

SERVICE AGREEMENT

BETWEEN

COUNTY OF SAN JOAQUIN

AND



FOR

RECYCLABLE MATERIALS PROCESSING SERVICES

DECEMBER 2025

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	1
ARTICLE 2 REPRESENTATIONS AND WARRANTIES	10
2.1 Of Contractor	10
2.2 Of the County	10
2.3 Of the Parties	11
ARTICLE 3 TERMS AND SCOPE OF AGREEMENT	11
3.1 Term and Option to Extend.....	11
3.2 Scope of Agreement.....	12
3.3 Non-Exclusive Rights for Recyclable Materials	13
3.4 Change in Marketability of Materials.....	13
3.5 Change in Scope	13
3.6 Obligation to Provide Service	14
3.7 No Guarantees of Materials Volume or Composition.....	15
3.8 References to Defined Terms	16
3.9 Subcontractors and Affiliates	16
ARTICLE 4 MATERIAL ACCEPTANCE AND PROCESSING.....	16
4.1 Overview of Scope of Services.....	17
4.2 Transfer Services	17
4.3 Material Acceptance and Rejection	18
4.4 Recyclable Materials Processing.....	18
4.5 Facility Operations.....	20
ARTICLE 5 RESIDUE DISPOSAL SCOPE OF SERVICES	21
5.1 Residue Disposal.....	21
ARTICLE 6 OTHER RELATED SERVICES.....	21
6.1 Billing.....	21
6.2 Provision of Emergency Services	22
6.3 Extended Producer Responsibility Programs	22
6.4 Generation, Characterization, and Pilot Studies.....	23
6.5 Annual Recyclable Materials Characterization	23
ARTICLE 7 STANDARD OF PERFORMANCE	24
7.1 General.....	24
7.2 Disposal of Recyclable Materials.....	24
7.3 Days and Hours of Operation	24
7.4 Alternate Approved Facilities	25
7.5 Rejection of Unpermitted Waste	26

7.6	Permits	26
7.7	Traffic Control and Direction	27
7.8	Vehicle Turnaround Guarantee.....	27
7.9	Scale Operation.....	28
7.10	Personnel	29
7.11	Equipment and Supplies.....	30
7.12	Compliance with Facility Rules.....	30
7.13	Marketing.....	30
7.14	Diversion and Material Recovery Standards	33
ARTICLE 8 CONTRACTOR'S COMPENSATION		34
8.1	Overview	34
8.2	Process for Setting and Adjusting Fees.....	35
8.3	Fee Application Process	36
8.4	Special Review of Fees	37
8.5	Adjustment to Fees for Changes in Scope	39
8.6	Coordination with Other County Contractors	39
ARTICLE 9 REVIEW OF SERVICES AND PERFORMANCE		39
9.1	Right to Enter Facility and Observe Operations	39
9.2	Performance Review	40
ARTICLE 10 RECORD KEEPING AND RECORDING.....		40
10.1	General Record Keeping Provisions.....	40
10.2	Review and Inspection	41
10.3	Retention of Records.....	41
10.4	Other Information Requirements	41
10.5	Reporting.....	41
10.6	Recycling and Disposal Reporting System Reporting	42
10.7	CERCLA Reporting.....	43
ARTICLE 11 INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND		43
11.1	General Indemnification.....	43
11.3	CalRecycle Indemnification	43
11.4	Environmental Indemnity	43
11.5	Insurance.....	44
11.5	Performance Bond.....	47
ARTICLE 12 BREACH, DEFAULT, REMEDIES, AND TERMINATION		47
12.1	Events of Breach	47
12.2	Contractor's Right to Remedy Breach	48
12.3	Acts Necessary to Perform Service	48
12.4	Event of Default.....	49

12.5	Event of Default Not Curable	50
12.6	County's Remedies in the Event of Default	50
12.7	Specific Performance	50
12.8	County's Remedies Cumulative.....	50
12.9	Liquidated Damages.....	51
12.10	Excuse from Performance	51
12.11	Right to Demand Assurances of Performance.....	52
12.12	Waiver of Defenses	52
12.13	Guaranty of Contractor's Performance	53
ARTICLE 13	RESOLUTION OF DISPUTES	53
13.1	Cooperation and Disputes Between Contractors.....	53
13.2	Informal Resolution.....	53
13.3	Mediation.....	53
13.4	Pendency of Dispute	53
ARTICLE 14	OTHER AGREEMENTS OF PARTIES	54
14.1	Relationship of Parties.....	54
14.2	No Third-Party Beneficiaries.....	54
14.3	Compliance with Law.....	54
14.4	Governing Law	54
14.5	Jurisdiction	54
14.6	Notice to Parties	54
14.7	Assignment and Transfer of Agreement	55
14.8	Transition to Next Contractor.....	56
14.9	Compliance Audit.....	56
14.10	Binding on Successors	57
14.11	Non-Waiver.....	57
ARTICLE 15	MISCELLANEOUS PROVISIONS	57
15.1	Entire Agreement.....	57
15.2	Amendment	57
15.3	Section Headings	57
15.4	References to Laws.....	57
15.5	Interpretation	57
15.6	Severability	57
15.7	Further Assurance	57
15.8	Counterparts.....	58
15.9	Exhibits.....	58
15.10	Electronic Signatures.....	58
15.11	Actions of the Authority in its Governmental Capacity	58

List of Exhibits

Exhibit A: Scope of Work

Exhibit B: List of Allowable Recyclable Materials

Exhibit C: Reporting Requirements

Exhibit D: Liquidated Damages

Exhibit E: Approved Subcontractors and Affiliates

Exhibit F: Iran Contracting Certification

Exhibit G: Guaranty Agreement

Exhibit H: Capital Requirements and Specifications

Exhibit I: Recyclable Materials Characterization Study Methodology

Exhibit J: Marketed Recovered Materials Standards

Exhibit K: Rates and Fees for Rate Year One

**SERVICE AGREEMENT
BETWEEN
COUNTY OF SAN JOAQUIN
AND
[REDACTED]
FOR
RECYCLABLE MATERIALS PROCESSING SERVICES**

{Note to Proposers: Gray highlighted text indicates text that will be updated to reflect successful proposals and finalized during negotiations. Gray highlighted text listing out services, facilities, materials, or contractor types has been reviewed for completeness but is subject to change. Text is to be considered a placeholder and not finalized text.}

This Agreement for Recyclable Materials Processing Services ("Agreement") is entered into on the [REDACTED] day of [REDACTED], 2025, by and between the County of San Joaquin, a political subdivision of the State of California, on behalf of its Public Works Department – Solid Waste Division, (hereinafter, "County"), and *{Insert Contractor Legal Name and any DBAs}* (hereinafter, "Contractor") (collectively, the "Parties").

ARTICLE 1 DEFINITIONS

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341," as amended, supplemented, superseded, and replaced from time to time.

"AB 901" means Assembly Bill 901, approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of; amended, renumbered, and added Section 41821.6 of; and, added Sections 41821.6 to, the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time.

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.), as amended, supplemented, superseded, and replaced from time to time.

"Accept" or "Acceptance" (or other variations thereof) means the receipt and acceptance of Delivered Material by an Approved Facility that results in a transfer of ownership of any Material: i) from the Collector to the Contractor; or, ii) from the Contractor to an Approved Facility.

"Advanced Clean Fleets Regulation" means 13 CCR Sections 2013, 2013.1, 2013.2, 2013.3, 2013.4, 2014, 2014.1, 2014.2, 2014.3, 2015, 2015.1, 2015.2, 2015.3, 2015.4, 2015.5, 2015.6, and 2016, as amended, supplemented, superseded, and replaced from time to time.

"Affiliate" means any Person, corporation, or other entity directly or indirectly controlling or controlled by another Person, corporation, or other entity, or under direct or indirect common management or control with such Person, corporation, or entity. As between any two (2) or more Persons or entities, when ten

percent (10%) of one is owned, managed, or controlled by another, they are hereunder Affiliates of one another. In a joint venture, each party to the joint venture may have their own Affiliate.

“Agreement” means this Agreement for *{insert final scope of services}* services between the County and the Contractor, including all exhibits, attachments, and any future amendments hereto.

“Allowable” or “Allowed” (or other variations thereof) means the type of materials that are Accepted at Approved Facilities as specified in Exhibit B.

“Annual Percentage Change” means the annual percentage change in any of the indices defined below, calculated as described in the following paragraph.

The Annual Percentage Change for a cost index shall be calculated as the Average Index Value for the most recently available twelve- (12-) month period of the then-current Rate Year minus the Average Index Value for the corresponding twelve- (12-) month period of the most-recently-completed Rate Year and the result of which shall be divided by the Average Index Value for the same twelve- (12-) month period of the most recently completed Rate Year. The Annual Percentage Change shall be rounded (up or down) to the nearest thousandth (1,000th).

For example, if the Contractor is preparing its Rate application in January of 2028 for Rates to be effective for Rate Year Two, the Annual Percentage Change in CPI shall be calculated as follows: [(Average Index Value CPI for January 2027 through December 2027) – (Average Index Value CPI for January 2026 through December 2026)] / (Average Index Value CPI for January 2026 through December 2026)].

“Applicable Law” means all Federal, State, and local laws, regulations, rules, orders, judgments, permits, approvals, or other requirements of any governmental body having jurisdiction over the Collection, Transfer, Transport, Processing, Diversion, and Disposal of Solid Waste, Recyclable Materials, and/or Excluded Waste that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

“Approved Affiliate” means the Affiliates listed in Exhibit E that provide services, property, or other support related directly or indirectly to this Agreement.

“Approved Alternate Facility(ies)” means the *{Insert Facility Name}* at *{Insert Address, City, State}*, which is owned and operated by *{Insert Owner/Operator’s Name}* and that shall serve as a back-up facility(ies) for the *{Insert description of the facility purpose}* in the event the Approved *{Insert description of the facility purpose}* Facility is unavailable.

“Approved Recyclable Material Processing Facility” means the *{Insert Facility Name}* at *{Insert Address, City, State}*, which is owned and operated by *{Insert Owner/Operator’s Name}*. The Approved Recyclable Materials Processing Facility shall serve as the primary Processing Facility for Recyclable Materials under this Agreement. For the purposes of this Agreement, the Approved Recyclable Materials Facility shall also include the Approved Alternate Facility(ies) where the collective reference to the facilities is most appropriate.

“Board of Supervisors” or “Board” means the duly elected governing body of the County of San Joaquin.

“Billings” means any and all statements of charges for services rendered, howsoever made, described, or designated by the Contractor, or made by the County or others for the Contractor, pursuant to the terms and conditions of this Agreement.

“Business Days” means days during which the County offices are open to do business with the public.

“California Code of Regulations (CCR)” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

“CalRecycle” means California's Department of Resources Recycling and Recovery.

“CARB” means the California Air Resources Board.

“Change in Law” means any of the following events or conditions that have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- A. The enactment, adoption, promulgation, issuance, modification, elimination, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date.
- B. The order or judgment of any Federal, State, or local governmental body, 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 the County or the 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.

“Commencement Date” means {*March 1, 2027*}, or the date when the Contractor shall begin to provide all services set forth in this Agreement.

“Commercial” means of, from, or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, institutions, manufacturing and industrial operations, and including hotels, motels, and other similar Premises and any and all facilities operated by governmental entities within the County, but excluding businesses conducted upon Residential Premises that are permitted under applicable zoning regulations and are not the primary use of the property.

“Commodity Revenue” means any and all compensation, in any form, earned by Contractor from the sale or other transfer of Recyclable Materials and other materials delivered to the Approved Facility as determined in accordance with Article 8 of the Agreement.

