  
9 under Subdivision (iii), any requested Rate Adjustment that is based on  
10 any of the events listed in Subdivisions (i) through (iii) inclusive of this Part  
11 (a) shall be approved only to such extent (if any), and in such amount, as  
12 is supported by Substantial Evidence to justify a change in the Rates  
13 applicable to the Service Rate Area.

14 (i) Change in Scope.

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

18 (ii) Change in Law.

19 A Change in Law for which CONTRACTOR's compliance is  
20 mandatory, and that results in a significant and documented  
21 change in the specific cost of providing Collection Services, shall  
22 justify approval of an appropriate upward or downward change in  
23 the Rate to the extent, if any, that is supported by Substantial  
24 Evidence.

25 (iii) Pass-Through Expenses.

26 A change in the cost of providing Collection Services, to the extent  
27 it is due to an increase or decrease in the cost of any Pass-Through  
28 Expense(s), shall be deemed to create an irrebuttable presumption

1                   that Substantial Evidence justifies approval of a commensurate  
2                   upward or downward change in the Rate.

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

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

14           (ii)    Increases in disposal surcharges, taxes, fees and other charges  
15                   imposed after the Operative Date by a governmental agency other  
16                   than COUNTY, at a Disposal Facility that is neither owned nor  
17                   operated by COUNTY and is utilized by CONTRACTOR for  
18                   Disposal of Collection Materials generated by Customers pursuant  
19                   to this Agreement.

20           (iii)   Increases in the tipping fee charged at a Disposal Facility that is  
21                   neither owned nor operated by COUNTY and is utilized by  
22                   CONTRACTOR for Disposal of Collection Materials generated by  
23                   Customers pursuant to this Agreement, that are imposed on  
24                   CONTRACTOR after the Operative Date of this Agreement, by the  
25                   operator of such Disposal Facility.

26           (iv)    Subdivision (b)(iv) of this Subparagraph 7.2.B.1 is inapplicable to  
27                   this Amended and Successor Agreement.

28           (v)     A substantial change in character of the Service Rate Area or

portion thereof, when attributable to an annexation, incorporation or de-annexation, may justify a redesignation of the impacted area(s) to allow application of the Rate schedule most appropriate to the area's changed character, as provided in Subparagraph 7.3.D.1.

## **2. Ineligible Items**

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

- (a) Changes in the number of Customers due to changes in population or housing/business development (unless eligible under Subdivision 7.2.B.1(b)(v) as a change in character attributable to an annexation, incorporation or de-annexation).
- (b) Shifts in the number of accounts between larger and smaller Cart sizes, large and smaller Bins, or more or less frequency of Cart and Bin pickup.
- (c) Increases in transportation time and/or costs related to provision of Collection Services that may reasonably be described as either foreseeable or insubstantial, or that may be addressed appropriately by the CPI Adjustment provisions that immediately follow this Subparagraph.
- (d) If CONTRACTOR receives a Poor Performance Rating, and COUNTY requires reasonable changes to CONTRACTOR's operations, at CONTRACTOR's cost, in order to remedy identified deficiencies in CONTRACTOR's performance, pursuant to Subparagraph 8.6.D.1. (It is acknowledged and agreed that exercise of such right by COUNTY is not a Change in Scope, in that the costs incurred by CONTRACTOR are intended to remedy deficiencies in its performance as measured against satisfactory performance of the scope of duties encompassed by the terms of this Agreement.)

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

2           (a)     Approval of a requested rate adjustment for any Pass-Through Expenses  
3 and Changes in Scope shall include payment for any time periods from the date  
4 CONTRACTOR incurred an actual increase in costs as a result of the act or event on  
5 which the request was based, through and including the date of approval of the Rate  
6 Adjustment (such interim period shall be referenced for purposes hereof as the  
7 “Retroactive Adjustment”).

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

18           (c)     Approval of a requested Rate Adjustment attributable either to a Change  
19 in Law, or to any of those Eligible Items that are covered by the provisions of Part (b) of  
20 Subparagraph 7.2.B.1, shall not include any Retroactive Adjustment if determined within  
21 a reasonable time from the date of the initiating request therefor: and such rate  
22 Adjustment shall be effective on a prospective basis only from the date of approval by  
23 COUNTY’s Board of Supervisors, subject only to CONTRACTOR’s compliance with the  
24 requirements of Section 7.3 regarding advance notice to Customers. Provided,  
25 however, and notwithstanding the foregoing, if the initiating request for such a  
26 requested Rate Adjustment (i.e., attributable either to a Change in Law or an Eligible  
27 Item covered by the provisions of Part (b) of Subparagraph 7.2.B.1) and all supporting  
28 information are submitted timely by CONTRACTOR and the Other Interested Providers,

1 and if approval by the Board of Supervisors occurs more than six months after the  
2 initiating request, then only under such limited circumstances a Retroactive Adjustment  
3 shall be allowed; and in such case, the Retroactive Adjustment shall apply only to that  
4 period commencing 120 days after submission of the initial request, through and  
5 including the date of approval by the Board of Supervisors.

6 **C. CPI Adjustment**

7 Each Rate (including Solid Waste, Organic Materials Collection, transfer and  
8 Processing costs, Special Services rates, and Community Cleanup rates after the  
9 COUNTY's coupons are exhausted) shall be adjusted up or down, by COUNTY, on an  
10 annual basis beginning on July 1 after the first anniversary of the Operative Date of this  
11 Amended and Successor Agreement, and on July 1 of each year thereafter for the  
12 remainder of the Extension Term, to reflect the product of the change in the annual  
13 inflation rate measured as the percentage increase in the CPI over the previous twelve  
14 (12)-month period ending on December 31 of the preceding calendar year. COUNTY  
15 Representative shall seek approval of adjustments by the COUNTY Board of  
16 Supervisors during the month of March to facilitate issuance of notices to customers  
17 with hauler billing cycles. For purposes of illustration, the calculation of the change in  
18 the CPI for a Rate adjustment taking effect on July 1, 2019 after the first anniversary of  
19 the Operative Date of this Amended and Successor Agreement shall be based on the  
20 change in the CPI over the period between December 31, 2017, and December 31,  
21 2018. The CPI is then adjusted by the applicable percentage of the CPI (the "CPI  
22 Adjustment Factor"), which is 75 percent (75%) for Cart Rates. 65 percent (65%) for Bin  
23 Rates and 65 percent (65%) for Special Services rates, and Community Cleanup rates.  
24 The adjusted Rate shall be calculated as follows:

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

27 An illustration of the calculation of the adjusted CPI Component is attached as Exhibit G  
28 and incorporated by this reference. The CPI Adjustment is independent of any other

Rate Adjustment request that either Party may initiate, and is neither intended to preclude the availability nor to supplant the procedures provided in this Agreement for Rate adjustments that may be justified on other bases (including without limitation for Pass-Through Expenses).

**D. Change in the CPI Index**

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

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

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

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

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

If COUNTY's new Disposal Tipping Fee will only be in effect for a portion of the new Contract Year, the adjustment to the Disposal Tipping Fee Component shall be prorated accordingly. Examples of the manner in which the adjusted Disposal Tipping Fee Component is calculated are provided in Exhibit H hereto and incorporated by this reference.

**7.3 NOTICE OF ADJUSTED RATES**

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

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**A. Review of Costs**

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

**B. Submittal of Request**

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

**C. Burden of Justification**

CONTRACTOR shall bear the burden of justifying to COUNTY by Substantial Evidence any request by CONTRACTOR for consideration of a Rate adjustment under this Article 7. The request shall be addressed to the COUNTY Representative, and on its face shall reflect that CONTRACTOR also has sent copies of such request to all other exclusive providers of Collection Services operating within the Service Rate Area at issue (for purposes of this Paragraph 7.3.C, hereinafter "Other Interested Providers"), pursuant to agreements substantially identical to this Agreement. The recommendation of the COUNTY Representative as to approval or disapproval of the request shall be based upon the accompanying supporting information submitted together with the initiating request submitted by CONTRACTOR to the COUNTY Representative and such additional supporting information as may be presented to the COUNTY Representative, in a reasonably timely manner, by any Other Interested Providers. The submittal of such additional supporting information by Other Interested Providers shall be considered timely if submitted within 45 days after CONTRACTOR's initiating request. The supporting information submitted by CONTRACTOR and any Other Interested Providers, or an appropriate summary thereof, shall be presented to the Board of Supervisors as part of the agenda packet in advance of the hearing on the

request. The Board of Supervisors, in its discretion and only for good cause shown, may consider additional evidence not previously presented to the COUNTY Representative, in accordance with the provisions of this Paragraph 7.2.C, by CONTRACTOR and any Other Interested Providers. If the Board of Supervisors determines that CONTRACTOR has not met its burden, to present Substantial Evidence to justify a Rate Adjustment in the Service Rate Area at issue (whether based on CONTRACTOR's initial submission of supporting documentation or any additional evidence allowed in the Board of Supervisors' discretion), the decision of the Board of Supervisors on that issue shall be final for administrative purposes, subject only to limited judicial review as specified in Section 7.4.

**D. Grant of Request**

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

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

Because Rates are intended to be uniform throughout the entire Service Rate Area that includes CONTRACTOR's Exclusive Service Area, the CONTRACTOR is required to provide evidence that supports or justifies application of the requested Rate Adjustment throughout the entire Service Rate Area, consistent with the provisions of Paragraph 7.3.C. Notwithstanding the foregoing, in the event of an annexation, incorporation or de-annexation, as contemplated by Subdivision 7.2.B.1(b)(v), COUNTY may (and if requested by CONTRACTOR shall) determine whether the Service Rate Area or some portion thereof should be redesignated from its existing designation (Zone 1, Zone 2a, Zone 2b and Zone 3) to one of the other designations, because of a substantial change in the character thereof caused by the annexation, incorporation or de-annexation, in which case CONTRACTOR and the COUNTY shall cooperate in taking all actions reasonably necessary to implement the redesignation expeditiously, including without



1 limitation making the necessary modifications to the Agreement and providing  
2 reasonable notice to CONTRACTOR's Customers.

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

4 (a) For those Eligible Items that are considered under Part (a) of Subparagraph  
5 7.2.B.1, the extent to which Substantial Evidence supports the requested Rate  
6 Adjustment may properly be characterized as the controlling factor in the Board of  
7 Supervisors' determination. To the extent a request is based on a properly  
8 characterized Pass-Through Expense, Change in Law or Change in Scope, then such  
9 request shall be approved, but only to the extent (if any), and in such amount, as is  
10 supported by Substantial Evidence, as applied to the entire Service Rate Area at issue.