“Contaminant(s)” (or other variations thereof) means any materials not identified in Exhibit B; including, Excluded Waste and/or Unpermitted Waste.

“Contractor” means {*Insert Contractor Legal Name and any DBAs*} and any Approved Affiliates and Subcontractors.

“Contractor Revenue” means Gross Receipts plus any revenue received by the Contractor for sale of Materials or their resulting by-products Allowable under this Agreement.

“Contractor’s Operations Cost” means the Total Calculated Contractor Cost less Processing and Disposal Costs.

“Contractor’s Proposal” means the proposal submitted by the Contractor to the County dated {mm/dd/yyyy}.

“County” or “The County” means the County of San Joaquin, a political subdivision of the State of California, and includes its Department of Public Works and the Director thereof, acting on behalf of the County in connection with this Agreement.

“CPI-U” means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco-Oakland-Hayward Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

“Criminal Activity” means, but is not limited to:

- A. any criminal offense in connection with obtaining, attempting to obtain or procuring a public or private agreement related to Solid Waste, Organic Materials, or Recyclable Materials services of any kind, including this Agreement.
- B. bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency.
- C. fraud, embezzlement, extortion, racketeering, false claims, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft; and/or.
- D. violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to determination of Recovered Materials Revenue Payments.

“Days” means calendar days, including Saturdays, Sundays, and Holidays, except as otherwise specifically provided herein.

“Delivered” or “Delivery” (or other variations thereof) means arrival of Materials in the Transfer Service vehicles at the entrance of Approved Facility(ies) during Facility receiving hours for the purposes of Acceptance.

“Designated Waste” means non-Hazardous Waste that may pose special disposal problems because of its potential to contaminate the environment and that may be Disposed of only in Class II Disposal facilities or Class III Disposal facilities pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in 23 CCR Section 2522 as may be amended from time to time.

“Director” means the Director of the San Joaquin County Department of Public Works or their designee.

“Disposal” (or other variations thereof) means the final disposition of Solid Waste or Processing Residue at a Disposal Site.

“Disposal Site” means a County-owned facility used for the Disposal of solid waste and/or the Disposal of Processing Residue.

“Diversion” (or other variations thereof) means activities that reduce or eliminate the amount of Solid Waste from Disposal, including, but not limited to, Processing Recyclable Materials at a Processing Facility.

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

“Event of Default” means a default by the Contractor as described in Section 12.4.

“Excluded Waste” means Hazardous Substance, Hazardous Waste, infectious waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that the Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in the Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the Contractor or the County to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

“Extended Producer Responsibility Program” or “EPR Program” means an environmental program or policy codified, enforced, and/or monitored by local, State, or Federal governments in which a producer’s, distributor’s, or retailer’s administrative, financial, operational, and/or physical responsibility for a product is extended to the post-consumer stage of a product’s life cycle. Extended Producer Responsibility Programs may be implemented by individual producers, collective industry organizations such as a producer responsibility organization or Stewardship Organization, or other regulated entities specified under the program. Such programs may cover individual products or categories of products, using one (1) or more funding mechanisms, as defined in the regulation(s) establishing the program.

“Facility” means any site, owned or leased, maintained, operated and/or used by Contractor for purposes of performing under this Agreement.

“Facility User” means any Person delivering Recyclable Materials, or any other material, to an Approved Facility, including, but not limited to the Transfer Service, County staff or designees, Stewardship Organizations or Extended Producer Responsibility Program participants, and Self-Haulers.

“Federal” means belonging to or pertaining to the Federal government of the United States.

“Generator” means any Person that generates or produces Recyclable Materials, or whose act first causes Recyclable Materials to become subject to regulation.

“Governmental Fees” means those fees charged, levied, or imposed by Federal, State, and local governmental bodies having jurisdiction over the Collection, Transfer, Transport, Processing, Diversion, and Disposal of Solid Waste and/or Recyclable Materials.

“Gross Receipts” means total cash receipts that the Contractor receives from the County for the provision of services pursuant to this Agreement through Tipping Fees less Pass-Throughs. Gross Receipts do not include revenues from the sale of Recovered Materials.

“Guarantor” means *{Insert Contractor Legal Name and any DBAs}*.

“Hazardous Substance” means any of the following:

- A. Any substances defined, regulated, or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” “pollutant,” or “toxic substances,” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) CERCLA, 42 U.S.C. § 9601 et seq.; (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (v) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (vi) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; and, (vii) California Water Code Section 13050.
- B. Any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted.
- C. Any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other applicable Federal, State, or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products, and by-products.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in California Health and Safety Code Sections 25117, 25110.02, and 25115, in California Public Resources Code Section 40141, or in the future amendments to or recodifications of such statutes, or as identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

“Holidays” are defined as Thanksgiving, New Year’s Day, and Christmas Day, unless otherwise agreed to between the Parties as provided in Section 7.3.C.

“Implementation Period” means the period between the Effective Date and the Commencement Date during which the Contractor makes the necessary preparations in order to implement all the Contractor services and obligations set forth herein.

“Liquidated Damages” means the amounts agreed upon by the Contractor and the County as fair and reasonable damages for the Contractor’s failure to meet specific quantifiable standards of performance, as described in Section 12.9 and Exhibit D.

“Load” means the payload contents of a collection vehicle or Transfer Vehicle measured in Tons.

“Party(ies)” means the County and Contractor, individually or together.

“Permits” means all Federal, State, county, County, other local, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable

Law to be obtained or maintained by any Person with respect to services performed under this Agreement, as renewed or amended from time to time.

“Person(s)” means any individual, business, firm, association, organization, partnership, public or private corporation, trust, joint venture, political subdivision, special purpose district, or public or governmental entity.

“Process” or “Processing” (or any variation thereof) means the controlled separation, volume reduction, or conversion of materials including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of Recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20) to produce Recoverable Materials for Recycling.

“Processing Facility” means a permitted Facility in which materials are sorted, separated, or otherwise manipulated for the purposes of Recovering marketable commodities.

“Rate” means the dollar unit to be charged by Contractor for providing the services under this Agreement and for providing other extra services (as applicable).

“Rate Year” means a twelve- (12-) month period, commencing July 1 and concluding on June 30, with the exception of Rate Year One.

“Rate Year One” means the first (1st) Rate Year covered by this Agreement that covers a sixteen- (16-) month period. Rate Year One shall begin on March 1, 2027 and shall end on June 30, 2028.

“Recover,” “Recovery,” or “Recovered” (or other variations thereof) means the picking, pulling, sorting, separating, and classifying of Recyclable Materials whether by manual or mechanical means, after Acceptance of the materials and before Marketing of Recovered Materials, including Recycling, material reuse and recovery.

“Recyclable Materials” means materials, by-products, or components of such materials that are set aside, handled, or packaged and separated from Solid Waste. Recyclable Materials do not include Unpermitted Materials or Excluded Materials. Recyclable Materials are the materials listed in Exhibit B that may be replaced by a list posted by the Director in their sole discretion from time to time and provided to the Contractor.

“Recycled” or “Recycling” (or other variations thereof) means the treating or reconstituting materials that are or would otherwise be Disposed of and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products. Recycling includes processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include the use of materials for gasification or transformation as defined in Public Resources Code Section 40201.

“Residue” means materials that remain after Acceptance, Processing, and Diversion of Recyclable Materials, which may not be Recovered, and which subsequently require Disposal.

“SB 54” means the Plastic Pollution Prevention and Packaging Producer Responsibility Act approved by the Governor of the State of California on June 30, 2022, which amended Section 41821.5 of the California Public Resources Code to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30, as

amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 54 includes any implementing regulations developed by CalRecycle, as amended supplemented, superseded, and replaced from time to time.

“Solid Waste” means all putrescible and nonputrescible solid, semisolid and liquid wastes, including but not limited to organic waste, garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge (biosolids), which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that solid waste does not include any of the following wastes:

- A. Hazardous waste, as defined in the State Public Resources Code Section 40141.
- B. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 [commencing with Section 114960] of Part 9 of Division 104 of the State Health and Safety Code).
- C. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 [commencing with Section 117600] of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

“Source Separated” means the segregation from Solid Waste, by the Generator, of materials designated for separate Collection for some form of materials Recovery or special handling.

“Special Tipping Fee Review” means an adjustment to the Tipping Fee(s) in addition to or at a time other than when periodic adjustments of the Tipping Fee(s) are made under this Agreement pursuant to Section 8.4.

“Standard Industry Practice” means (i) the then-current development and operations practices and standards of the northern California Solid Waste and materials management industry with respect to collection, transfer, transport, processing, diversion, and disposal services; and, (ii) the then-current development, operations, closure, and post-closure practices and Solid Waste Association of North America (or any successor organization) Manager of Landfill Operations standards in meeting the Contractor’s obligations under this Agreement.

“State” means the State of California.

“Stewardship Organization” means a Person(s) that is approved or designated under Applicable Law or by a relevant governing body, including, but not limited to, CalRecycle, CARB, or the County, to manage, coordinate, fund, or otherwise oversee one or more Extended Producer Responsibility Programs, and that is selected by the County.

“Subcontractor” means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that: (i) involves Accepting, Processing, Transporting, Transferring, Diverting, Marketing and/or other handling of the Recyclable Materials; and, (ii) is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to the Contractor shall not be considered Subcontractors.

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

“Tipping Fee” or “Tip Fee” is the per-Ton cost assessed by an Approved Facility for Processing and/or Disposal services plus Pass-Throughs.

“Ton” or “Tonnage” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

“Transfer” or “Transferring” (or other variations thereof) means the process of managing, loading, and delivering Recyclable Materials into Transfer Vehicles for the purpose of transporting such materials to the Approved Recyclable Materials Processing Facility and transporting Residue to a Disposal Site.

“Transfer Facility” means a Facility that receives and temporarily stores materials, and then Transfers the materials into larger trailers for Transport to a Processing facility, or a Disposal Site.

“Transfer Service(s)” means the receipt, consolidation, handling, and transport of Recyclable Materials or Processing Residue from designated Transfer Facilities to the Processing Facility or County-owned Disposal Site.

“Transfer Service Fee” means the flat charge assessed by the Contractor for Transfer Services, applied on a per-load basis for the receipt, consolidation, handling, and transport of Materials between designated Transfer Facilities and the Processing Facility or Disposal Site.

“Transfer Vehicle” means a tractor and trailer designed to haul Recyclable Materials, and/or Residue from a Transfer Facility or Recyclable Material Processing Facility to an Approved Recyclable Materials Processing Facility or Disposal Site.

“Transport” (or other variations thereof) means the conveyance of Recyclable Materials collected, Residue from Processing, to an Approved Recyclable Materials Processing Facility or Disposal Site.

“Uncontrollable Circumstance” means:

- A. An act of nature, hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage, tsunami, pandemic, or similar occurrence (but not including reasonably anticipated weather conditions in the County), acts of terrorism, extortion, war, blockade or insurrection, riot or civil disturbance, and other similar catastrophic events that are beyond the control of and not the fault of the Party. Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor’s employees, directed at or initiated by Contractor, or an Affiliate, contractor, or supplier of Contractor, is not an Uncontrollable Circumstance.
- B. A Change in Law (as defined herein).

“Unpermitted Waste” means wastes or other materials that the Approved Facilities may not receive under their Permits, including:

- A. All materials that the Approved Facilities are not permitted to accept.

- B. Designated Waste if not permitted at the Approved Facilities under Applicable Law and Permits.
- C. Single Loads with an excessive level of Contaminants based on visual inspection.

This definition shall be promptly amended to reflect any applicable changes in Permits or Applicable Law.

“Working Days” means days on which the Contractor is required to provide the Recyclable Materials Processing services pursuant to Section 7.3 of this Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 Of Contractor

By acceptance of this Agreement, the Contractor represents and warrants that:

- A. **Existence and Powers.** The Contractor represents and warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of California; is qualified to transact business in the State; and has full legal right, power, and authority to enter into and perform its obligations under this Agreement. This Agreement has been duly authorized, executed, and delivered by the Contractor and constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms.
- B. **Due Diligence and Capability.** The Contractor acknowledges that it has independently investigated all conditions relevant to this Agreement and enters into it based solely on its own judgment and advice. The Contractor further represents that it possesses the necessary business, technical, and professional competence, as well as sufficient personnel, equipment, and facilities, to fully perform all obligations required under this Agreement in accordance with best industry practices.
- C. **Accuracy, Performance, and Limitations.** The Contractor certifies that all information provided to the County is true, accurate, and complete, and shall promptly update any material changes. The Contractor agrees to use only County-owned facilities for processing residuals, acknowledges that the County makes no warranty as to volume or material types, and covenants not to initiate or support any legal or administrative action against the County arising from or related to the RFP process or this Agreement.
- D. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance with and has completed all requirements necessary to become certified under the Iran Contracting Act (Public Contract Code Sec. 2200). Proof of certification shall be included as Exhibit F of this Agreement.

2.2 Of the County

By acceptance of this Agreement, the County represents and warrants that:

- A. **Existence and Powers.** The County is a political subdivision of the State of California, duly organized and validly existing under the Constitution and laws of the State of California, with full legal right, power, and authority to enter into this Agreement.

- B. **Due Authorization.** The County has full authority to enter into this Agreement and has taken all actions required by law to authorize its execution, and the Person(s) signing this Agreement on behalf of the County is/are duly authorized to do so.
- C. **No Warranty Regarding Volumes or Material Types.** The County expressly disclaims any and all warranties, whether express or implied, as to the quantity, quality, type, merchantability, or fitness for any particular purpose of any materials delivered to the Contractor.

2.3 Of the Parties

By acceptance of this Agreement, the Parties represent and warrant that:

- A. **No Conflicts.** To the best of the Parties' knowledge, after reasonable investigation, the execution or delivery of this Agreement, as well as the performance by the Parties of their obligations hereunder, does not conflict with, violate, or result in breach of:
 1. Any applicable law.
 2. Any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental County.
 3. Any agreement or instrument to which the Contractor or any of its Affiliates is a party or by which the Contractor or any of its Affiliates' properties or assets are bound or constitutes a breach thereunder.
- B. **No Litigation.** There is no administrative filing, action, suit, or other proceeding as of the Effective Date, at law or in equity, before or by any court or governmental County, commission, board, agency, or instrumentality decided, pending, or to the Parties' best knowledge, threatened by or against either Party wherein an unfavorable decision, ruling, or finding in any single case or in the aggregate, would:
 1. Materially adversely affect the performance by either Party of its respective obligations hereunder or the transactions contemplated by this Agreement.
 2. Adversely affect the validity or enforceability of this Agreement. Or,
 3. Have a material adverse effect on the financial condition of the Contractor, or any surety or entity guaranteeing the Contractor's performance under this Agreement.
- C. **No Legal Prohibition.** The Parties have no knowledge of any adverse judicial decision or any law in effect on the Effective Date that either affects the validity of this Agreement or would prohibit the performance by either Party of its respective obligations hereunder or the transactions contemplated by this Agreement.

ARTICLE 3 TERMS AND SCOPE OF AGREEMENT

3.1 Term and Option to Extend

The Term of this Agreement shall commence March 1, 2026 ("Commencement Date") and continue in full force for a period of five (5) Rate Years (Including "Rate Year One")*{term is subject to +/- five (5) years and will be finalized during negotiation}*, through and including June 30, 2031, unless the Agreement is

extended in accordance with this Section or terminated pursuant to Article 12. During the Implementation Period, the Contractor shall perform all activities necessary to prepare itself to start providing the services required by this Agreement on the Commencement Date.

At the County's sole discretion, without negotiation, and with no change in compensation other than as provided for in Article 8, the Term of this Agreement may be extended by written notice of the Director, without need of written amendment, for up to two (2) additional periods totaling no more than five (5) years each. Each such extension may be for any length of time, up to the maximum allowed for that period, as determined by the Director. If the County elects to exercise this option to extend the Term, the Director shall provide written notice to the Contractor specifying the length of the extension no less than one hundred eighty (180) Days prior to the expiration date then existing under this Agreement. *{Note to Proposer: to be negotiated.}*

The County has no obligation to renegotiate, renew, or extend the rights granted to the Contractor beyond the initial Term of the Agreement.

3.2 Scope of Agreement

Through this Agreement, the County grants to the Contractor the right, privilege, and obligation to perform the following activities related to the Processing and Transporting of Recyclable Materials and Disposal of Residue. Subject to the limitations in Section 4.5, and except where otherwise prohibited by Federal, State, and local laws and regulations, the Contractor shall be responsible for each of the following:

- A. Complying with applicable law.
- B. Accepting, Processing, Transporting, and Marketing of Recyclable Materials.
- C. Transporting and Disposal of Residue at County-owned Disposal Site.
- D. Maintaining accurate records and providing timely reporting of all materials Accepted and transactions conducted under this Agreement.
- E. Furnishing all labor, supervision, vehicles and fueling/charging infrastructure, containers, processing equipment, other equipment, materials, supplies, and all other items and services necessary to perform Contractor's obligations under this Agreement.
- F. Paying all expenses related to provision of services required by this Agreement, including, but not limited to, taxes, regulatory fees, governmental fees, and payments to the County.
- G. Performing all services in substantial accordance with the Contractor's Proposal and in full compliance with this Agreement, at all times utilizing best industry practices for comparable operations. In the event of any conflict between the Contractor's Proposal and this Agreement, the terms and provisions of this Agreement shall prevail.
- H. Providing reports in a timely manner.
- I. Providing all services required pursuant to this Agreement in a professional manner, ensuring that such services are thorough, timely, reliable, courteous, and of high quality at all times.
- J. Performing or providing all other services necessary to fulfill the Contractor's obligations under this Agreement.

3.3 Non-Exclusive Rights for Recyclable Materials

This Agreement does not grant the Contractor any exclusive rights or privileges to collect, process, transport, or otherwise manage Recyclable Materials within the County. The County expressly reserves the right, on an as-needed basis, to contract with, authorize, or permit other companies, individuals, or organizations to collect, process, transport, or manage recyclable materials, including materials that may otherwise fall within the general scope of services under this Agreement.

Nothing in this Agreement shall prevent or restrict:

- A. Generators, businesses, or other Persons from directly selling, donating, or otherwise lawfully conveying recyclable materials to other entities for reuse, recycling, or recovery purposes.
- B. Other service providers from lawfully collecting or managing Recyclable Materials prior to such materials being placed in a collection container intended for the Contractor's collection system. Or,
- C. The County from establishing, authorizing, or implementing additional, alternative, or supplemental programs, contracts, or arrangements for the collection, diversion, processing, or management of Recyclable Materials, whether temporarily, periodically, or on an as-needed basis.

The Contractor acknowledges and agrees that the County may, at its sole discretion and without notice to or approval from the Contractor, permit or engage other Persons to handle or manage the County's Recyclable Materials. The Contractor shall have no claim, right, or expectation of exclusivity for any Recyclable Materials generated, collected, or managed by the County.

3.4 Change in Marketability of Materials

If any materials, by-products, or components listed in Exhibit B, or any other materials not currently designated as Recyclable Materials in Exhibit B, develop sustained economic value equal to or greater than the cost of Disposal for at least six months and are reasonably expected to maintain such value, the County may add such materials to this Agreement and may request that the Contractor Transfer, Transport, Process, Divert, or Dispose of them, subject to a change in scope. Conversely, if any materials designated as Recyclable Materials in Exhibit B experience a sustained six month decline in value to below the cost of Disposal and are reasonably expected to remain below that value, the County and Contractor shall meet to determine whether to remove such materials from Exhibit B and cease their Processing and Diversion, with any resulting changes treated as a change in scope pursuant to Section 3.5. The Contractor shall accept modifications to the SB 54 required materials list by default, and the Parties shall meet and confer to update Exhibit B accordingly.

3.5 Change in Scope

The County may, by written notice, direct the Contractor to perform additional services or modify existing services under this Agreement, but no change in scope shall be constructed so as to materially impair the rights of the Contractor granted hereunder.

- A. Within sixty (60) Days of the County's written request under this Section, Contractor shall present a written proposal to perform the additional or modified Processing services or stop Processing some of the Recyclable Materials or performing some of the Diversion programs. At a minimum, the proposal shall contain a complete description of the following:
 - 1. Changes to Processing and Diversion methodology to be employed (equipment, sorting stations, staffing requirements, etc.).

2. Changes in equipment to be used.
 3. Changes in labor requirements (number of employees by classification; estimated hours per year per employee).
 4. Changes to types of materials to be Processed and Diverted and estimated volumes per week and per year. And,
 5. Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format, including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing Services and revenues from Marketing of Recovered Materials.
- B. The County shall review the Contractor's proposal for the change in scope of services. The County may accept the proposal, negotiate the terms of the proposal with the Contractor, or reject the proposal. The Parties will cooperate in good faith to amend the Agreement, as needed, to reflect the outcome of the County's review of the proposal.
 - C. The Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope. However, if the County approves the change in scope, the Contractor may seek a Special Tipping Fee Review as provided in Section 8.4 and 8.5.
 - D. If the County and the Contractor cannot agree on the terms and conditions of the change in scope, including compensation and/or Tipping Fee adjustments, within one hundred twenty (120) Days (or otherwise mutually extended in writing by the Parties) from the date when the County receives a proposal from the Contractor to perform such services, the Contractor acknowledges and agrees that the County may permit other Persons besides the Contractor to provide such services. Nothing herein shall prevent the County from soliciting cost and operating information from other Persons in order to inform the evaluation of the Contractor's proposal.

3.6 Obligation to Provide Service

The County and the Contractor agree that the proper collection, processing, and diversion of Recyclable Materials are fundamental to the protection of the public health, safety, and welfare of the County and its constituents. The County's responsibility for ensuring the adequacy and continuity of these essential services provides the justification for the granting of this Agreement to the Contractor.

Except as otherwise provided in this Agreement, this Agreement creates an obligation that such services continue to be provided even under difficult or adverse circumstances, including, but not limited to, uncontrollable circumstances, natural disasters, pandemics, labor unrest, and any period in which legal actions, judicial interpretations, or newly enacted laws or regulations affect the performance or effectiveness of portions of this Agreement. In such events, it shall be the responsibility of the Contractor to mitigate any potential impacts to service to the maximum extent feasible.

1. **Continuation of Service.** Should a court of competent jurisdiction or other regulatory agency set aside, invalidate, or stay all or a portion of the rates, fees, or other charges approved by the County under this Agreement, the Contractor agrees to continue to perform its obligations as otherwise set forth herein. The County and/or the Contractor shall take such urgent or interim actions as necessary to facilitate the continuation of service.