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

24 **E. Unspecified Special Service Fees**

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

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

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

**ARTICLE 8**

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

**8.1 RECORD KEEPING**

**A. Accounting Records**

CONTRACTOR shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection by COUNTY Representative or designee upon request. Rate Revenues, Special Service Fees, Community Clean-Up Event Services, and Recycling revenues derived from provision of

1 the Collection Services, whether such services are performed by the CONTRACTOR or  
2 by a subcontractor(s), shall be recorded as revenues in the accounts of  
3 CONTRACTOR. CONTRACTOR shall maintain and preserve all cash, billing and  
4 Disposal records for a period of not less than five (5) years following the close of each  
5 of CONTRACTOR's fiscal years. Provided, however, that as to any record relating to an  
6 assessment of Liquidated Damages, or to declaration of a breach, a default, or a  
7 specified cause of termination, any and all such record(s) shall be retained for a  
8 minimum of five (5) years, or for four (4) years following the expiration or termination of  
9 this Agreement, whichever is earlier, unless the COUNTY Representative gives express  
10 written authorization for its disposal.

11 **B. Collection Materials Records**

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

19 **C. Public Education and Information**

20 CONTRACTOR shall maintain, and preserve for the time period specified in Paragraph  
21 8.1.A, records of its customer information and public education activities as detailed in  
22 Article 5.1 and Exhibit A of this Agreement. Such records shall be subject to audit, copy,  
23 and inspection by COUNTY Representative or designee upon request.

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

25 CONTRACTOR shall maintain, and preserve for the time period specified in Paragraph  
26 8.1.A, records of all public education, outreach, and monitoring activities, for all  
27 commercial accounts as required by AB 341 and AB 1826, and other applicable laws.  
28 Such records shall be subject to audit, copy, and inspection by COUNTY

Representative or designee upon request.

**E. Customer Complaint Log**

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

**F. Operations Data**

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

CONTRACTOR shall provide COUNTY with such other information as may reasonably be requested.

**G. Other Records**

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

**8.2 REPORTING**

**A. General**

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

1 As set forth in this Article, CONTRACTOR shall submit reports to the COUNTY on Solid  
2 Waste Collection and Disposal, Recyclables Collection, Green Waste and Organic  
3 Materials Collection to assist the COUNTY in meeting the reporting requirements of AB  
4 939, SB 1016, AB 341, AB 1826, SB1383 and other new laws or requirements.

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

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

12 **B. Accuracy of Reports**

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

17 The submittal by CONTRACTOR of records or reports that are untimely, or are  
18 determined by the COUNTY Representative to be insufficient or inaccurate pursuant to  
19 the provisions of Paragraph 4.7C shall also constitute grounds for revocation of  
20 CONTRACTOR's exemption from the requirement of Paragraph 4.7A to deliver to the  
21 American Avenue Disposal Site all of the Solid Waste CONTRACTOR collected within  
22 the unincorporated areas of Fresno County. CONTRACTOR shall ensure that reports  
23 submitted to processing and disposal facilities match reports submitted to the COUNTY,  
24 to the satisfaction of the COUNTY. CONTRACTOR'S drivers will provide the same  
25 county of origin information to processing and disposal facilities as provided to the  
26 COUNTY.

27 **C. Quarterly Reports to COUNTY**

28 Quarterly reports to COUNTY shall be due forty-five (45) days after the end of the

1 respective quarter and shall include.

- 2 1. Amount (in tons) of Solid Waste, Recyclables, Green Waste and Organic  
3 Materials Collected;
- 4 2. Amount (in tons) and type of materials deposited in a permitted facility and  
5 identification of permitted facility.
- 6 3. Amount (in tons) of Recyclables, Green Waste and Organic Materials  
7 Diverted.
- 8 4. Customer count and tons by type of service including Special Services  
9 and Community Clean-Up Services and coupons accepted from  
10 Customers and Non-Customers.
- 11 5. Unit counts, material types and tonnages of bulky items collected from  
12 residential customers, indexed by zipcode+4 coding.
- 13 6. Customer participation rates by type of service (i.e., Solid Waste,  
14 Recyclables, Green Waste and Organic Materials collection services) by  
15 customer service sector (residential and commercial). Residential  
16 participation rate to be measured by the percentage of customers setting  
17 out a cart in a given month. Commercial account participation rate  
18 calculation to be mutually agreed upon by the CONTRACTOR and  
19 COUNTY.
- 20 7. COUNTY Fees and supporting data and calculations as detailed in Exhibit  
21 F.
- 22 8. Public education and information activities undertaken during the quarter  
23 by category (electronic, print, and direct contact), including distribution of  
24 bill inserts, number of issued collection notification tags, community  
25 information and events, quarterly newsletters, and other activities related  
26 to the provision of Collection Services.
- 27 9. Information on commercial recycling technical assistance including listing  
28 waste audits/business assessments conducted and new commercial

accounts offered service.

10. AB 341 and AB 1826 compliance and monitoring reporting, including a listing of the businesses and institutions subject to the requirements of each law, and the actual businesses and institutions with Recycling and Organic Material Collection Services. CONTRACTOR additionally shall list the informational notices, as applicable, and the non-compliance notices (including identification of the non-compliant Customer), as applicable, distributed each quarter throughout its service area.
11. State-mandated reporting data required under AB341, AB1826, SB1383 or any new laws or requirements.
12. Separate tonnage data (Solid Waste, Recyclables, Green Waste, Organics Materials) for all schools, colleges, universities, Special Districts, COUNTY, State and Federal facilities that CONTRACTOR serves in the County (even if not a Customer under this Agreement).
13. Residual rates for the amount of Residual generated by weight of materials processed for Recycling.
14. Customer complaint logs for the specified time period.
15. Summary of Liquidated damages assessed for the specified time period. Fourth Quarter reports to COUNTY due on February 15<sup>th</sup> of each year additionally shall include data by category (electronic, print, and direct contact), for Electronic Annual Reports to the State under AB341 Mandatory Commercial Recycling (MCR) and data for Electronic Annual Reports to the State under AB 1826 Mandatory Commercial Organics Recycling (MORE) as indicated in Exhibit J and below:
  1. All quarterly data as detailed above.
  2. A summary assessment of the delivery of services in the CONTRACTOR'S service area. The intent of the report is for the CONTRACTOR to assess how well services and programs are operating

1 in terms of efficiency, and meeting the COUNTY's diversion requirements.  
2 This is an opportunity for the CONTRACTOR to highlight significant  
3 accomplishments and provide recommendations for service and program  
4 improvements.

5 3. A summary of the prior year's quarterly Rate Revenues, COUNTY Fees,  
6 Liquidated Damages, any other payments to COUNTY, and Quarterly  
7 Remittances.

8 4. An estimated annual Diversion rate for CONTRACTOR's Customers  
9 calculated for the previous calendar year by customer service sector  
10 (residential, commercial and bulky items) and overall.

11 5. Customer account data by service level and customer service sector  
12 including the number of accounts, number of carts and bins by service  
13 level,  
14 amount (in tons) and type of materials collected, amount and type of  
15 materials deposited in a permitted facility, amount and type of materials  
16 Diverted, applicability of mandatory commercial recycling (MCR) and  
17 mandatory organics recycling (MORe) for each account, and customer  
18 count by type of service, including Special Services and Community  
19 Clean-Up Services.

20 6. Compilation of all quarterly reports information on public education and  
21 information activities undertaken during the year by category (electronic,  
22 print, and direct contact), including distribution of bill inserts, number of  
23 issued collection notification tags, community information and events,  
24 quarterly newsletters, and other activities related to the provision of  
25 Collection Services.

26 7. Amount of Solid Waste removed by CONTRACTOR for Collection  
27 purposes from locations within the COUNTY and taken by CONTRACTOR  
28 for Disposal to landfills located outside the COUNTY.



1 8. Compilation of all quarterly reports information on the number and type of  
2 complaints received over the past year, including how they were resolved  
3 and the elapsed time between receipt of the first complaint and final  
4 resolution of the complaint. CONTRACTOR shall propose, and COUNTY  
5 shall approve in advance the format to be used for this portion of the  
6 annual report.

7 9. CONTRACTOR shall include a listing of markets for Recyclable Materials  
8 and the end use of these materials in general categories requested by  
9 COUNTY (such as broad categories of “domestic” or “export”, not specific  
10 purchasers of the materials). This type of information is used to help the  
11 COUNTY gauge the sustainability of Recycling markets and to assist in  
12 the development of new markets.

### 13 **8.3 OTHER RELATED REQUIREMENTS**

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

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

#### 20 **B. Collection Monitoring**

21 CONTRACTOR shall monitor its Collection of Solid Waste, Recyclable Materials, Green  
22 Waste and Organic Materials to identify occurrences of, and to prevent, contamination  
23 of Recyclable Materials, Green Waste and Organic Materials. COUNTY may also  
24 monitor CONTRACTOR while on route by observing collection activities and practices.  
25 COUNTY Representative will inform CONTRACTOR at least one (1) week in advance  
26 prior to date of such route monitoring. COUNTY Representative will make such  
27 observations at a safe distance from CONTRACTOR’s vehicles, equipment and  
28 employees and otherwise comply with all policies and procedures of CONTRACTOR

when making such observations.

#### **8.4 INSPECTION BY THE COUNTY**

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

#### **8.5 PERIODIC REVIEW**

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

#### **8.6 PERFORMANCE REVIEW**

Subject to issues listed below, COUNTY may require a "Performance Review" of CONTRACTOR up to three (3) times during the Base Term of the Agreement and two (2) times during the Extension Term of the Agreement. (Provided, however, that a

1 Remedial Performance Review, whether scheduled by the COUNTY Representative  
2 pursuant to Subparagraph 8.6.D.2, or by the Board of Supervisors pursuant to  
3 Subparagraph 10.7.A.2, shall not count against the maximum allotted number of  
4 Performance Reviews specified in the preceding sentence.) COUNTY shall be  
5 responsible for payment for all Performance Reviews during the Base Term and any  
6 Extension Term of the Agreement. (Provided, however, that CONTRACTOR is  
7 responsible for any costs incurred by CONTRACTOR in cooperating and participating in  
8 the Performance Review process, and CONTRACTOR shall not be entitled to  
9 reimbursement therefor.) The Performance Review shall be conducted as set forth in  
10 the following provisions of this Section 8.6.