- B. **Change in Law.** Should there be a Change in Law, the Contractor agrees to meet and confer with the County to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement and to determine any mutually acceptable adjustments, if necessary.
- C. **Allocation of Risk.** Neither the County nor the Contractor shall have the right to obtain payment from the other Party for losses sustained due to a court of competent jurisdiction or regulatory body invalidating, setting aside, or staying the collection of fees or rates approved under this Agreement. The Contractor shall bear the risk of any lost profits or costs associated with continued service under such circumstances, and the County shall bear any associated loss of payments to the County during any period in which such amounts cannot lawfully be collected.
- D. **Labor Unrest.** In the event of labor unrest, including but not limited to strikes, work stoppages, slowdowns, sickouts, picketing, or other concerted job actions involving the Contractor's employees, affiliates, subcontractors, or suppliers, the Contractor shall not be excused from performance. Any labor action initiated by the Contractor, including a lockout, shall not excuse performance, and failure to perform shall constitute an Event of Breach in accordance with Section 12.4.
- E. **Capacity Restrictions and/or Facility Closure.** In the event of a temporary, sustained, or permanent capacity restriction or closure of an Approved Facility under this Agreement, the Contractor shall not be excused from performance except in cases of Uncontrollable Circumstances. The Contractor shall continue to provide services and shall prioritize the County's materials where capacity is limited. Any reduction or restriction in facility capacity shall not relieve the Contractor of its obligations to perform under this Agreement. The County retains the right to demand assurances of performance in accordance with Section 12.11.
- F. **Exercise of County's Non-Exclusive Rights.** In the event the Contractor is unable, unwilling, or fails to provide any services required under this Agreement, the County reserves the right, on an as-needed basis, to exercise its non-exclusive rights to contract with, authorize, or permit other companies, individuals, or organizations to process, transport, or otherwise manage Recyclable Materials.

The Contractor acknowledges that the County's exercise of this right shall not constitute a breach, default, or modification of this Agreement, nor shall it entitle the Contractor to any claim for damages, compensation, or adjustment to rates or fees.

3.7 No Guarantees of Materials Volume or Composition

The County does not guarantee the quantity or composition of Recyclable Materials Delivered to the Contractor during the Term of the Agreement. The Parties acknowledge that the quantity and composition of Recyclable Materials will be impacted during the Term of the Agreement based on a number of unpredictable factors such as, but not limited to, those factors listed below.

- A. The state of the economy.
- B. The number of residents and the number and type of businesses.
- C. Participation level of residents and businesses in various Diversion programs.
- D. Changes in packaging, products, technology, and other external factors.
- E. Diversion programs or policies of the State, the County, County Collectors, and others.

- F. Impact of existing, pending, or future Applicable Law, including but not limited to, AB 901, AB 939, AB 341, SB 54, and the Advanced Clean Fleets Regulation.
- G. Impact of new bans or policies on the Disposal of materials, such as, without limitation, polystyrene, single-use plastics, or materials that are difficult to Process, as established by the County, the State, or other applicable regulatory bodies.
- H. Impact of new Extended Producer Responsibility Programs established by the County, the State, or other applicable regulatory bodies.

3.8 References to Defined Terms

Throughout this Agreement, references to defined terms that are not capitalized shall have the same meaning as their capitalized counterparts unless the use of such terms indicates they are not the subject to the provisions of this Agreement or the other separate agreements between the County and other parties for services directly or indirectly related to this Agreement. Where actions or activities are used in their lowercase form, such activities are assumed to have not been performed by any person in privity of contract with the County for services directly or indirectly related to this Agreement.

3.9 Subcontractors and Affiliates

The Contractor shall not engage with any Subcontractor(s) and/or Affiliate(s) for Processing Services without the prior written consent of the Director, which may be granted or withheld in the Director's sole discretion. Subcontractor(s) and/or Affiliate(s) pre-approved by the County and identified in Exhibit E are authorized upon execution of this Agreement, provided the Contractor demonstrates compliance with all requirements of this Section 3.9 on or before the Commencement Date.

Following the Effective Date, any proposed addition, removal, or substitution of a Subcontractor and/or Affiliate listed in Exhibit E shall require the prior written approval of the Director, who is hereby authorized to approve such modifications on behalf of the County. The Contractor shall provide at least thirty (30) days' written notice of any proposed change and include an explanation of any potential impacts on the quality, timeliness, or cost of services under this Agreement.

The Contractor shall be solely responsible for management and oversight of the activities of all approved Subcontractor(s) and/or Affiliate(s) and shall require compliance with all material terms of this Agreement, including the Indemnification provisions in Article 11 of this Agreement. The Contractor shall require that all Subcontractors and/or Affiliates file an insurance certificate with the County describing insurance coverage and name the County as an additional insured. The Director may waive or excuse these insurance requirements in its sole discretion. The Contractor shall be considered to be in breach or default should the activities of any Subcontractor(s) and/or Affiliate(s) constitute a breach or Event of Default under this Agreement.

ARTICLE 4 MATERIAL ACCEPTANCE AND PROCESSING

This Article 4 describes the general requirements for the Contractor's obligation to Accept and Process specified materials under this Agreement. The County shall enter into an agreement with the Collector that requires the delivery of all materials specified herein to the facilities specified herein for that material.

{Note to Proposer: This Article 4 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 4 may be moved to Exhibit A: Scope of Work.}

4.1 Overview of Scope of Services

- A. **Acceptance.** Contractor shall receive Delivery of and Accept at the Approved Recyclable Materials Processing Facility all Recyclable Materials.
- B. **Capacity.** Contractor warrants that, as of the Commencement Date, it has sufficient Processing Facility capacity at the Approved Processing Facility to receive the County's Recyclable Materials through the Term and that it shall maintain that Processing Facility capacity through the Term (including any extension).
- C. **Responsibility for Materials.** Once the Recyclable Materials are Delivered to the Approved Facility(ies) and such materials are Accepted by the Contractor, ownership and the right to possession of the Recyclable Materials will transfer directly to the Contractor, with the exception of Excluded Waste if the Contractor can identify the Excluded Waste pursuant to Section 7.5. All benefits and liabilities resulting from ownership and possession will accrue to the Contractor until such time as such materials are delivered to and accepted by the operator of an Approved Facility as required by this Agreement.
- D. **Facility Permits.** The Contractor shall keep all existing Permits and approvals necessary for use of the Approved Facility(ies), in full regulatory compliance, or confirm that the owner or operator of such facility does so. The Contractor shall, upon request, provide copies of Permits and/or notices of violation of Permits to the County.

4.2 Transfer Services

If and when the County determines that the use of transfer services is necessary or desirable for the efficient or cost-effective transport of Recyclable Materials or Residue, the Contractor shall, upon the County's request, provide Transfer Services in accordance with the terms of this Agreement. Such Transfer Services shall include, as applicable, the receipt, consolidation, handling, and transport of materials from one or more designated Transfer Facilities to the Processing Facility or Disposal Site. The County's request for Transfer Services shall specify the scope, duration, and operational parameters of such services. The Parties shall meet and confer in good faith to establish a mutually agreed-upon plan, including any adjustments to compensation, routing, or facility utilization as appropriate.

Nothing in this Section shall obligate the County to utilize Transfer Services on a continuous or exclusive basis, nor shall it prevent the County from electing to bypass Transfer Services and direct Recyclable Materials to the Processing Facility when operationally feasible.

The Parties acknowledge that Transfer Services may be utilized on an as-needed basis to ensure system efficiency, cost-effectiveness, or compliance with operational constraints. Compensation for such services, if requested by the County, shall be in accordance with the rates, fees, or adjustment mechanism set forth in Article 8 and Exhibit K.

The Contractor shall be solely responsible, at its own cost, for the transport, delivery, and unloading of all Residue at the Disposal Site in compliance with the requirements of Section 5.1.

4.3 Material Acceptance and Rejection

- A. **Notification and Handling of Contaminated Recyclable Materials.** The Contractor shall notify the County upon receipt of any Recyclable Materials Load that appears to contain excessive moisture and/or exceeds ____ percent (____%) physical contamination *{Note to Proposer: The County will discuss appropriate thresholds for moisture and contamination based on educational program needs}*. Such notification shall include the date and time the materials were delivered.
- If the Contractor Accepts a Load with contamination exceeding the facility limits established by the Contractor, the Contractor shall:
1. Photograph the offending Load to document the contamination level; and,
 2. Provide the photographic evidence to the Director within one (1) Business Day; and
 3. Dispose of the Load and any residual materials in accordance with applicable law, facility procedures, and Article 5 of this Agreement.
- B. **Inspection.** Contractor shall use Standard Industry Practices to detect and reject Unpermitted Waste in a uniform manner and shall not knowingly Accept Unpermitted Waste at the Approved Facilities. Contractor shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law. The Contractor shall comply with the inspection procedure contained in its Permit requirements. The Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.
- C. **Unpermitted Waste Handling and Costs.** The Contractor shall arrange for or provide handling, Transportation, and delivery to a Recycling facility, incinerator, or landfill permitted in accordance with Applicable Law of all Unpermitted Waste detected at the Approved Processing Facility. The Contractor is solely responsible for making those arrangements or provisions and paying for all costs thereof.
- D. **Contamination of Recyclable Materials.** The Contractor shall be responsible for minimizing Contamination of Recyclable Materials Delivered to the to the Approved Recyclable Materials Facilities through its own operational practices.

4.4 Recyclable Materials Processing

- A. **Allowable Recyclable Materials.** Contractor shall Accept all the County's Recyclable Materials, as defined in Exhibit B, and shall Process all Recyclable Materials Delivered to maximize Recovery, Recycling, and Diversion. The Contractor shall also Recover from the County's Recyclable Materials, additional types of Recovered Materials described in Contractor's Proposal for no additional charge, unless otherwise agreed to by the County. If such additional materials are identified in the Proposal, they shall be incorporated into Exhibit B during contract negotiations. The Contractor shall be expressly precluded from requesting any Special Tipping Fee Review, as described in Section 8.4 or 8.5, for any materials Contractor was previously Recovering and Diverting as described in Contractor's Proposal, even if the addition of the subject material is covered under what might otherwise be considered an eligible item under Section 8.4.A.

If existing Extended Producer Responsibility Programs (including but not limited to, AB 901, AB 939, AB 341, and SB 54) or new Extended Producer Responsibility Programs, as further described in Section 6.3, require additional materials be Diverted that are not otherwise identified in Exhibit B,

the County may incorporate such materials into the County's Collection program for Recyclable Materials and update Exhibit B, as appropriate, and the Contractor shall Accept, Process, Recover, and Divert those materials. The County may also request the Contractor participate in another type of program to receive the subject material for Processing, Recovery, and Diversion that would constitute a change in scope, as described in Section 3.5, although the County is under no obligation to do so. Notwithstanding the provisions of Section 8.4.A.4, any and all such changes described in this paragraph related to Extended Producer Responsibility Programs shall be treated as a change in scope pursuant to Sections 3.5, 8.4.A.1, and 8.5 and shall not be considered a Change in Law.

Further, the Contractor shall also be expressly precluded from requesting a Special Tipping Fee Review, as described in Section 8.4, to the extent any such item is covered under an Extended Producer Responsibility Program that compensates the Contractor for the Processing, Recovery, and/or Diversion of such materials, in whole or in part. The County reserves the right to trigger a Special Tipping Fee Review or direct the Contractor to otherwise remit compensation attributable to the services under this Agreement, as provided in Section 6.3.E, if the Contractor receives compensation for the Processing, Recovery, and/or Diversion of any such item from the County under an Extended Producer Responsibility Program.

Additionally, if either Party becomes aware that Exhibit B may require modification as a result of an Extended Producer Responsibility Program, such Party shall promptly notify the other Party upon becoming aware of the potential need for such modification. Upon the County's request, and to the extent the County elects to incorporate any new materials into the County's program, the Parties shall promptly meet and confer in good faith to establish a mutually agreed-upon timeline and process for:

1. The County's implementation of such changes to the Collection Program, and
2. The Contractor's corresponding adaptations to its processing methods, as necessary, to ensure the Recovery and Diversion of the newly included materials.

The County's Director shall update Exhibit B as appropriate and the Contractor shall implement any required changes to its processing method on a timeline as mutually agreed to by the Contractor and the County or before any required deadlines identified in the Extended Producer Responsibility Program, whichever is sooner. Contractor shall maintain records in accordance with Article 10 and Exhibit C. Pursuant to Section 12.3, Contractor shall bear full responsibility for complying with all Applicable Law and the provisions of this Agreement.

{Note to Proposers: The County may revise the following paragraphs to include Processing details specified in Contractor's proposal.}

- B. **Processing Method.** The Contractor shall Accept all Recyclable Materials at the Approved Recyclable Materials Processing Facility and shall Process such material in accordance with Contractor's Proposal. Contractor shall operate the Approved Recyclable Materials Processing Facility in accordance with Applicable Law and all standards of performance described in Article 7. The Contractor shall operate the Recyclable Materials Processing Facility in a manner that meets or exceeds the minimum operational standards established under the Recyclable Materials Characterization Study, in accordance with Section 6.5 and Exhibit I. If the Contractor proposes to deviate from any of the operational standards set forth under Section 6.5 and Exhibit I, such as, without limitation, modifying staffing levels, changing sorting practices, or retiring, rearranging, or changing equipment, the Contractor shall request written approval from the County prior to making

any changes. Upon the County's request, the Contractor shall provide additional documentation to support its proposed revisions prior to the County's determination and written approval.

- C. **Residue Allocation and Disposal.** *{Note to Proposer: Proposer must comply with Section 10.6 and shall also describe how they will implement and monitor allocation methodology in their proposal.}* Contractor shall use the method described in Section 10.6 for tracking and allocating Recyclable Materials Residue and as further described in the Contractor's Proposal, adjusted or modified by mutual agreement between the Contractor and the County, and approved by the County. Contractor's Residue allocation methodology shall be used throughout the Term to accurately allocate the County's share of the total Residue generated from the Processing of Recyclable Materials at the Approved Recyclable Materials Processing Facility. Contractor shall report Residue from Recyclable Materials Processing to the County quarterly in accordance with Section 10.6 and Exhibit C. The Contractor shall not change the Residue level calculation method without prior written approval from the County.

Residue from the Contractor's Processing of Recyclable Materials shall be Transported and Disposed at a County-owned Disposal facility by Contractor at Contractor's sole expense. Contractor shall be fully responsible for the safe Disposal of all such Residue in accordance with Applicable Law. Residue delivered for Disposal shall not contain any Excluded Waste. Contractor shall maintain records and submit reports related to the County-owned Disposal facility, in accordance with Exhibit C.

- D. **Marketed Recovered Materials.** Contractor shall market Recovered Materials in the categories and grades listed in Exhibit J.

4.5 Facility Operations

The Contractor shall provide Recyclable Materials Processing services at the Approved Recyclable Materials Processing Facility in accordance with Applicable Law, Standard Industry Practices, other requirements of this Agreement, and the following service specifications:

- A. Operating, managing, and maintaining the Approved Processing Facility including all buildings, scales, roads, utilities, equipment, and other Facility requirements.
- B. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations and maintenance.
- C. Operating and maintaining the scale house and scale system and weighing all inbound Recyclable Materials and outbound Residue and Recovered Recyclables in accordance with Section 7.9.
- D. Directing on-site traffic to appropriate unloading areas in accordance with Section 7.7 and providing a safe working environment for Approved Processing Facility users, visitors, and employees.
- E. Accepting Recyclable Materials Delivered by County or the County's Transfer Service.
- F. Safely managing the Recyclable Materials Accepted at the Approved Recyclable Materials Processing Facility, including, but not limited to, meeting requirements of Section 4.3.
- G. Managing Recovered Materials in a manner compliant with Applicable Law to ensure that the County shall benefit from full programmatic compliance and Diversion credit for that material.

ARTICLE 5 RESIDUE DISPOSAL SCOPE OF SERVICES

5.1 Residue Disposal

- A. The Contractor shall be solely responsible for the transport of all Residue from the Processing Facility and shall safely and lawfully Dispose of Residue at a County-owned Disposal Site. Residue transportation and Disposal Site tipping fees are at the sole expense of the Contractor.

ARTICLE 6 OTHER RELATED SERVICES

{Note to Proposers: This Article 6 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 6 may be moved to Exhibit A and Exhibit B, as appropriate. Sections 6.7 and 6.8 will also be further developed and incorporated as a result of the plan(s) submitted by the proposer(s) and negotiations with the selected contractor(s).}

6.1 Billing

- A. **General Requirements.** The Contractor shall bill the County for Tipping Fees established under this Agreement for Recyclable Materials, including any Transfer Services required to transport such materials from an Approved Transfer Facility to Approved Processing Facilities. All billing shall be based solely on services actually rendered under this Agreement and documented in accordance with its requirements. The Contractor shall not invoice the County for any amount exceeding the number of Tons of Recyclable Material delivered from the County or transported under Transfer Services, multiplied by the applicable Tipping Fee for that Recyclable Material for the subject calendar month. Tipping Fees for Processing shall be calculated based on the verified weight of inbound materials as determined at the Approved Processing Facility's scale. All invoices submitted for Transfer Services shall itemize the Tons transferred, applicable Tipping Fees, dates of service, and any required supporting scale tickets or documentation.
- B. **Billing Frequency.** The Contractor shall invoice the County no later than the tenth (10th) Business Day of each month for the prior month's services. The County shall remit payment of all undisputed Tipping Fees to the Contractor promptly following their receipt of such invoice from the Contractor.
- C. **Bill Format.** The format of the itemized Billing statements shall be reviewed and approved by the County before the Commencement Date of this Agreement. At a minimum, the Billing statements shall include the number of Loads and Tons delivered from the County or the Transfer Service to the Contractor subject to each Tipping Fee and a monthly invoice total.
- D. **Payment Options.** The Contractor shall cooperate with the County to implement reasonable payment options that may include but are not necessarily limited to check or electronic check.
- E. **Billing Disputes and Errors.** In the event of a dispute between the Parties with respect to a Billing matter, the provisions of Section 13 shall apply. The Contractor shall refund any amounts overpaid by the County within thirty (30) Days after determining such an overpayment has been made. The Contractor shall invoice the County within thirty (30) Days after determining that the County was previously under-Billed. In the event of a Billing error, the Contractor may require the County to pay any undisputed amounts in the normal timeline. The Contractor may not withhold provision of

services, payments, or other obligations of this Agreement during the pendency of or resulting from any dispute related to payment.

- F. **Payments to the County.** Contractor shall submit all payments to the County for Tipping Fees established under this Agreement for Residual Disposal at the frequency approved by the County. Contractor is prohibited from withholding or offsetting payments to the County as remedy for any dispute under this agreement.

6.2 Provision of Emergency Services

- A. **Essential Service.** The Contractor acknowledges that it provides an essential service, and that while provision of Processing service during or following a disaster may be affected by impacts to facilities, equipment, and/or public infrastructure, the Contractor is obligated to take all measures reasonably necessary to provide such service in a timely and effective manner in compliance with this Agreement, Section 12.10 notwithstanding. Such measures may include, but are not limited to, a change in Approved Facility(ies).
- B. **Contractor Reimbursement for Use of Additional Resources.** In the event of a declaration of an emergency, should the Contractor provide, upon County's request, additional equipment, vehicles, and/or personnel beyond that normally performing services under this Agreement, for use by the Contractor in conducting emergency operations under the County's direction, the Contractor may submit to the County detailed records of specific, additional, and reasonable costs and expenses borne by the Contractor in providing such additional resources. The County shall reimburse the Contractor for such documented, reasonable expenses within ninety (90) Days after the County receives State and/or Federal emergency agency reimbursement specific to these expenses. Should such State and/or Federal reimbursement not occur within five hundred and forty (540) Days after the Contractor's complete submission as verified by the County, Contractor may seek compensation under the terms of this Agreement. The Contractor shall promptly cooperate with the County, State and/or Federal reporting and documentation requirements related to a request for reimbursement. The Contractor shall further comply with all applicable Federal, State, or local funding and accounting requirements that may apply to expenses that will be reimbursed upon notice of the same from the County.
- C. **Disaster Waivers.** In the event of a disaster, the County may grant the Contractor a waiver of some or all Processing requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Processing requirements shall be addressed as a change in scope in accordance with Section 3.5.

6.3 Extended Producer Responsibility Programs

- A. **General.** The County and the Contractor acknowledge that the requirements under the existing Extended Producer Responsibility Programs may be applicable to the services provided by the Contractor under this Agreement, and that additional or amended Extended Producer Responsibility Programs may be established in the future.
- B. **Change in Scope.** The County may require Contractor's compliance with, and participation in, existing and/or new Extended Producer Responsibility Programs that may include a modification to Exhibit B.

Notwithstanding Section 8.4.A.4, any and all County Extended Producer Responsibility Program requests and/or requirements shall be treated as a change in scope in accordance with Sections 3.5,

8.4.A.1, and 8.5 and shall not be treated as a Change in Law pursuant to Section 8.4.A.4; provided, however, that the Contractor shall be expressly precluded from requesting a Special Tipping Fee Review for a change in scope if the Contractor's is compensated, in whole or in part, for Processing, Recovery, and/or Diversion costs associated with such participation. Additionally, the Contractor shall be expressly precluded from requesting any Special Tipping Fee Review, as described in this Section, for any materials Contractor represented as already being Recovered and or Diverted, as described in the Contractor's Proposal, even if the subject material is covered under what might otherwise be considered an eligible item under Section 8.4.A and Section 8.4.A.1.

- C. **Record Keeping and Reporting.** The Contractor acknowledges that, as part of the services provided under this Agreement, the Contractor's participation in any Extended Producer Responsibility Program may impact the County. As such, regardless of whether the Contractor is specifically contracted under this Agreement to provide any such Extended Producer Responsibility Programs under this Agreement, the Contractor acknowledges and agrees it has obligations to the County, nonetheless.

Throughout the Term of this Agreement, the Contractor shall maintain records of all funding or other resources the Contractor receives directly or indirectly through an Extended Producer Responsibility Program. The Contractor shall inform and report to the County as part of Contractor's obligations under Exhibit C and shall calculate and demonstrate the dollar amount that can be attributed to services provided under this Agreement. The Contractor shall include copies of invoices or receipts with the applicable Stewardship Organization with its payment or Tipping Fee Application, as appropriate, regardless of whether the County is aware such funding or other resources have been received by the Contractor.

The Contractor shall also maintain all operational and financial records related to Extended Producer Responsibility Programs as provided in Article 10 and report such information to the County in accordance with Exhibit C or as otherwise requested by the Director.

6.4 Generation, Characterization, and Pilot Studies

The Contractor acknowledges that the County, CalRecycle, or other governmental agencies may wish to perform and/or participate in periodic material generation or characterization studies or pilot programs related to materials covered under this Agreement. The Contractor agrees to participate and cooperate with the County and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated, Disposed, Diverted or otherwise Processed, including the resultant Residue. If the County requires Contractor to participate in such a study or program, Contractor and the County shall mutually agree on the scope of services to be provided by Contractor. In any event, Contractor shall permit and in no way interfere with the handling of the subject materials by other Persons for such purposes. The Contractor's annual Recyclable Materials Characterization Study, specified in Section 6.5, is not subject to this section and shall be conducted in accordance with Section 6.5 and Exhibit I.