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

- 12 1. Be performed by a qualified firm under contract to COUNTY. The  
13 qualified firm shall be selected by COUNTY.
- 14 2. Address all appropriate areas of concern to COUNTY, and shall provide  
15 specific recommendations, as appropriate, for improvement in each area,  
16 including but not limited to the following:
  - 17 a. Compliance with the terms of this Agreement and Applicable Laws.
  - 18 b. Overall organizational structure and management systems and  
19 procedures.
  - 20 c. Efficiency of Collection operations, including an analysis of routes,  
21 schedules, and the impact of the requirements of this Agreement.
  - 22 d. Timeliness and thoroughness of Collection Services.
  - 23 e. Staffing practices, including the deployment of management and  
24 supervisory personnel.
  - 25 f. Financial management practices, including billing and collection  
26 system and policies regarding uncollected Customer accounts.
  - 27 g. Personnel management practices, including compensation policies  
28 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 of its duties and obligations under this Agreement shall be accorded one of the following ratings by COUNTY (in consultation with the firm selected pursuant to Subparagraph 8.6.A.1): "Satisfactory," "Needs Improvement," or "Poor." Determination of the rating given to the CONTRACTOR shall be based on the factors and concerns specifically enumerated in Subparagraph 8.6.A.2, and the extent to which CONTRACTOR's performance meets or exceeds generally accepted industry standards and COUNTY's reasonable expectations regarding the quality of service and responsibility to the general public demonstrated by CONTRACTOR in its performance of a critical public service.
2. Either of the following circumstances shall be considered presumptive evidence

of poor performance, based on unacceptably high Liquidated Damages:

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

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

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

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

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

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

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

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

2. In the event CONTRACTOR receives a rating in its Performance Review other than "Satisfactory" (i.e., either "Improvement Needed" or "Poor"), then the

- COUNTY Representative, in his or her discretion, may place the CONTRACTOR on probationary status, and in such case a Remedial Performance Review shall be scheduled to be conducted approximately six (6) months after the date of CONTRACTOR's placement on probationary status. If the CONTRACTOR receives a rating of "Satisfactory" in the Remedial Performance Review, the CONTRACTOR automatically shall be removed from probationary status.
3. In the event CONTRACTOR receives a rating of "Poor" in its Performance Review, then the COUNTY Representative, in his or her discretion, may declare an Event of Default and initiate proceedings recommending COUNTY's termination of the Agreement, pursuant to the provisions of Subparagraph 10.7.A.2. If the COUNTY Representative declares an Event of Default and recommends termination of this Agreement (rather than placement of CONTRACTOR on probationary status under the immediately preceding Subparagraph 8.6.D.2), based on CONTRACTOR's "Poor" performance rating, then that recommendation shall proceed to the Board of Supervisors for its consideration in accordance with the provisions of Subparagraph 10.7.A.2.
4. In the event CONTRACTOR receives two (2) consecutive ratings of "Poor" (first in a standard Performance Review and subsequently in the Remedial Performance Review), then the COUNTY Representative shall declare an Event of Default and recommend termination of this Agreement, and that recommendation shall proceed to the Board of Supervisors for its consideration in accordance with the provisions of Subparagraph 10.7.A.2.

## **ARTICLE 9**

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

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

CONTRACTOR agrees to and shall indemnify, defend, with Counsel acceptable to COUNTY, and hold harmless COUNTY, its officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all costs (including

attorneys' fees) and damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties), arising or resulting from or in any way connected with: (i) subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the CONTRACTOR, its agents, employees, and/or subcontractors to comply in all respects with applicable laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of CONTRACTOR, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law; (iv) the processing, marketing, and end use of Recyclable Materials, Green Waste and Organic Materials; and (v) CONTRACTOR's acts or omissions in performance of its duties hereunder resulting in the improper disposal of any Hazardous Waste at any place where CONTRACTOR transports, stores or disposes of Collection Materials pursuant to this Agreement. In the event such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnitees' negligence, the foregoing indemnity shall apply to the full extent permissible under California Public Resources Code Section 40059.1 and other Applicable Law.

In instances where CONTRACTOR and COUNTY are both named defendants, CONTRACTOR shall provide a defense for COUNTY, unless after meeting and conferring on the issue, it appears that sufficient conflicts between CONTRACTOR and COUNTY exist so as to reasonably prevent a joint defense of CONTRACTOR and COUNTY by counsel for CONTRACTOR. If a final decision, judgment, or settlement allocates liability to CONTRACTOR and to the COUNTY, or to one or more other COUNTY contractors, CONTRACTOR shall have no obligation to the COUNTY for indemnification or otherwise with respect to any liability allocated to COUNTY for

intentional wrongful acts or sole negligence of the COUNTY. CONTRACTOR's responsibility for indemnification of one or more other COUNTY contractors, if any, shall be based on legal principles regarding allocation of fault, contribution and equitable indemnity.

## **9.2 INSURANCE SCOPE AND LIMITS**

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

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

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

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

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

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

**Employee Blanket Fidelity Bond** - \$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.
6. CONTRACTOR shall notify COUNTY Representative in writing within thirty (30) calendar days of any planned nonpayment of premium or planned reduction in coverage.
7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the COUNTY Risk Manager.
8. The policies shall cover all activities of CONTRACTOR, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
9. For any claims relating to this Agreement, the CONTRACTOR's insurance coverage shall be primary, including as respects the COUNTY, its officers,

agents, employees, and volunteers. Any insurance maintained by the COUNTY shall apply in excess of, and not contribute with, insurance provided by CONTRACTOR's liability insurance policy.

10. The CONTRACTOR shall waive all rights of subrogation against the COUNTY, its officers, employees, agents, and volunteers related to the performance of services under this Agreement.

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

C. **Renewals.** Throughout the entire Term of this Agreement, CONTRACTOR shall furnish the COUNTY Representative with certificates or original endorsements reflecting renewals, changes in insurance companies, and any other documents reflecting the maintenance of the required coverage throughout the entire Term (including any Extension Term) of this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf.

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

*"I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before*

1                   *commencing any services required by this Agreement.*

2  
3                   *The Person executing this Certificate on behalf of CONTRACTOR*  
4                   *affirmatively represents that she/he has the requisite legal authority to do*  
5                   *so on behalf of CONTRACTOR, and both the Person executing this*  
6                   *Agreement on behalf of CONTRACTOR and CONTRACTOR understand*  
7                   *that the COUNTY is relying on this representation in entering into this*  
8                   *Agreement.”*

9   **9.3    INSTRUMENT FOR SECURING PERFORMANCE**

10   Within seven (7) calendar days of the COUNTY's notification to CONTRACTOR that the  
11   COUNTY has executed this Amended and Successor Agreement, CONTRACTOR shall  
12   file with the COUNTY a bond, payable to the COUNTY, securing the CONTRACTOR's  
13   performance of its obligations under this Agreement and such bond shall be renewed  
14   annually if necessary so that the performance bond is maintained at all times during the  
15   Term. The principal sum of the bond shall be the lesser of fifty thousand dollars  
16   (\$50,000) or twenty-five percent (25%) of CONTRACTOR's Annual Gross Receipts over  
17   the previous three years under this Agreement.

18   The bond shall be issued by a surety company designated as an admitted surety insurer  
19   in good standing with and authorized to transact business in this state by the California  
20   Department of Insurance, and that has a record of service and financial condition  
21   acceptable to the COUNTY. In its discretion, when determining the sufficiency of  
22   a proposed surety company, the COUNTY may require the surety company to provide  
23   additional information supported by documentation. The COUNTY generally requires  
24   such information and documentation whenever the proposed surety company has either  
25   a Best's Key Rating Guide of less than A or a financial size designation of less than VIII.  
26   Provided, however, that the COUNTY expressly reserves its right to require all  
27   information and documentation to which the COUNTY is legally entitled from any  
28   proposed surety company.

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

## 8 **ARTICLE 10**

### 9 **BREACH, DEFAULT, AND TERMINATION**

#### 10 **10.1 EVENTS OF BREACH**

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

#### 18 **A. Definitions**

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

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

**B. Liquidated Damages**

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

The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance, and to serve as a specific measure of successful performance under the Agreement. The Parties further recognize that if CONTRACTOR fails to perform its obligations, COUNTY and residents of COUNTY will suffer damages that are and will be impractical and extremely difficult to ascertain and determine. The Parties agree that the Liquidated Damage amounts provided in Exhibit E represent a reasonable estimate of the amount of such damages for the types of breaches specified therein, without prejudice to COUNTY's right to treat uncorrected non-performance as an Event of Default under this Article 10. It is acknowledged and agreed that the assessment and payment of Liquidated Damages hereunder shall constitute damages, and are neither intended nor considered to be a penalty. COUNTY may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives, or by investigation of Customer or resident complaints.

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

Prior to assessing Liquidated Damages, and in addition to any other available remedies COUNTY may impose, COUNTY shall give CONTRACTOR written notice of its intention to do so. The notice shall include a brief description of the incident or nonperformance. CONTRACTOR may review (and copy at its own expense) all information in the possession of COUNTY relating to the assessment of Liquidated Damages. CONTRACTOR may, within ten (10) Working Days after receiving the notice, request a meeting with COUNTY Representative. CONTRACTOR may present

evidence in writing and through testimony of its employees and others relevant to the incident or nonperformance. COUNTY Representative shall provide CONTRACTOR with a brief written explanation of his or her determination on each breach prior to authorizing the assessment of liquidated damages. The decision of COUNTY Representative shall be final. The assessment of Liquidated Damages issued by the COUNTY shall appear on the next quarterly statement and the CONTRACTOR shall, at its own expense, remit to the COUNTY the amount of damages specified in said assessment as part of the Quarterly Remittance.

## **10.2 EVENTS OF DEFAULT**

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

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

1. **Uncured Material Breach.** Failure by CONTRACTOR to take immediate actions as necessary, appropriate and sufficient to cure a Material Breach once CONTRACTOR becomes cognizant thereof, whether as a result of receipt of notice thereof from COUNTY or otherwise, and whether based on the significant nature of the breach or its characterization as the latest in a repeated pattern of otherwise standard breaches (either of which may constitute a Material Breach as defined in Section 10.1 above).
2. **Uncured Standard Breach.** A standard (non-material) breach of this Agreement that appears to be accidental, inadvertent, and occasional (i.e., that is not indicative of a pattern or repetitive practice of CONTRACTOR based on past performance hereunder) may constitute a basis for declaration of an Event of Default if, within thirty (30) days after receipt of notice of the breach, CONTRACTOR: (a) fails to correct its deficient performance, or (b) fails to commence appropriate corrective action and provide written notice to COUNTY specifying the estimated time-frame for completion of the corrective action; or (c) CONTRACTOR's estimated

time-frame for completion of corrective action is not reasonable, based on the nature and consequences of the breach; or (d) CONTRACTOR fails to complete the corrective action within the estimated reasonable time-frame previously provided by CONTRACTOR.

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

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

5. **Result of Performance Review.** As a result of a rating of "Poor" in CONTRACTOR's performance review, in which case the default and cure provisions of this Article 10 shall be read together with those provided in Section 8.6 (and specifically Paragraphs C and D thereof), and to the extent of any inconsistency, the provisions of Section 8.6 shall control.

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

- 1           7.     **CONTRACTOR Debt.** CONTRACTOR files a voluntary petition for debt  
2           relief under any applicable bankruptcy, insolvency, or other similar law, or  
3           consents to the appointment of, or taking of possession by, a receiver,  
4           liquidator or sequestrator (or similar official) of any part of  
5           CONTRACTOR's operating assets or any substantial part of  
6           CONTRACTOR's property, or shall make any general assignment for the  
7           benefit of CONTRACTOR's creditors, or shall become insolvent and  
8           unable to pay its debts generally as they become due. Provided,  
9           however, that (as is the case with any default) COUNTY may, in its  
10          discretion, may waive or choose not to declare such default. In order for  
11          COUNTY to give any serious consideration to the exercise of its option to  
12          waive or refrain from declaring a default under this Subparagraph (or the  
13          following Subparagraph 8), the CONTRACTOR would have to provide  
14          notification to COUNTY in advance of its bankruptcy filing (or similar  
15          action), provide strong assurances that there will be no disruption of  
16          Collection Services to Customers, and all supporting facts that would be  
17          reasonably necessary to establish CONTRACTOR's continuing ability to  
18          perform its obligations under this Agreement.
- 19          8.     **Court Order or Decree.** Any court having jurisdiction enters a decree or  
20          order for relief in respect of CONTRACTOR, in any involuntary case  
21          brought under any bankruptcy, insolvency, or similar law, or any such  
22          court shall enter a decree or order appointing a receiver, liquidator,  
23          sequestrator (or similar official) of any part of CONTRACTOR's operating  
24          equipment or assets, or order the winding up or liquidation of  
25          CONTRACTOR's affairs.
- 26          9.     **Failure to Provide Performance Assurances.** CONTRACTOR fails to  
27          provide reasonable assurances of performance as required under Section  
28          10.9.



- 1           10.   **Failure to Notify COUNTY.** CONTRACTOR fails to notify COUNTY in a  
2                   timely manner of any receipt of notice of violation or official communication  
3                   from those regulatory agencies regulating Solid Waste, Recyclables,  
4                   Green Waste, Organic Materials Collection, transportation, processing or  
5                   Disposal activities that might materially affect CONTRACTOR's ability to  
6                   perform all of the Collection Services.
- 7           11.   **Lapse of Financial Requirement.** Lapse of any insurance, letter of  
8                   credit, bond or other financial instrument required under this Agreement.
- 9           12.   **Regulatory Violation.** CONTRACTOR violates in any material respect  
10                   any orders or filings of any regulatory body having jurisdiction over  
11                   CONTRACTOR relative to this Agreement, provided CONTRACTOR may  
12                   contest any such orders or filings by appropriate proceedings conducted in  
13                   good faith, in which case no breach of this Agreement shall be deemed to  
14                   have occurred until the later of a final order or judgment has been issued.
- 15          13.   **Cessation of Services.** CONTRACTOR ceases to provide Collection  
16                   Services as required under this Agreement for a period of three (3)  
17                   consecutive Working Days or more, for any reason within the control of  
18                   CONTRACTOR.
- 19          14.   **Failure to Meet Payment or Reporting Requirements.** CONTRACTOR  
20                   fails to make any payment of any sum owed to COUNTY that is required  
21                   under Section 3.5 of this Agreement and/or refuses to provide COUNTY  
22                   with required information, reports, and/or records in a timely manner as  
23                   provided for in this Agreement, including but not limited to the  
24                   requirements of Sections 8.1 and 8.2.
- 25          15.   **Unremedied Acts or Omissions.** Any act or omission relative to this  
26                   Agreement by CONTRACTOR which violates in any significant respect the  
27                   material terms, conditions, or requirements of this Agreement, the  
28                   provisions of AB 939, AB341, AB1826 and SB1383 applicable to

1 CONTRACTOR as they may be amended from time to time, or any other  
2 provision of Applicable Law as it relates to this Agreement, and which is  
3 not corrected or remedied within the time set in the written notice of the  
4 violation.

5 16. **Criminal Activity of CONTRACTOR.** Should CONTRACTOR or any of  
6 its officers, directors or contract manager, or other employees in position  
7 to supervise or influence actions under this Agreement, be “found guilty”  
8 under Federal law or California law of a felony for conduct within the State  
9 of California relating to the performance or non-performance of obligations  
10 similar to those imposed on CONTRACTOR directly or indirectly by its  
11 execution of this Agreement. The term “found guilty” shall be deemed to  
12 include any judicial determination that CONTRACTOR or any of  
13 CONTRACTOR’s officers, directors or employees is guilty, and any  
14 admission of guilt by CONTRACTOR, or any of CONTRACTOR’s officers,  
15 directors or employees including, but not limited to, the pleas of “guilty,”  
16 “nolo contendere,” “no contest,” or “guilty to a lesser felony” entered as  
17 part of any plea bargain. Such felonious conduct includes, but is not  
18 limited to, any activities related to or carried out pursuant to this  
19 Agreement for: (i) price fixing, (ii) illegal transport or disposal of  
20 hazardous or toxic materials, (iii) bribery of public officials, (iv) fraud, or (v)  
21 jury tampering. In the event of any such felonious conduct, COUNTY  
22 reserves the right to exercise one or more of the remedies specified below  
23 in Article 10. Such action shall be taken only after CONTRACTOR has  
24 been given notice and an opportunity to present evidence in mitigation.  
25 COUNTY shall not terminate this Agreement as a result of a determination  
26 of felonious conduct within the meaning of this Paragraph, if  
27 CONTRACTOR dismisses or removes officers, directors or employees  
28 found guilty of felonious behavior and takes all action necessary and

appropriate to remedy any breach of its obligations hereunder.

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

**B. Notice of Default**

CONTRACTOR shall be in default from the date of receipt of a notice from COUNTY identifying such default. The notice shall include a brief description of the default. CONTRACTOR may review (and copy at its own expense) all information in the possession of COUNTY relating to the Event(s) of Default. CONTRACTOR may, within three (3) Working Days after receiving the notice, request a meeting with COUNTY Representative. CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the Event(s) of Default. The decision of COUNTY Representative regarding determination of any noticed Event(s) of Default shall be final for administrative purposes. Accordingly, there shall be no appeal from the COUNTY Representative's determination, unless CONTRACTOR receives a subsequent notice of COUNTY's intent to terminate the Agreement on the basis of that Event of Default, in which case the appeal of the proposed termination would proceed in accordance with the applicable provisions of Section 10.7.

**C. Cure of Default**

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

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

- 5 1. Immediately, if the default is such that in the determination of COUNTY,  
6 the health, safety, or welfare of the public is endangered thereby; or
- 7 2. Within thirty (30) Working Days of giving or receiving notice of default;  
8 provided that if the nature of the default is such that it will reasonably  
9 require more than thirty (30) days to cure, CONTRACTOR shall have such  
10 additional time as is reasonably needed to expeditiously complete a cure,  
11 and only upon written agreement from COUNTY. During any default cure  
12 period, CONTRACTOR shall provide COUNTY weekly written status of  
13 progress in curing such default.

### 14 **10.3 COUNTY DETERMINATION OF CURE OF BREACH OR DEFAULT**

15 A Breach or an Event of Default shall be considered remedied and/or cured upon  
16 execution of a written acknowledgment, executed both by the COUNTY Representative  
17 and CONTRACTOR's representative, specifying the event and stating that remedy  
18 and/or cure of such event has been satisfactorily completed.

### 19 **10.4 COUNTY'S RIGHT TO PERFORM**

#### 20 **A. General**

21 In addition to any and all other legal or equitable remedies, in the event that  
22 CONTRACTOR, for any reason whatsoever, fails, refuses or is unable to provide any  
23 Collection Service for a period of more than three (3) consecutive Working Days, and if,  
24 as a result thereof, should Solid Waste accumulate in COUNTY to such an extent, in  
25 such a manner, or for such a time that COUNTY should find that such accumulation  
26 endangers or menaces the public health, safety, or welfare, then COUNTY shall have  
27 the right, but not the obligation, without payment to CONTRACTOR after twenty-four  
28 (24) hours prior notice to CONTRACTOR, during and throughout the period of such

1 emergency as determined by COUNTY, to perform or cause to be performed, with its  
2 own or other personnel, all such services as COUNTY deems necessary or appropriate,  
3 without liability to CONTRACTOR.

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

8 CONTRACTOR further agrees that in such event:

- 9       1.     CONTRACTOR will fully cooperate with COUNTY to effect the temporary  
10             transfer of possession of property, as necessary and appropriate for  
11             COUNTY's use, to provide for the resumption of Collection Services.
- 12       2.     CONTRACTOR will, if COUNTY so requests, and to the extent feasible,  
13             keep in good repair and condition all of such property, provide all motor  
14             vehicles with fuel, oil and other service, and provide such other service,  
15             and provide such other service as may be necessary to maintain said  
16             property in operational condition.
- 17       3.     CONTRACTOR shall provide all necessary billing information to the  
18             COUNTY. COUNTY shall determine how to bill, in what amounts, and the  
19             distribution of amounts received. COUNTY shall provide CONTRACTOR  
20             reasonable compensation for provision of CONTRACTOR's land,  
21             equipment, or other property, if COUNTY's exercise of the right to perform  
22             is the result of an Uncontrollable Circumstance.

23 CONTRACTOR hereby acknowledges and agrees that COUNTY's exercise of its rights  
24 under this Section 10.4 in the circumstances specified herein: (i) does not constitute a  
25 taking of private property for which compensation must be paid; (ii) will not create any  
26 contract, tort, or common count liability on the part of COUNTY to CONTRACTOR; and  
27 (iii) does not exempt CONTRACTOR from the indemnity provisions of Section 9.1,  
28 which are intended by the Parties to extend to circumstances arising under this Section

1 10.4. COUNTY shall make good faith efforts to coordinate use of CONTRACTOR's  
2 land, equipment and other property with CONTRACTOR in order to minimize  
3 interference with or disruption of other business activities of CONTRACTOR.

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

5 COUNTY has no obligation to maintain or continue in possession of CONTRACTOR's  
6 property and/or continue its use in providing any Collection Services for any specific  
7 period of time and may, at any time, in its discretion, relinquish possession to  
8 CONTRACTOR. COUNTY's right to retain temporary possession of CONTRACTOR's  
9 property, and to provide one or more Collection Services, shall continue until  
10 CONTRACTOR can demonstrate to COUNTY's satisfaction that it is ready, willing, and  
11 able to resume such services.

12 **10.5 COUNTY REMEDIES FOR CONTRACTOR DEFAULT**

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

- 15 1. **Waive Default.** At its discretion (and subject to the provisions of Section  
16 10.6), to waive CONTRACTOR's default.
- 17 2. **Termination.** Terminate the Agreement in accordance with Section 10.7.
- 18 3. **All Other Available Remedies.** In addition to, or in lieu of termination, to  
19 exercise all of its remedies in accordance with this Article 10 and any  
20 other remedies at law and in equity, to which COUNTY shall be entitled,  
21 according to proof.
- 22 4. **Damages Survive.** If CONTRACTOR owes any damages upon  
23 COUNTY's termination of the Agreement, CONTRACTOR's liability under  
24 this Section 10.5 shall survive such termination.

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

28 ///

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

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

## **10.7 TERMINATION**

### **A. Termination for Cause**

Any of the following circumstances shall constitute grounds for COUNTY's exercise of its unilateral right to terminate this Agreement, for cause, by action of its Board of Supervisors at any regularly scheduled (or special) meeting of that body. CONTRACTOR shall be given reasonable notice of such meeting and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting.