6.5 Annual Recyclable Materials Characterization

- A. **General.** The Contractor shall conduct at least four (4) characterization studies of Recyclable Materials and Recyclable Materials Processing Residue (collectively "Characterization Study") on an annual basis, in accordance with this section and Exhibit I.

- B. **Methodology and Schedule.** The Contractor shall conduct the first Characterization Study within _____ () days of the Effective Date of this Agreement, and quarterly thereafter. The Contractor shall complete each Characterization Study in accordance with the methodology outlined in Exhibit I, unless otherwise directed or approved by the County in writing.

No later than _____ of each calendar year, the Contractor shall submit its proposed schedule for the performance of each quarterly Characterization Study for that calendar year and any other pre-study documentation required under Exhibit I. The County shall review and approve, in its sole discretion, the proposed schedule and documentation.

- C. **Recordkeeping and Results.** The Contractor shall submit its quarterly and year-to-date results within thirty (30) Days of completion of each Characterization Study, inclusive of copies of its daily Characterization Study documentation specified in Exhibit I, as applicable. Additionally, and as part of its annual Tipping Fee application described in Sections 8.2 and 8.3, the Contractor shall prepare and submit complete results from the Characterization Study that shows its Revenue Sharing Calculation and final annual summary in accordance with Exhibit I. Contractor shall submit the final results of each quarterly and annual Characterization Study in the format specified in Exhibit I, unless otherwise directed by the County.

The County shall review the Contractor-provided quarterly and annual Characterization Study results within thirty (30) Business Days of Contractor's submission of complete and accurate results and shall review such results, verify accuracy and/or request changes, and shall provide the Contractor with written confirmation of acceptance once such determination as to accuracy is verified. The Contractor shall maintain complete and accurate records of all aspects of each Characterization Study in accordance with Article 10.

ARTICLE 7 STANDARD OF PERFORMANCE

{Note to Proposers: This Article 7 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 7 may be moved to Exhibit A, as appropriate.}

7.1 General

The Contractor shall at all times comply with all law and regulation and provide services in a manner that is safe to the public, the County's employees, and the Contractor's employees. Except to the extent that a higher performance standard is specified in this Agreement, Contractor shall perform services in accordance with Solid Waste and Recyclable Materials management practices common to Northern California.

7.2 Disposal of Recyclable Materials

Recyclable Materials may not be Disposed in lieu of Processing except as otherwise provided in 7.14.F.6.

7.3 Days and Hours of Operation

- A. **Approved Processing Facility.** The Contractor shall operate the Approved Processing Facility for the receipt of the County's Recyclable Materials, in accordance with the days and hours of operation set forth below. At a minimum, the Contractor shall Accept Recyclable Materials Monday through

Friday from [] a.m. to [] p.m. and [] a.m. to [] p.m. on Saturdays. The Contractor may not change the specific times or reduce the total number of hours during which the Contractor accepts the County's Recyclable Materials without prior written approval of the County. The Contractor shall provide the County with a minimum of sixty (60) Days written notice of such an anticipated modification.

- B. **Holiday Schedule.** The Contractor may request approval from the County to not Accept, or Process on a Holiday. The Contractor shall not change its designation of Holidays or Holiday-related closures of Approved Facility(ies) without prior written approval by the County and no less than six (6) months' advance notice to the County.

7.4 Alternate Approved Facilities

- A. **Purpose.** Pursuant to Section 3.6.F of this Agreement, the Contractor is obligated to provide service and shall (no later than 180 days prior to the Commencement) identify arrangements with Approved Alternate Facilities, whether an Affiliate or owned by a third-party, which shall be subject to review by the County, upon County request, in order to ensure uninterrupted service should Contractor for any reason be unable to provide services at the Approved Facility. Contractor shall ensure that Alternate Facilities comply with all provisions of this Agreement and Applicable Law.
- B. **Alternate Facility Arrangements.** The Contractor's arrangements with Approved Alternate Facilities must ensure that Contractor can Accept and Process Recyclable Materials at an Approved Alternate Facility within two (2) Business Days after the Contractor or the County notice of need to use such Alternate Facility. The Contractor shall ensure that Alternate Facility(ies) are able to Accept Recyclable Materials on a continuous basis for no less than thirty (30) Days. Should Contractor's use of the Approved Alternate Facility exceed thirty (30) Days, the County may require the Contractor to provide additional reasonable assurances of the Approved Alternate Facility's ability to Accept Recyclable Materials on an ongoing basis under the terms of this Agreement. The Contractor may request, and County may at its discretion grant a change in, an Alternate Facility owned and operated by Contractor or an Affiliate or owned and/or operated by a third party with the third party's prior written consent.
- C. **Alternate Facilities for Reasons within Contractor's Control.** If Contractor does not Accept the County's Recyclable Materials for reasons other than Uncontrollable Circumstances, following County approval given in the County's sole discretion, Contractor shall:
1. Perform services at another Processing Facility owned by it or an Affiliate at a price not to exceed the Tipping Fee established pursuant to Article 8 and Exhibit K. Contractor shall be solely responsible for any additional Transportation costs incurred in Delivering the County's Recyclable Materials, to the other Processing Facility.
 2. Arrange for the County's Recyclable Materials to be Processed at another Processing facility not owned by it or an Affiliate, in which case Contractor shall pay any difference in the fees charged at that Processing facility plus any additional Transportation costs incurred by Delivering materials to the other facility, and the charges thereat.
- D. **Alternate Facilities Related to Uncontrollable Circumstances.** If Contractor does not Accept the County's Recyclable Materials at the Approved Processing Facility due to Uncontrollable Circumstances, then promptly upon County direction, Contractor shall, to the extent it is legally able to do so in accordance with Applicable Law, Accept the materials at Contractor's Approved Alternate Facility, pursuant to Section 7.4 of this Agreement, at a price not to exceed the respective Tipping Fees in effect under this Agreement, less additional Transport costs if the distance to the

Approved Alternate Facility is greater than the distance to the Approved Processing . Should no Approved Alternate Facility owned by Contractor or an Affiliate be available or should another available facility identified by the Contractor not be acceptable to the County or not be within a cost-effective distance, at the Director's sole discretion, the County may direct Delivery of materials to another facility, unrelated to Contractor, for the performance of similar services during the pendency of the service disruption resulting from the Uncontrollable Circumstances.

- E. **Termination for Continued Disruption.** If the County is unable to use an Approved Facility(ies) under this Agreement for more than thirty (30) Days in a consecutive twelve- (12-) month period, the County may, in its sole discretion, terminate this Agreement as provided in accordance with Section 12.6.B.

7.5 Rejection of Unpermitted Waste

- A. **Inspection Program and Training.** Contractor shall use Standard Industry Practices to detect and reject Unpermitted Waste in a uniform manner and shall not knowingly Accept Unpermitted Waste at the Approved Facilities. Contractor shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.

The Contractor shall develop a Load inspection program at Approved Facilities that includes the following components: (i) personnel and training; (ii) Load checking activities; (iii) management of materials; and, (iv) record keeping and emergency procedures.

Contractor's Load checking personnel, including personnel at Approved Facilities, shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of Unpermitted Waste; and, (iii) emergency notification and response procedures.

- B. **Unpermitted Waste Identified at Approved Processing Facility.** In the event that Load checkers and/or equipment operators at such Approved Facility(ies) identify Unpermitted Waste in the Loads delivered from the County or Transfer Service, such personnel shall remove these materials for storage in approved, on-site, Unpermitted Waste storage Container(s). Except for cases where it can be attributed to a specific generator or permitted hauler, the Contractor shall arrange for removal of the Unpermitted Wastes, at its sole cost, in accordance with Applicable Law.

7.6 Permits

- A. **Securing, Maintaining, and Modifying Permits.** The Contractor shall obtain and maintain, at the Contractor's sole cost, all Permits required under all laws and regulations to perform services required by this Agreement. The Contractor shall provide the County with copies of Permits for the Approved Facilities and Approved Alternate Facilities, and shall demonstrate compliance with the terms and conditions of Permits, within ten (10) Days after County request. In its quarterly report or more frequently, as necessary, the Contractor shall inform the County of the Contractor's status of securing the issuance, revision, modification, extension, or renewal of Permits, including those at its or an Affiliate's Approved Facilities. The Contractor shall inform the County, at least fifteen (15) Days prior to application, of the Contractor's intent to apply for any Permit authorized or required under Applicable Law regarding services performed under this Agreement. Within ten (10) Days following the County's request, the Contractor shall provide the County with copies of any applications or other correspondence that the Contractor submits in connection with securing Permits.

- B. **Compliance with Permits.** The Contractor shall comply with all Permits or environmental documents, including any mitigation measures related to the operation and maintenance of the Approved Facility at no additional cost to the County. The Contractor shall provide the County with copies of all documentation verifying compliance with Permit conditions at the same time such documentation is submitted to the permitting County. The Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

7.7 Traffic Control and Direction

Contractor shall construct and maintain all roads at the Approved Processing Facility required for vehicles Delivering the County's Recyclable Materials to safely and efficiently access and use the Approved Processing Facility. The Contractor shall direct on-site traffic to appropriate unloading areas and provide a safe working environment for facility users, visitors, and employees. The Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas. The Contractor shall maintain all signs at the Approved Processing Facility in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of Persons using the Approved Processing Facility and to facilitate safe and efficient traffic flow at the Approved Processing Facility.

7.8 Vehicle Turnaround Guarantee

- A. **General.** The Contractor shall maintain a maximum vehicle turnaround time of no more than twenty (20) minutes for Delivery of Recyclable Materials to the Approved Processing Facility.
- B. **Guaranteed Collection Vehicle Turnaround Time.** The maximum vehicle turnaround time shall be no more than twenty (20) minutes for any Delivery vehicle containing the County's Recyclable Materials. The vehicle turnaround time shall be measured as the elapsed time from the vehicle entering the Approved Processing Facility property to the vehicle leaving the Approved Processing Facility property. The Contractor shall operate the Approved Processing Facility so that all vehicles are processed, unloaded, and exited from the Approved Processing Facility property within the maximum vehicle turnaround time.
- C. **Supporting Documentation.** Upon County request, Contractor shall provide the County reports or access to electronic scale house system records and/or on-site camera recordings that provide the County information to determine actual vehicle turnaround times. The Contractor acknowledges that the County may conduct on-site surveys to verify compliance with the guaranteed vehicle turnaround times for vehicles. The Contractor acknowledges that the County may also use records provided by the County's Transfer Service to calculate actual vehicle turnaround times. At the Contractor's option, the Contractor may, at its own cost, implement and maintain a technology-based vehicle tracking system of recording inbound and outbound vehicle times (such as a system that uses RFID vehicle tags and RFID readers). Such system shall not inconvenience the County nor delay vehicles from arriving at and departing from the Approved Processing Facility.
- D. **Contractor Dispute of Complaints.** The Contractor may provide evidence disputing any complaint received regarding vehicle turnaround times, including, but not limited to, camera recordings of vehicle(s), scale house records, or other documented timestamp of the arrival and departure times from the Approved Processing Facility. The Contractor's evidence shall be presented no later than ten (10) Business Days after receipt of the County's written notice of complaint(s). The County shall review both Contractor and the County or the County's Transfer Service's evidence and provide written notice of the County's determination that the complaint was valid or invalid.