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

2. **Poor Performance Review.** If the uncured Event of Default that is the basis for the proposed termination is a Poor Performance Review, under the procedures governing Performance Reviews as provided in Section 8.6, the Board of Supervisors shall have the following options in considering a recommendation for termination of the Agreement on the basis of a Poor Performance Review.

(i) Terminate the Agreement for cause, or

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

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

12 **3. Unacceptably High Incidence of Liquidated Damages**, based on both the  
13 number of occurrences and the cumulative amount assessed, may constitute an  
14 independent basis for termination of the Agreement, as set forth in Subparagraph  
15 8.6.B.2.

16 Provided, however, that an Unacceptable Level of Liquidated Damages shall  
17 form an independent basis for termination of the Agreement for cause only if  
18 CONTRACTOR has received a Poor Performance Review and termination of the  
19 Agreement is proposed on the separate basis of such Poor Performance Review.

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

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

25 In addition to any other available remedies COUNTY may impose as specified in  
26 Section 10.5 and as a result of CONTRACTOR default, COUNTY may give  
27 CONTRACTOR written notice of intent to terminate this Agreement. The ultimate  
28 decision concerning any recommendation by the COUNTY Representative to terminate



1 this Agreement shall be made by the Board of Supervisors, subject only to  
2 CONTRACTOR's right to seek judicial review of such determination by a court of  
3 competent jurisdiction. Upon notice of intent to terminate, CONTRACTOR shall  
4 promptly provide COUNTY with any or all records kept in accordance with Article 8 or  
5 any other record keeping provisions of this Agreement or its Exhibit; and in the event of  
6 termination of the Agreement, CONTRACTOR's duty (and its liability for failure or  
7 refusal) to provide all such records shall survive the termination of this Agreement.

## 8 **10.8 EXCUSE FROM PERFORMANCE**

### 9 **A. Excuse from Performance**

10 The Parties shall be excused from performing their respective obligations hereunder in  
11 the event they are prevented from so performing by reason of Uncontrollable  
12 Circumstances. Labor unrest, including but not limited to strike, work stoppage or  
13 slowdown, sick-out, picketing, or other concerted job action conducted by  
14 CONTRACTOR's employees or lawfully directed at CONTRACTOR, or a subcontractor  
15 shall not constitute an excuse from continuing to provide a reasonably satisfactory level  
16 of performance during the pendency thereof, and CONTRACTOR shall be obligated to  
17 continue to provide an adequate level of service notwithstanding the occurrence of any  
18 or all of such events. In the case of labor unrest or job action directed at a third party  
19 over whom CONTRACTOR has no control, the inability of CONTRACTOR to make  
20 collections due to the unwillingness or failure of the third party to provide reasonable  
21 assurance of the safety of CONTRACTOR's employees while making collections or to  
22 make reasonable accommodations with respect to container placement and point of  
23 delivery, time of collection, or other operating circumstances to minimize any  
24 confrontation with pickets or the number of persons necessary to make collections,  
25 shall, to that limited extent, excuse performance; provided, however, that such excuse  
26 shall be conditioned on CONTRACTOR's cooperation in making collection at different  
27 times and in different locations.

28 ///

**B. Inexcuse from Performance**

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

**C. Interruption or Discontinuance of Service**

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

**10.9 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

If CONTRACTOR is: (i) the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of COUNTY to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal investigation, charge, or judgment or order entered by a Federal, State, regional or local agency for violation of a law relating to performance under this Agreement, and COUNTY believes in good faith that CONTRACTOR's ability to perform under the Agreement has thereby been placed in substantial jeopardy, COUNTY may, at its option and in addition to all other remedies it may have, demand from CONTRACTOR reasonable assurances of timely and proper performance of this Agreement, in such form and substance as COUNTY believes in

1 good faith is reasonably necessary in the circumstances to evidence continued ability to  
2 perform under the Agreement. If CONTRACTOR fails or refuses to provide satisfactory  
3 assurances of timely and proper performance in the form and by the date required by  
4 COUNTY, such failure or refusal shall be an Event of Default for purposes of  
5 Section 10.2 and this Article 10.

## 6 **ARTICLE 11**

### 7 **OTHER AGREEMENTS OF THE PARTIES**

#### 8 **11.1 RELATIONSHIP OF PARTIES**

9 The Parties intend that CONTRACTOR shall perform the Collection Services as an  
10 independent contractor engaged by COUNTY and not as an officer or employee of  
11 COUNTY, and also not as a partner of or joint venturer with COUNTY. No employee or  
12 agent of CONTRACTOR shall be or shall be deemed to be an employee or agent of  
13 COUNTY. Except as expressly provided herein, CONTRACTOR shall have the  
14 exclusive control over the manner and means of conducting Collection Services and all  
15 persons performing such services. CONTRACTOR shall be solely responsible to the  
16 COUNTY for the acts and omissions of its officers, employees, subcontractors, and  
17 agents. Neither CONTRACTOR nor any of its officers, employees, subcontractors, and  
18 agents shall obtain any rights to retirement benefits, workers' compensation benefits, or  
19 any other benefits which accrue to COUNTY employees by virtue of their employment  
20 with COUNTY. CONTRACTOR or its employees shall not provide, directly or indirectly,  
21 any gifts or gratuities to any COUNTY employee or representative.

#### 22 **11.2 COMPLIANCE WITH LAW**

23 In providing the services required under this Agreement, CONTRACTOR shall at all  
24 times, at its sole cost (subject to rate adjustment provisions elsewhere in this  
25 Agreement), comply with all Applicable Laws of the United States, the State of  
26 California, Fresno County, and other states or governmental agencies which may have  
27 jurisdiction over any service provided pursuant to this Agreement, and with all  
28 applicable regulations promulgated by any Federal, State, regional, or local

administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term (including any Extension) of this Agreement, including all permit requirements for facilities used in disposal activities relating to CONTRACTOR's provision of Collection Services hereunder.

### **11.3 GOVERNING LAW**

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

### **11.4 JURISDICTION AND VENUE**

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

### **11.5 ASSIGNMENT**

#### **A. Definition**

For purposes of this Section 11.5, the term, "assignment" shall include, but not be limited to: (i) a transfer by CONTRACTOR to another person or entity of all of CONTRACTOR's rights, duties and obligations under this Agreement; (ii) a sale, exchange, or other transfer of substantially all of CONTRACTOR's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of CONTRACTOR; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which CONTRACTOR or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of CONTRACTOR; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If CONTRACTOR is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect

1 similar to the situations described in foregoing sentence for corporations. For purposes  
2 of this Article, the term “proposed assignee” shall refer to the proposed transferee(s) or  
3 other successor(s) in interest pursuant to the assignment. If CONTRACTOR is a  
4 subsidiary of another corporation or business entity, any assignment, as defined above,  
5 by the parent company or corporation shall be considered an assignment by  
6 CONTRACTOR.

7 **B. COUNTY Consent**

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

21 **C. Requirements of CONTRACTOR**

22 If CONTRACTOR requests COUNTY’s consideration of and consent to an assignment,  
23 COUNTY may approve or deny such request in the reasonable exercise of its  
24 discretion. COUNTY agrees that its consent to such proposed assignment will not be  
25 unreasonably withheld, and that no request submitted in accordance with the  
26 requirements of this Paragraph 11.5.C will be denied without a detailed review of the  
27 proposed assignment. Provided, however, and notwithstanding the foregoing,  
28 COUNTY shall not be obligated to consider a request by CONTRACTOR for consent to

an assignment unless and until CONTRACTOR has met each of the following requirements:

1. CONTRACTOR shall pay COUNTY its reasonable expenses for attorney's fees and investigation costs to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.
2. CONTRACTOR shall furnish COUNTY with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.
3. CONTRACTOR shall furnish COUNTY with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Collection Services and to provide exceptional service to customers, including: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under this Agreement; (ii) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any Federal, State, or local environmental laws and the assignee has provided COUNTY with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste management practices in substantial compliance with all Federal, State, and local laws regulating the Collection and Disposal of Solid Waste including hazardous substances; (v) the proposed assignee has in the last five (5) years provided excellent service to existing franchised customers and has not been subject to any administrative or legal actions related to failure to provide adequate service under a contract or franchise; and (vi) any other information required by COUNTY to ensure the proposed

1 assignee can fulfill the terms of this Agreement in a timely, safe, and  
2 effective manner. A formal written instrument of assignment shall be  
3 executed by CONTRACTOR and the proposed assignee, which shall  
4 provide for the proposed assignee's acceptance of all terms and  
5 conditions of this Agreement, including all duties and obligations imposed  
6 thereby, and also the proposed assignee's express adoption of the  
7 representations of CONTRACTOR set forth herein as its own  
8 representations. COUNTY reserves the right to approve an assignment  
9 conditioned on an increase to the instrument for securing performance  
10 required pursuant to Article 9 and/or use of another mechanism in addition  
11 to, or as an alternative to, the instrument for securing performance  
12 required in Article 9.

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

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

19 1. Required Statement for Exemption of Proposed Transfer

20 The written statement shall contain a representation that both  
21 CONTRACTOR and the prospective transferee intend and expect that at  
22 least two-thirds of those individuals responsible for the day-to-day  
23 management and supervision of CONTRACTOR's performance under this  
24 Agreement, during the six (6)-month period immediately preceding the  
25 anticipated date of the proposed transfer, will continue to be responsible  
26 for CONTRACTOR's performance under this Agreement for at least six (6)  
27 months following such transfer. The written statement shall be executed  
28 by both CONTRACTOR and the prospective transferee, and shall be

submitted to the COUNTY Representative at least thirty (30) days before the anticipated date of transfer.

2. Conditionally Exempt Transfers of Ownership Interests

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

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

- Any transfer of ownership interests among existing owners of CONTRACTOR;
- Any transfer of ownership interests by an existing owner of CONTRACTOR to a revocable living trust for the benefit of his or her family;
- Any transfer to a family member resulting from bequest, intestate succession or otherwise by operation of law, following an owner's death. (In this case the requirements in Subparagraph 11.5.D.1 for execution of the statement by the deceased owner and its submission thirty (30) days in advance shall not apply, and the statement need then be executed only by the transferee and submitted within a reasonable time thereafter.)

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

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**E. Transition**

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

**11.6 DISPUTE RESOLUTION**

**A. Continue Performance**

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

**B. Mediation**

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

**11.7 NON-DISCRIMINATION**

CONTRACTOR shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed,

color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

### **11.8 SUBCONTRACTING**

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

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

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

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

CONTRACTOR may request COUNTY'S written consent to a proposed subcontracting agreement between CONTRACTOR and another ESAP Hauler, pursuant to which CONTRACTOR proposes that one or more specified accounts maintained by CONTRACTOR in connection with CONTRACTOR'S provision of Collection Services hereunder (e.g., accounts pertaining to Customer(s) within a discrete and specifically identified area within CONTRACTOR'S designated Exclusive Service Area, or specifically identified accounts of a certain type) may be effectively delegated to the subcontracted Hauler to be retained for that purpose, who subject to COUNTY'S consent to such subcontract would then proceed to provide Collection Services to such

1 accounts pursuant thereto. The request for COUNTY'S consent must be submitted in  
2 writing to the COUNTY Representative and shall be accompanied by a copy of the  
3 proposed subcontract which necessarily would have to contain all provisions  
4 appropriate to ensure CONTRACTOR'S continued and uninterrupted compliance with  
5 all of its obligations to COUNTY hereunder in order to be considered for approval. The  
6 request may be approved or denied in the sole discretion of the COUNTY  
7 Representative.

8 **3. Payment of COUNTY'S Costs is a Condition of Approval**

9 CONTRACTOR and the other ESAP Haulers shall be jointly and severally responsible  
10 for payment of COUNTY'S expenses for staff costs, including attorney's fees, involved  
11 in the review of any proposed subcontract pursuant to the provisions of either of the  
12 immediately preceding Subparagraphs 11.8.A.1 or 11.8.A.2. Full payment of  
13 COUNTY'S costs in connection with such review shall be a condition to the final written  
14 consent of the COUNTY to any such proposed subcontract pursuant to this Paragraph  
15 11.8.A. The Haulers will be invoiced for such costs once the provisions of the  
16 proposed subcontract have been reviewed and verbally approved by the COUNTY  
17 Representative, at which point the COUNTY'S written consent shall remain subject only  
18 to prior payment of the invoice for COUNTY'S costs and execution of the subcontract by  
19 a duly authorized officer of each Hauler. The Haulers may separately agree as to how  
20 they may wish to allocate those costs as between themselves, but each is responsible  
21 for the entire amount of the invoice until it has been paid in full.

22 **4. CONTRACTOR Remains Entirely Responsible for Performance By**

23 **Subcontractor of CONTRACTOR's Obligations Hereunder**

24 The COUNTY'S consent to the proposed subcontracting agreement between  
25 CONTRACTOR and another ESAP Hauler pursuant to this Paragraph 11.8.A shall  
26 neither relieve nor diminish, in any manner or to any degree whatsoever,  
27 CONTRACTOR'S continuing responsibility for the full performance of all of its  
28 responsibilities pursuant to the provisions of this Agreement. CONTRACTOR hereby

acknowledges its understanding that, at all times following COUNTY'S written consent to the proposed subcontracting agreement and throughout the remainder of the Extension Term, CONTRACTOR would remain entirely responsible to the COUNTY for such full performance of all of CONTRACTOR'S obligations hereunder.

## **5. Requisite Notices**

### **a. Notice To Affected Customers**

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

### **b. Limit on Termination of Subcontract / Notice To COUNTY**

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

## **B. TRANSFER OF ACCOUNTS**

CONTRACTOR may request COUNTY'S approval, based on a showing of good cause, of a proposed transfer to another ESAP Hauler of CONTRACTOR'S responsibility hereunder for the provision of Collection Services to certain specified Customer account(s) (e.g., accounts pertaining to Customer(s) within a discrete and specifically identified area within CONTRACTOR'S designated Exclusive Service Area, or specifically identified accounts of a certain type). Such request must be submitted in writing to the COUNTY Representative, and both CONTRACTOR as proposed

transferor and the other ESAP Hauler as proposed transferee must submit a written statement (either a collective statement signed by both or a separate statement signed by each), setting forth the reasons that they contend serve to establish the requisite showing of good cause for the proposed transfer. The proposed transfer may contemplate either an exchange of such account(s) or a purchase of such account(s), and the request may be approved or denied in the sole discretion of the COUNTY'S Board of Supervisors, in accordance with the provisions of this Paragraph 11.8.B.

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

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

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

CONTRACTOR and the other ESAP Hauler shall be jointly and severally responsible for payment of COUNTY'S expenses for staff costs, including attorney's fees, involved in the preparation of the amendments to each of the impacted Haulers' respective ESAP Agreements (and Exhibits thereto, as appropriate). The Haulers will be invoiced for such costs once the amendments have been signed by each Hauler and the Agenda Item has been prepared for approval by the COUNTY'S Board of Supervisors of the proposed amendments. The Haulers may agree separately as to how they may wish to

1 allocate those costs as between themselves, but each is responsible for the entire  
2 amount of the invoice until it has been paid in full. Full payment of COUNTY'S costs  
3 shall be a condition to the approval by the COUNTY'S Board of Supervisors of any such  
4 transfer of accounts pursuant to this Paragraph 11.8.B. Receipt of such payment must  
5 be received by the COUNTY Representative at least ten (10) working days prior to the  
6 date scheduled for presentation of the proposed amendments for approval by the  
7 COUNTY'S Board of Supervisors.

### 8 **3. Notice to Affected Customers**

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

### 14 **11.9 BINDING ON SUCCESSORS**

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

### 17 **11.10 TRANSITION TO NEXT CONTRACTOR**

18 If at any time COUNTY desires to grant, to any person or entity not a party hereto, those  
19 Collection Services that are contracted to CONTRACTOR under this Agreement,  
20 CONTRACTOR shall be obligated to cooperate with COUNTY and such prospective  
21 successor contractor, and to assist and cooperate in an orderly transition. One (1) year  
22 prior to the conclusion of the Extension Term, and in order to assist with the competitive  
23 bid process to award the Collection Services for the term immediately following the  
24 conclusion of the Extension Term, CONTRACTOR shall provide COUNTY with such  
25 information as may reasonably be requested, which at a minimum shall include all  
26 information specified in Section 8.1F. CONTRACTOR shall cooperate with and  
27 schedule with COUNTY and new CONTRACTOR its removal of all Carts distributed to  
28 each Customer. CONTRACTOR and the new CONTRACTOR may choose at their

discretion to enter into negotiations to sell (in part or all) Collection vehicles, Bins, and Containers to the new CONTRACTOR. Failure by CONTRACTOR to provide full cooperation with a transition may, at COUNTY's discretion, preclude CONTRACTOR from participating in future competitive procurements, including the procurement of the CONTRACTOR for the term that follows the Extension Term.

#### **11.11 PARTIES IN INTEREST**

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

#### **11.12 WAIVER**

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

#### **11.13 CONDEMNATION**

In addition to the rights specified in Article 10, COUNTY fully reserves any and all other rights available for the COUNTY's use in acquiring CONTRACTOR's property utilized in the performance of this Agreement, including purchase or through exercise of COUNTY's right of eminent domain.

#### **11.14 NOTICE**

##### **A. Notice Procedures**

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

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

If to CONTRACTOR: Peña's Disposal, Inc.  
12094 Avenue 408  
Cutler, California 93615  
Attention: Arthur G. Peña, Vice President  
Maria E. Peña, Corporate Secretary

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

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

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

Arthur G. Peña, Vice President

Maria E. Peña, Corporate Secretary

Fax number: (559) 528-4030

Electronic mail: art@penasdisposal.com

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

1. Director of the Department of Public Works and Planning or his/her designee shall be responsible for administration of this Agreement on behalf of COUNTY.
2. Director of the Department of Public Works and Planning or his/her designee may delegate authority to appropriate COUNTY employees or

other appropriate persons.

3. Board of Supervisors reserves to itself all discretionary and administrative authority not otherwise expressly delegated pursuant to ordinance. In all instances that require prior approval by COUNTY under this Agreement, such approval may be given by the Deputy Director of Resources and Administration or his or her designee, subject to appeal to the Board of Supervisors by CONTRACTOR.

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

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

COUNTY may, at any time, investigate all options for the provision of the exclusive services granted to CONTRACTOR by this Agreement. Without limiting the generality of the foregoing, COUNTY may solicit proposals from CONTRACTOR and from third parties for the provision of any or all Collection Services and may negotiate and execute agreements for such services which will take effect upon expiration of the Extension Term, or earlier termination of this Agreement under Article 10, and/or with respect to any future agreements.

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

CONTRACTOR may at its election and sole expense, defend the validity of this Agreement against all challenges to the Agreement by any entity or person not a Party to this Agreement. Neither COUNTY nor CONTRACTOR shall have any liability to the other resulting from a determination that this Agreement violates any Federal or State law, statute, or constitutional provision, except to the extent such determination relates

1 to CONTRACTOR's willful misconduct or gross negligence. However, if the  
2 CONTRACTOR elects to not defend the validity of this Agreement, the COUNTY may,  
3 upon reasonable notice, terminate the Agreement at its election, and if it makes that  
4 election, it shall have no liability to CONTRACTOR resulting from that election to  
5 terminate. CONTRACTOR's sole remedy shall be to retain its share of Rate Revenues  
6 as specified in Article 6, for services rendered by CONTRACTOR up to the date of  
7 termination, less any offsets or monies due the COUNTY under the provisions of this  
8 Agreement. Notwithstanding the CONTRACTOR's option to defend the validity of this  
9 Agreement as provided above, COUNTY agrees to take such action as may be  
10 necessary or appropriate, during the Base Term (and any Extension) hereof, to  
11 maintain, or assist in the defense of, CONTRACTOR's exclusive right to provide  
12 Collection Services within the Exclusive Service Area specified in Exhibit C.

#### 13 **11.18 GOOD FAITH AND EXERCISE OF OPTIONS**

14 Each Party's performance under this Agreement, including its exercise of any option,  
15 approval or discretion it may possess hereunder, and each Party's interpretation of this  
16 Agreement, shall be reasonable and consistent with the intent to deal fairly and in good  
17 faith with the other Party hereto, in regard to the respective obligations binding on each  
18 Party toward the other Party, as set forth throughout the provisions hereof. To that end,  
19 the CONTRACTOR agrees at all times to perform its obligations hereunder in a  
20 commercially reasonable manner that: (1) meets or exceeds regional and national  
21 industry standards for solid waste collection and Disposal; (2) upholds the public  
22 confidence entrusted by COUNTY to the CONTRACTOR hereunder for the  
23 performance of duties critical to the public; and (3) reflects CONTRACTOR's  
24 cooperation with COUNTY to assist in COUNTY's achievement of State goals detailed  
25 in Section 3.8. On its part, COUNTY similarly shall be guided at all times in the  
26 performance of its obligations hereunder by COUNTY's duty to uphold the public  
27 interest, including but not limited to the protection of the health, safety and welfare of all  
28 residents of the County.

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**ARTICLE 12**

**MISCELLANEOUS PROVISIONS**

**12.1 ENTIRE AGREEMENT**

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

**12.2 REFERENCES TO LAWS**

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

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

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

**12.4 MODIFICATION**

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

**12.5 SEVERABILITY**

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

declared to be severable.

## **12.6 COUNTERPARTS**

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

## **12.7 NOTICES**

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

## **12.8 PRIVACY**

CONTRACTOR shall strictly observe and protect the rights of privacy of Customers during provision of all Collection Services. Information identifying individual Customers or the composition or contents of Customer's Solid Waste, Recyclables, Green Waste or Organic Materials shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, written request from a law enforcement agency, or upon valid authorization of the Customer.