7.9 Scale Operation

- A. **Maintenance and Operation.** This Section 7.9 applies to motor vehicle scales at the Approved Processing Facility. The Contractor shall maintain at least two State-certified motor vehicle scales at each Approved Processing Facility in accordance with Applicable Law. The Contractor shall provide documentary evidence of such certification within ninety (90) Days after the Commencement Date and within ten (10) Business Days after County's request during the Term. The Contractor shall link all scales to a centralized computer recording and billing system that shall be compatible with the Contractor's systems. Such computerized system shall track pertinent data on all incoming and outgoing vehicles and materials, as further described in Section 7.9.G. The Contractor shall employ licensed weigh master(s) to operate those scales during Approved Facility open hours and during other hours as determined by the Contractor as needed to weigh all inbound and outbound vehicles Delivering Recyclable Materials. The Contractor shall provide the County with access to any weighing information maintained by the Contractor at all times, and copies thereof shall be provided on the next Business Day following the County's request.
- B. **Vehicle Tare Weights.** Upon request of the County, the Contractor shall promptly weigh vehicles and determine the unloaded ("tare") weight(s) of the vehicle(s). The Contractor shall record the tare weight and vehicle identification number. Within ten (10) Business Days after weighing, the Contractor shall provide the County with a report listing vehicle tare weight information. The Contractor shall have the right to request re-determination of tare weights of County vehicles two (2) times each calendar year. If there is reasonable suspicion or evidence that tare weights are not accurate, the County may, at any time and without limitation, request re-determination of tare weights, in which case Contractor shall promptly re-determine tare weights for requested vehicles. The Contractor shall update tare weights, at the Contractor's own initiative or, at the request of the County, more frequently.
- C. **Substitute Scales.** If any scale at the Approved Processing Facility is inoperable, being tested, or otherwise unavailable, the Contractor shall use reasonable business efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired. The Contractor shall arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, the Contractor shall immediately obtain a temporary substitute scale(s).
- D. **Estimates.** Pending substitution of portable scales or during power outages, the Contractor shall estimate the Tonnage of the Recyclable Materials Delivered to and Accepted at the Approved Processing Facility by utilizing the arithmetic average of each vehicle's recorded Tons of that specific type of Recyclable Materials Delivered on its preceding three (3) Deliveries, on the same day of the week, to the Approved Processing Facility.

During any period that the scales are out of service, Contractor shall continue to record all information required by Section 7.9.G for each Delivery of Recyclable Materials to the Approved Processing Facility.
- E. **Testing.** The Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months or upon County request.
- F. **Weighing Standards and Procedures.** At the Approved Processing Facility, the Contractor shall weigh and record inbound weights of all vehicles Delivering the County's Recyclable Materials when

the vehicles arrive at the Approved Processing Facility, and weigh and record outbound weights of vehicles for which the Contractor does not maintain tare weight information. The Contractor shall provide each driver a receipt showing the date, time, and quantity of materials that the vehicle Delivered to the Approved Facility.

- G. **Records.** The Contractor shall maintain computerized scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials Delivered, type of material, company/hauler identification, and classification, type, and weight.
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall make those videos available for County review during the Facility's operating hours, upon request of the County, and shall provide the name of the driver of any particular Load if available.

7.10 Personnel

- A. **General.** The Contractor shall furnish such qualified personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. The Contractor shall designate at least one (1) qualified employee as the County's primary point of contact with the Contractor who is principally responsible for operations and resolution of service requests and complaints in performing the services under this Agreement.

The Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. The Contractor shall not permit its employees to accept, demand, or solicit, directly or indirectly, any additional compensation or gratuity from members of the public.

- B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. The Contractor shall, at a minimum, use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- C. **Safety Training.** The Contractor shall provide suitable operational and safety training for all its employees who operate Processing Facility vehicles or equipment and shall provide a Safety Plan prior to the Commencement Date for the County's review and approval. The Contractor shall train its employees involved in Processing to identify, and not to collect, Unpermitted Waste. Upon the County's request, the Contractor shall provide the County with a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.
- D. **Uniforms and Identification.** All employees of the Contractor performing field service under this Agreement shall be dressed in clean uniforms with employee's name or numbered badge that also shows the Contractor's name thereon at all times while engaged in the work. No portion of this uniform may be removed while working.
- E. **Employee Behavior.** If any Contractor manager, supervisor, or employee is found to be discourteous or not to be performing services in the manner required by this Agreement, the Contractor shall take all necessary and legal corrective measures, including, but not limited to, transfer, discipline, or termination. If the County notifies the Contractor of a Complaint related to discourteous or improper behavior, the Contractor shall consider reassigning the employee to duties that do not involve contact with the public as it relates to this Agreement while the Contractor conducts its investigation and implements any necessary corrective action.

- G. **Subcontractor and Approved Affiliates' Obligations.** Subcontractors and Approved Affiliates shall be required to comply with the obligations of this Agreement, in accordance with Section 3.9 and Section 7.10.

7.11 Equipment and Supplies

The Contractor shall equip and operate the Approved Recyclable Materials Processing Facility in a manner to fulfill Contractor's obligations under this Agreement. Contractor is solely responsible for the adequacy, safety, and suitability of the Approved Recyclable Materials Processing Facility. Contractor shall modify, enhance, and/or improve the Approved Recyclable Materials Processing Facility as needed to fulfill Services under this Agreement.

The Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, and other consumables as appropriate and necessary to operate the Approved Processing Facility and provide all services required by this Agreement. The Contractor shall place the equipment in the charge of competent operators. The Contractor shall repair and maintain all equipment at its own cost and expense.

7.12 Compliance with Facility Rules

The Contractor shall observe and comply with all regulations in effect at the Approved Facilities and shall cooperate with the operators thereof with respect to Acceptance and Delivery of Recyclable Materials, including directions to unload vehicles in designated areas, accommodating operations and maintenance activities, and complying with Unpermitted Waste exclusion programs.

7.13 Marketing

- A. **Market Arrangements.** The Contractor shall maintain long-term relationships with materials brokers, develop relationships with new materials brokers, continually monitor market conditions, and have the ability to anticipate and react to severe market demand and fluctuations in materials' quantity, composition, and pricing. The Contractor shall use both domestic and foreign / local and regional markets to maintain continued material movement and obtain the highest and best use, as described in subsection C below, for the market value.
- B. **Recovered Materials Marketed.** The Contractor shall market Recovered Materials in the categories and grades listed in Exhibit J. If the Contractor desires any modifications to the Recovered Material categories or grades in Exhibit J during the Term of the Agreement, the Contractor shall request approval from the County and such approval shall be obtained from the County before changes are implemented. *{Note to Proposer: Specific details regarding Recovered Materials marketing to be added based on proposer's Operations Plan and contract negotiations.}*
- C. **Highest and Best Use.** The Contractor's marketing strategy shall include the promotion of the highest and best use of materials for waste reduction, prevention, reuse, refill, repair, recovery, and Recycling, as established by Applicable Law and Extended Producer Responsibility Programs. Where commercially reasonable, the marketing strategy should include the use of local, regional, and domestic markets, in this preferential order, for Recovered Materials for Recycling.
- D. **Responsible End Markets.** The Contractor shall ensure the County's Recovered Materials are Delivered to, and Recycled and/or further Processed at, Responsible End Markets and shall maintain all records necessary to demonstrate compliance with this Section and Applicable Law. The

Contractor shall provide records to the County demonstrating compliance with this Section in accordance with Article 10 and Exhibit C.

- E. **Recordkeeping.** The Contractor shall maintain complete and accurate marketing records in accordance with Article 10 including, but not limited to, Tonnage of material marketed, price, revenue received, purchaser name, physical address of the final destination of marketed Recovered Materials, and the specified end-use of marketed Recovered Materials.
- F. **Marketability of Recovered Materials.**

1. General. The County acknowledges that the Contractor is required to: i) engage in marketing Recovered Materials on the open market, which may include participating in complex global markets that the Contractor has little influence over; ii) store such Recovered Materials prior to marketing in accordance with its facility permits; and, iii) ensure public health and safety. Except as otherwise provided in Section 7.13.F.2, the Contractor shall market such Recovered Materials under most market conditions, including periods of severe depression and even negative value, to ensure that Recovered Materials are recycled into the productive economy.

In addition to the circumstances that might arise as described in Sections 7.13.F.2 and 7.13.F.3, if the Contractor encounters general market challenges including, but not limited to, significant changes in pricing, market availability, or quality standards for any Recovered Materials marketed under this Agreement, Contractor shall notify the County in writing within five (5) Business Days of the nature of the market challenge and the Contractor's plans for addressing the challenge. Contractor shall provide the County with updates on the market challenges at least every twenty (20) Business Days thereafter until the Contractor determines, and the County agrees, that the concern has been resolved. However, in the event of a significant change in price or lack of market demand as specified in Section 7.13.F.2 and 7.13.F.3, the Contractor shall follow the noticing procedures set forth in 7.13.F.4.

2. Lack of Market Demand. In the event the market challenge results in a sustained lack of market demand for any Recovered Materials marketed under this Agreement, and subject to the notice requirements described in Section 7.13.F.4 Contractor may request permission from the County to use alternative marketing arrangements or temporarily Dispose of specific Recovered Material(s) impacted, as set forth below. A lack of market demand shall mean that the Contractor cannot reasonably find a market for the productive use of the subject Recovered Material(s) that ensures the recovered Material is Recycled and Diverted at any value, positive or negative.
3. Significant Change in Price. If the market challenge results in a significant change in pricing for any materials Recovered under this Agreement, the Contractor may request temporary relief from the County as set forth below. A significant change in pricing shall mean a reduction in market value such that the market cost, on a per ton basis, to send the subject Recovered Materials to a non-Disposal market, including Transportation costs, exceeds one hundred fifty percent (150%) of the Contractor's then-current costs for Transportation and Disposal of Materials under this Agreement or the sum of the County's then-current Transfer and Disposal costs under the County's other related Agreements, whichever is more. Processing costs, which are described in and subject to the adjustment provisions of Article 8, shall be excluded from this calculation (except for Transportation costs as set forth in the preceding sentence).
4. Duty to Provide Notice. Within one (1) Business Day of Contractor's first knowledge of an emerging lack of a market(s) in accordance with Section 7.13.F.2, or within five (5) Business

Days of Contractor's first knowledge of a significant change in pricing in accordance with Section 7.13.F.3, the Contractor shall notify the County via telephone and email with a formal signed written notice from the Contractor to the County to follow. Such notice shall include the Contractor's best estimate of the time when its remaining capacity to store the specific Recovered Material(s) impacted under the terms of its facility permits (the "Storage Capacity") will expire. The Contractor and the County shall meet and confer at the earliest, mutually-convenient opportunity to discuss the market conditions and the Contractor's assertion of a lack of market demand for the specific Recovered Material(s) impacted. The Contractor shall be required to provide the County with additional information on Contractor's Storage Capacity including the proportion of occupied by the specific Recovered Material(s) impacted relative to Contractor's other material storage, and Contractor's projected remaining capacity for the specific Recovered Material(s) impacted.

The Contractor shall have the burden of proving its good faith efforts to identify highest value markets for the specific Recovered Material(s) impacted and shall present to the County any information available to the Contractor related to the status of primary and alternative markets for the impacted Recovered Material(s), material pricing histories, and any other information, reasonably required by the Director, that may help the County make a finding about the Contractor's need for relief. The Contractor shall also provide the County with written notice when the Storage Capacity for the material in question has declined to thirty percent (30%) of normal, setting forth the estimated number of Days when no Storage Capacity for the specific Recovered Material(s) impacted will remain.

5. County Determination. The Director shall make a reasonable finding that a market demand either does or does not exist or that a significant change in pricing has or has not occurred for the impacted Recovered Material(s), based on the information presented and any other information available, within twenty (20) Business Days after the Parties meet and confer in accordance with Section 7.13.F.4 or before the date when no Storage Capacity remains, whichever comes first.