This provision shall not be construed to preclude CONTRACTOR from preparing, participating in, or assisting in the preparation of waste characterizations studies or waste stream analysis which may be required by a regional, Federal or State agency.

## **12.9 INTERPRETATION: TEXT / EXHIBITS**

This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, without reference to and regardless of the degree to which either Party participated in its drafting. In the event of any inconsistencies or disputes between the text of this Agreement and the exhibits hereto, the text of this Agreement shall control and govern.

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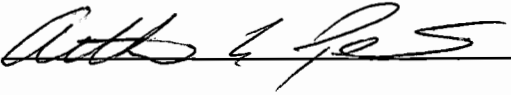
///

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



5 Arthur G Pena

6 Print Name

7 Vice President

8 Print Title

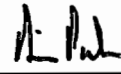
9 Peña's Disposal, Inc.

10 12094 Avenue 408

11 Cutler, California 93615

12 (559) 528-3909

By

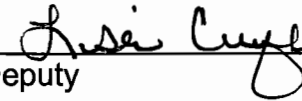


Brian Pacheco, Chairman  
Board of Supervisors

ATTEST:

Bernice E. Seidel, Clerk  
Board of Supervisors

By



Deputy

25 **FOR ACCOUNTING USE ONLY:**

26 <b>ORG:</b>	9015	9015	9020	9026
<b>FUND:</b>	0701	0701	0720	0700
<b>SUBCLASS:</b>	15003	15002	15000	15000*
<b>ACCOUNT:</b>	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 (90) 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. 9**

### **NARRATIVE DESCRIPTION OF TERRITORY**

Both sides of Hills Valley Rd. (east side is located in Tulare County) north from the Tulare County line to Adams Ave, then west on Adams Ave., on both sides of the road to Hill Ave., south on Hill, collecting on both sides of the road to Manning Ave. West along Manning Ave., excluding both sides of road to Alta Ave., both sides of Alta Ave south from Manning to Dinuba Ave.

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Both sides of Dinuba Ave., from west of Buttonwillow to Smith Ave. Continuing west on the south side of Dinuba Ave., from Smith to Riverbend. Continuing on Dinuba Ave., from Riverbend to Zediker neither side of road. Both sides of Zediker Ave., south from Dinuba Ave., to the Tulare County line.

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**NOTES:**

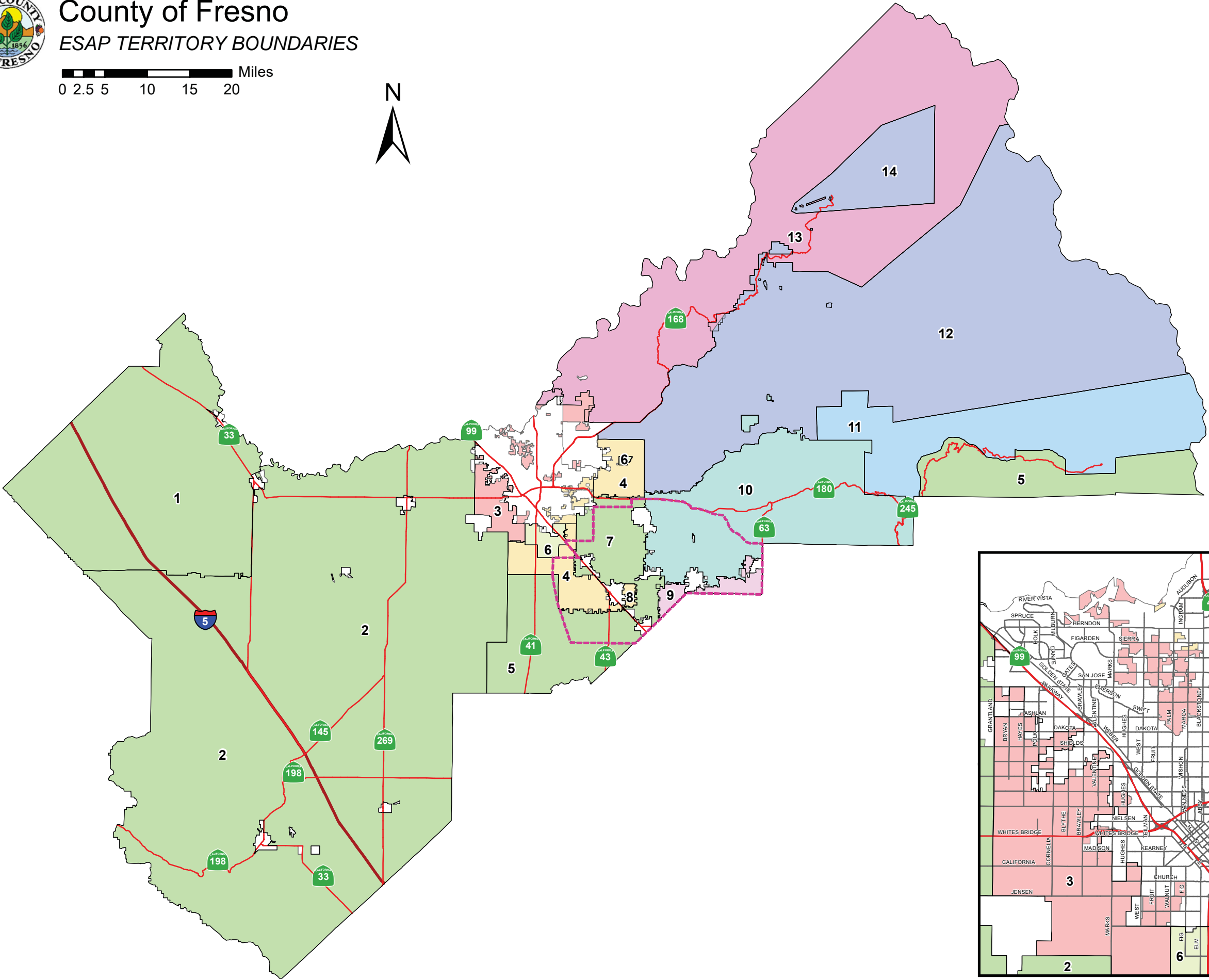
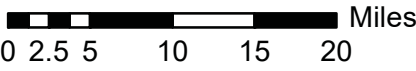
**Original Agreement with Pena's Disposal – 8/30/05 – Agenda Item #14**

Agreement #A-05-416



# County of Fresno

## ESAP TERRITORY BOUNDARIES



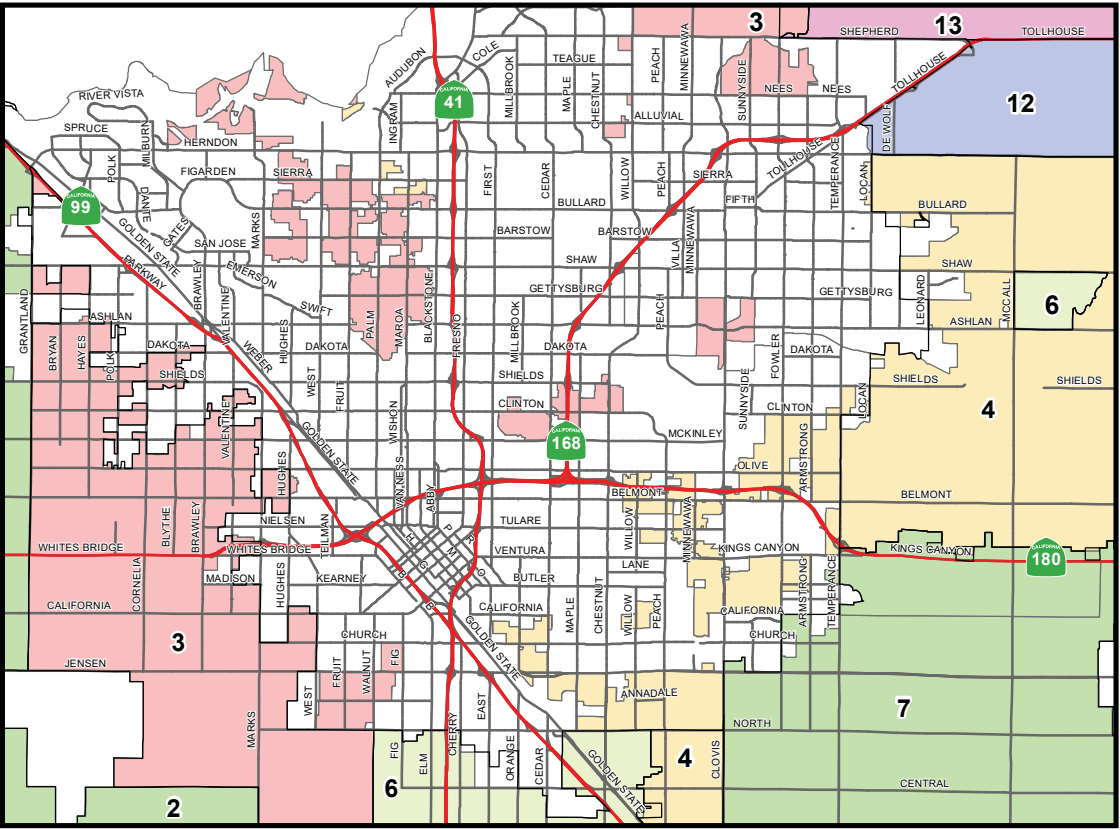
### Hauler's Territory Boundaries

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 )
SER	

### Incorporated Cities

(Not included in program)

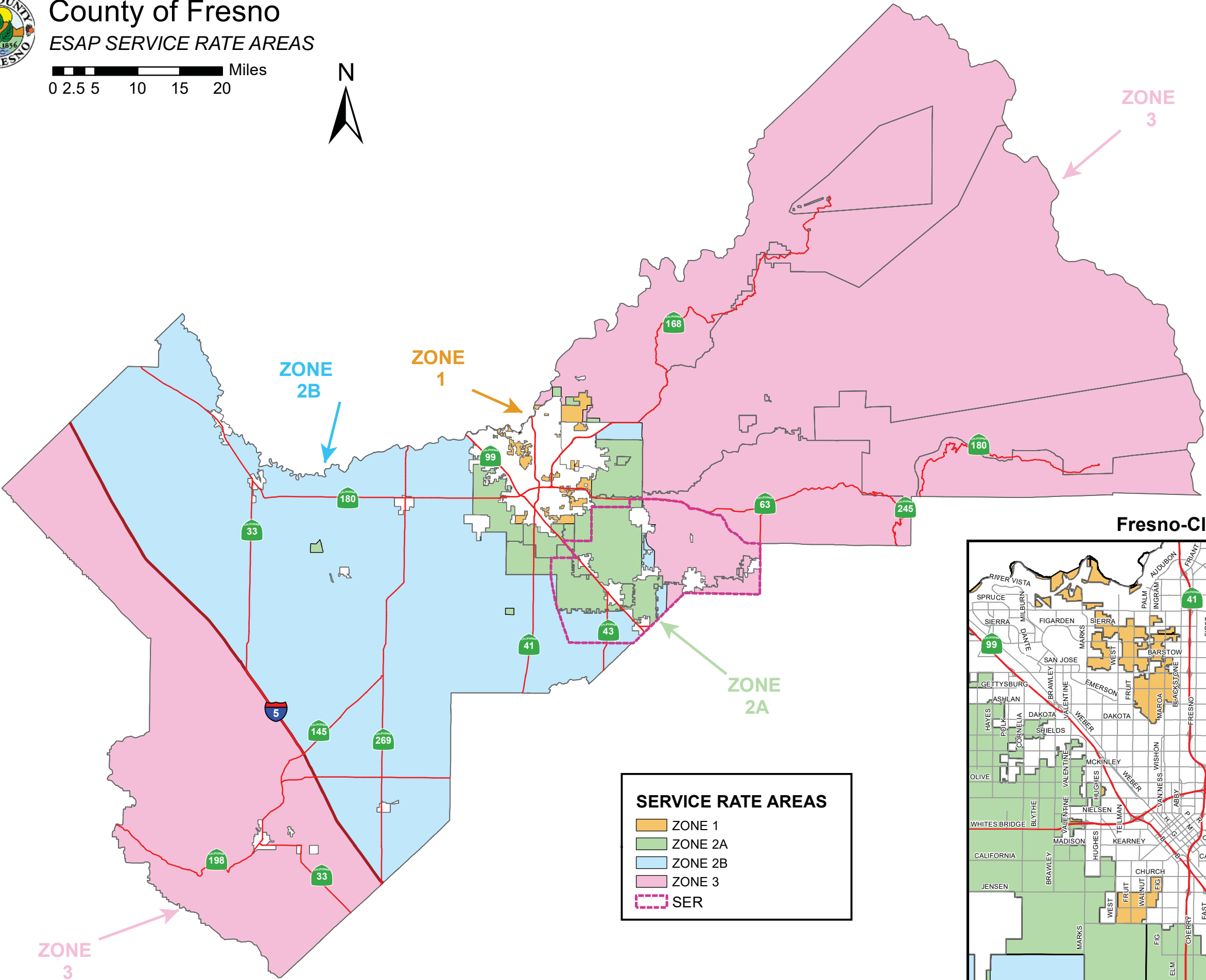
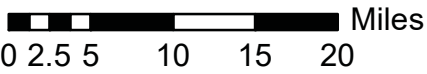
Exhibit 1



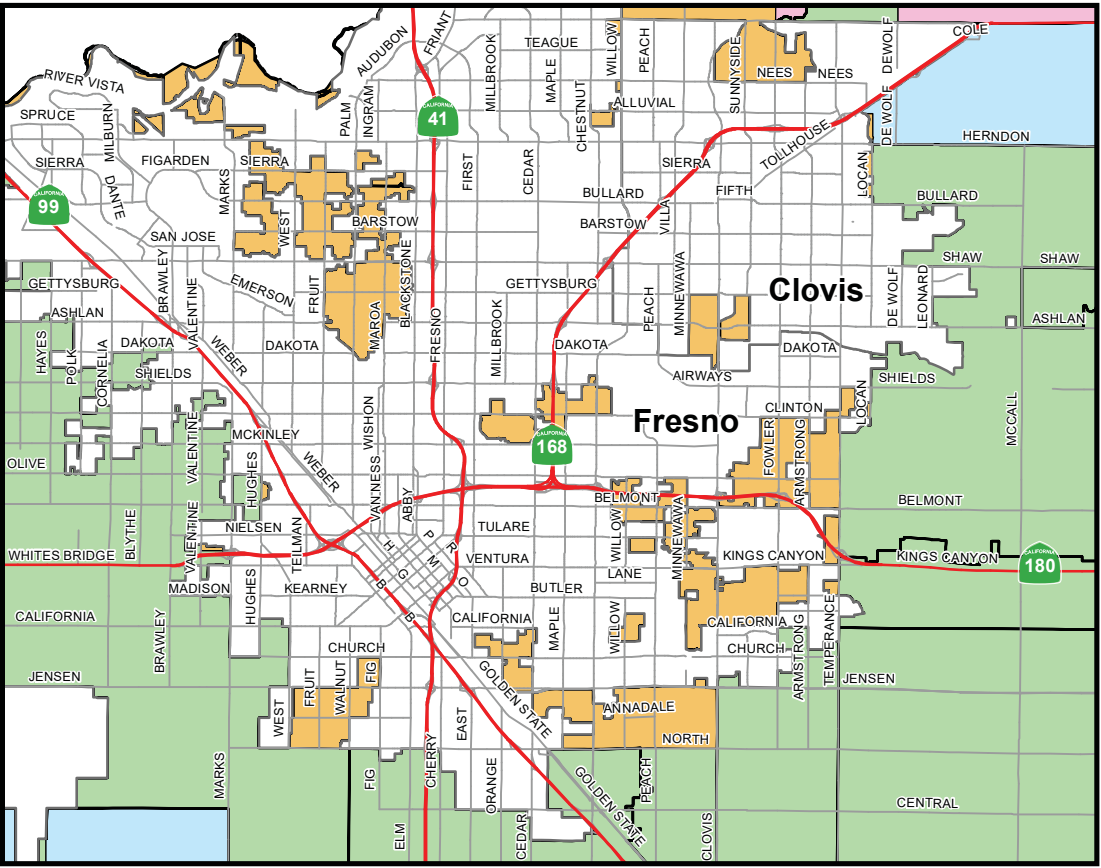


# County of Fresno

## ESAP SERVICE RATE AREAS



Fresno-Clovis Metropolitan Area



SERVICE RATE AREAS

ZONE 1

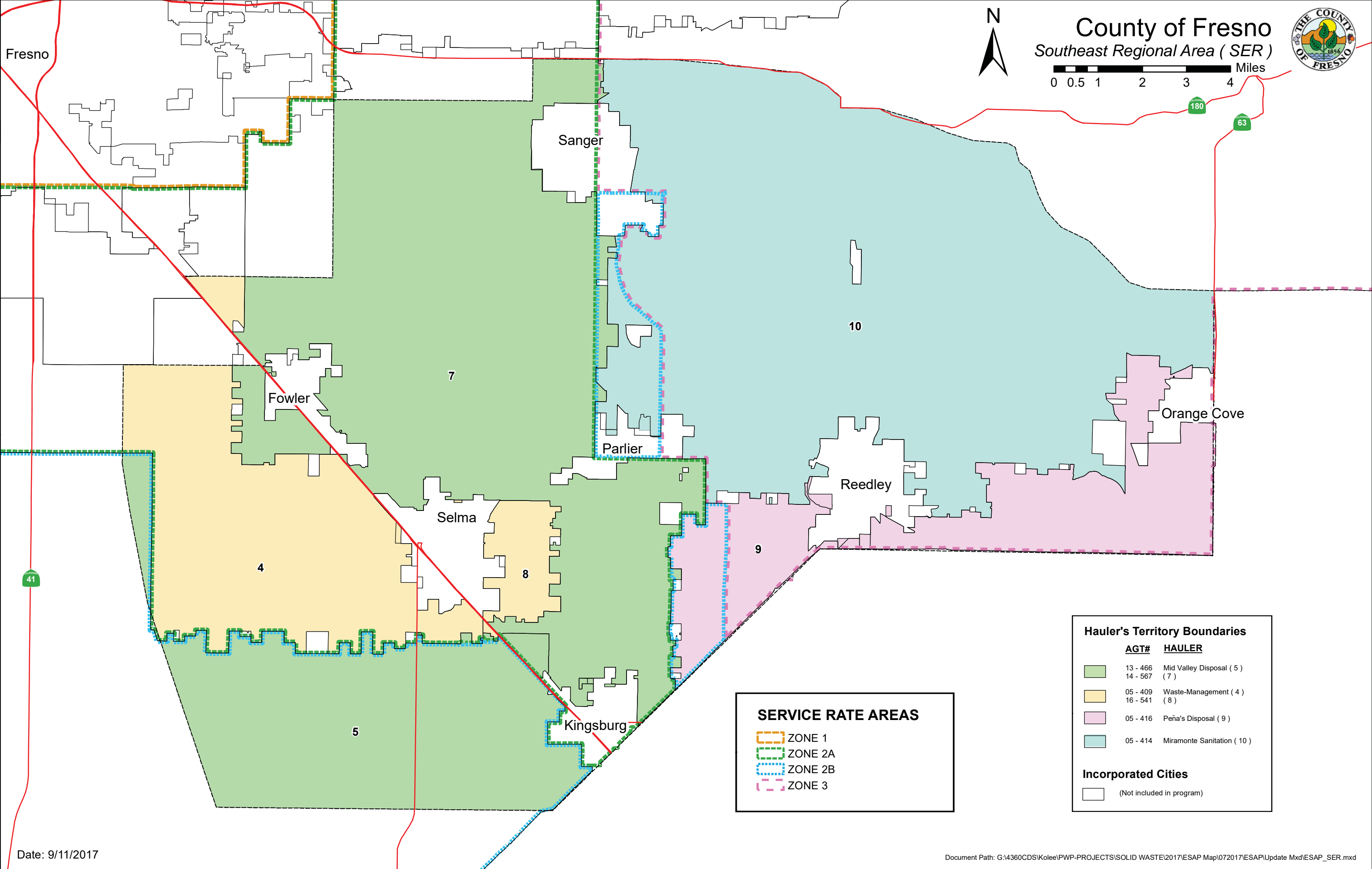
ZONE 2A

ZONE 2B

ZONE 3

SER







## 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. 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.
2. 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 =  $0.03 \times \text{Rate Revenues (Actually collected for each month of the preceding quarter)}$   

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

$$= \$3,000.00$$
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  $\left[\frac{\text{current CPI}}{\text{12 month previous CPI}}-1\right]$   
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>Multifamily</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Total Number Subject to AB 341				
Total Number <b>Not</b> Recycling				
What follow-up did the COUNTY do annually for those not recycling?				

**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
2. Education and Outreach provided by COUNTY and provided by each hauler
  - Update on websites and other electronic media
  - Copies of print material mailed/distributed including letters, flyers, etc.
  - Place and date of direct contact activity such as site visits, presentations, events, etc.
1. Monitoring activities provided by COUNTY and provided by each hauler
  - 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.
  - If applicable, please describe any challenges encountered in implementing monitoring related to the jurisdiction's commercial recycling program. If not applicable, enter N/A.
  - Provide the amount of organic material that is being diverted by covered businesses/multifamily complexes. If this tonnage information is not available, explain why
2. Other Monitoring Activities
  - Audits
  - Waste assessments
  - Tagging (# of tags and outcome)
  - Other
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 <i>Green Waste, landscaping pruning, non-hazardous wood waste</i> )				
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				