If the County reasonably determines that a market demand does exist or that a significant change in pricing has not occurred, Contractor shall be required to continue to market all Recovered Materials as required under this Agreement. If the County determines that a market demand does not exist or that a significant change in price has occurred, the following provisions shall apply:

- a. **Determination of Lack of Market Demand.** If the County reasonably determines that a market demand does not exist, the County may, but is under no obligation to, attempt to identify a productive, non-Disposal outlet for the subject Recovered Material(s). If the County identifies such an outlet, and such outlet does not exceed the pricing limitation described in Section 7.13.F.3, the Contractor shall deliver the subject Recovered Material(s) to that outlet. If the County is unable to identify such an outlet, the County may authorize the Contractor to temporarily Dispose of the subject Recovered Material(s) in accordance with Section 7.13.F.6.

Additionally, in the event that the County reasonably determines that a market demand does not exist, the County shall have the right, but not the obligation, to take physical possession of some or all of the subject Recovered Materials from Contractor's facility in order to market or otherwise handle or Dispose of such materials through channels or processes the County deems appropriate, in its discretion.

- b. **Determination of Significant Price Change.** If the County reasonably determines that a significant change in pricing has occurred, the County may either: 1) authorize the Contractor to send the specific impacted Recovered Material(s) to market at the reduced value and agree to compensate the Contractor for the amount, including Transportation costs, that exceeds one hundred and fifty percent (150%) of the greater of the two (2) options identified in 7.13.F.3; or 2) attempt to identify an alternate, productive, non-Disposal outlet for the specific Recovered Material(s) at a value, including Transportation costs, less than one hundred and fifty percent (150%) of the Disposal Tipping Fee. The Contractor shall follow the County's direction if either of those options is selected by the County.

If the County is unable to so identify an outlet and is unwilling to compensate Contractor for the significant change in price, the County shall authorize the Contractor to temporarily Dispose of the subject Recovered Material(s) in accordance with Section 7.13.F.6.

6. Disposal Approval. Subject to the determination and conditions specified in Sections 7.13.F.5.a and 7.13.F.5.b, the County may authorize the Contractor to temporarily Dispose of specified Recovered Material(s) impacted by the lack of market demand or significant change in price. In such case, Contractor and the County shall review the status of the markets at a frequency established by the County until such time as the acceptable pricing and market demand return or the County reasonably determines that the review process may be discontinued. Notwithstanding any other provision of this Section, Contractor shall not Dispose of any Recovered Materials prior to receiving written authorization from the County to do so and, as necessary and appropriate under the circumstances, the County may also require the Contractor to secure authorization from CalRecycle and/or other relevant regulatory entities.
- G. **Marketing Plan.** Upon the Director's request, the Contractor shall provide a summary of Contractor's marketing plan for each Recovered Material, and recent average commodity values for Recovered Materials end markets. If requested by the Director, the Contractor shall provide the Director with a list of broker/buyers used by the Contractor during the preceding twelve (12) months. If the Contractor becomes aware that a broker or buyer has illegally handled or Disposed of Recovered Material originating from the County or elsewhere, the Contractor shall immediately inform the Director and terminate its contract or working relationship with such party. Contractor shall maintain complete, accurate, and detailed marketing records, including Tonnage of Recovered Materials marketed, price, revenue received, name of purchaser, and end use in accordance with Article 10.

7.14 Diversion and Material Recovery Standards

A. Recyclable Materials Diversion

1. General. The Contractor shall Process all Recyclable Materials Accepted in a manner that maximizes reuse, Recycling, and Diversion. After Processing, the Contractor may Dispose as Residue any materials that do not have a higher or better use, to the extent allowed by State and local law, in accordance with Contractor's obligations under Section 7.13 and Section 7.14.A.2 unless otherwise expressly provided in Section 7.13.F.6.

In accordance with the Contractor's obligations to market Recovered Material consistent with the preferential order described in Section 7.13.C, the Contractor shall Process all Recyclable

- Materials such that all Recovered Material is of sufficient quality to attract the highest domestic market prices similar to market prices for Recovered Material produced by similar local Processing facilities that Process single-stream recyclable materials. The Contractor's operation of the Approved Recyclable Material Processing Facility must consistently produce Recovered Materials that achieve Residue and contamination standards that meet or exceed the domestic market requirements and attract the highest current domestic market price for the specified Recovered Materials. Exhibit J presents the Recovered Materials quality standards to be achieved by the Contractor.
2. Effective Recovery Rate of Recyclable Materials. The County acknowledges that the Recyclable Materials Delivered to the Approved Recyclable Materials Processing Facility for Processing may have varying levels of contamination. The Contractor shall Process Recyclable Materials in a manner that: maximizes the Recovery for each Recyclable Material type, as listed in Exhibit I-2; minimizes the amount of each Recyclable Material type in the resultant Residue; and, minimizes the amount of non-target Recyclable Material types in each type of Recovered Material ("Effective Recovery Rate"). Throughout the Term of the Agreement, the Contractor shall meet or exceed the Contractor's guaranteed Effective Recovery Rate of Recyclable Materials, for each Recyclable Material type, as listed in Exhibit I-2. The Contractor's Processing performance and compliance with the minimum Effective Recovery Rate of Recyclable Materials shall be verified through the Recyclable Materials Characterization Study process conducted in accordance with Exhibit I.

ARTICLE 8

CONTRACTOR'S COMPENSATION

{Note to Proposers: This Article 8 will be updated following successful negotiations with the selected contractor(s).}

8.1 Overview

The Contractor's compensation for performance of its obligations under this Agreement shall be the Tipping Fees and Transfer Service Fees paid by the County. Pursuant to this Agreement, Tipping Fees and Transfer Service Fees paid to the Contractor by the County shall be the full, entire, and complete compensation due to Contractor to cover Contractor's costs for all labor, equipment, materials and supplies, Facility fees, payments and fees due to County, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

If the Contractor's actual costs, including fees due to County, are more than Contractor's Revenue for services rendered by Contractor under this Agreement, Contractor shall not be compensated for the difference between actual costs and actual Contractor Revenue for services rendered by Contractor under this Agreement. If Contractor's actual costs are less than the actual Contractor Revenue for services rendered by Contractor under this Agreement, Contractor shall retain the difference provided that Contractor has made all payments required.

Under this Agreement, Contractor shall have the right and obligation to charge and collect from the County Tipping Fees and Transfer Service Fees established and adjusted under this Agreement for provision of Contractor's services to the County.

The Tipping Fees and Transfer Service Fees for Rate Year One are based on Contractor's Proposal and Exhibit K including certain per unit costs and operating assumptions as identified in Section 8.2.B below. Tipping Fees and Transfer Service Fees for subsequent Rate Years shall be adjusted annually in accordance with Section 8.2.C using an index-based adjustment method.

The annual adjustment to Tipping Fees involves adjusting Contractor's compensation and integrates Governmental Fees paid by Contractor.

8.2 Process for Setting and Adjusting Fees

- A. **General.** The Director shall be responsible for receiving, reviewing, and approving or denying the Contractor's application for adjustment of Tipping Fees or Transfer Service Fees as described in this Article. Such approval or denial shall only be made on the basis of Contractor's mathematical accuracy and logical adherence to the calculation methodology.
- B. **Maximum Rates for Rate Year One.** Tipping Fees and the Transfer Service Fees for Rate Year One are based on the Contractor's Proposal and are summed to establish a Rate for each service type. The rates applicable to Rate Year One are set forth in Exhibit K.
 1. Recyclable Materials Processing Tipping Fee. The Recyclable Materials Processing Tipping Fee shall be ~~XXX.XX~~ per Ton and shall be Contractor's compensation for all Processing obligations and services of Contractor under this Agreement.
 2. Transfer Service Fee. The County shall compensate the Contractor for Transfer Services at a flat rate per Load. The Contractor shall charge a flat Transfer Service Fee of ~~XXX.XX~~ per Load for the receipt, consolidation, handling, and transport of Materials from one or more designated Transfer Facility(ies) to the Approved Processing Facility(ies). All such charges shall be included on the Contractor's monthly invoice and shall reflect only services actually performed under this Agreement. This flat fee shall apply to each Load transported, and the Contractor shall not invoice the County for any tonnage or mileage-based charges.
- C. **Annual Adjustment.** The Tipping Fees and Transfer Service Fees shall be adjusted annually, upon approval by the Director as described in Section 8.2.A, commencing with Rate Year Two (*Insert Date*) through the remaining Term of this Agreement including any extension periods. The following formulas shall be used to calculate the adjustment of Tipping Fees and Transfer Service Fees.
 1. Adjusted Recyclable Materials Processing Tipping Fee. The adjusted Recyclable Materials Processing Tipping Fee for Rate Year Two, and each subsequent Rate Year thereafter, shall be determined by applying the inflation adjustment set forth Section 8.2.C.1.a below.
 - a. **Recyclable Materials Processing Tipping Fee.** The adjusted Recyclable Materials Processing Tipping Fee shall be calculated as follows:

$$\text{Adjusted Tipping Fee} = \text{current Tipping Fee} \times (1 + \text{Annual Percentage Change in the CPI-U})$$
 2. Adjusted Transfer Service Fee. The adjusted Transfer Service Fee for Rate Year Two, and each subsequent Rate Year thereafter, shall be determined by applying the inflation adjustment set forth in Section 8.2.C.2.a below.

- a. **Transfer Service Fee.** The adjusted Transfer Service Fee shall be calculated as follows:
- $$\text{Adjusted Transfer Service Fee} = \text{current Transfer Service Fee} \times (1 + \text{Annual Percentage Change in the CPI-U})$$

8.3 Fee Application Process

A. Application Date and Content.

1. Application Submittal Date. On {Insert date}, prior to the commencement of the Rate Year for which Maximum Rates are to be determined (coming Rate Year), the Contractor shall submit to the Director its application requesting the adjustment of Tipping Fees and Transfer Service Fees for the coming Rate Year via email with confirmation receipt. All Tipping and Transfer Service Fee applications shall be submitted in Microsoft Excel format with all formulas and calculations preserved.
2. Content of Application for Adjustment. The application submitted to support an adjustment of Tipping and Transfer Service Fees shall be submitted in Microsoft Excel format with all formulas and calculations preserved. Such application shall present the underlying data and calculations of the Annual Percentage Change in various cost indices as separate tabs or tables in the submittal. The application shall include all supporting documentation for the calculations including copies of any relevant correspondence or evidence related to Governmental Fees.

The application shall also present a summary table with the Tipping and Transfer Service Fees for the then-current Rate Year (e.g., Rate Year Three) and the proposed Tipping and Transfer Service Fees for the coming Rate Year (e.g., Rate Year Four).

If the County requests additional information beyond that provided by the Contractor in its application, the Contractor shall provide all information requested by the County during its review of the application, including, but not limited to, all information from Affiliates requested by the County regarding any transactions between Contractor and any Affiliates pertaining to Contractor's performance under this Agreement.

- B. **County Review of Application.** The Director shall review Contractor's application for an adjustment of Tipping and Transfer Service Fee and, upon completion of review, Director shall approve or deny with requirement for correction. The Director shall act in good faith to approve or direct changes required to provide for such adjustments to Tipping and Transfer Service Fees by {March 1} of the Rate Year. The adjusted Tipping and Transfer Service Fees shall not take effect until the Director has provided written approval of such Tipping and Transfer Service Fees.
- C. **Failure to Adjust Rates or Tipping Fees by {March 1}.** If the Contractor submits its application for adjustment of Tipping and Transfer Service Fees in a correct and compliant format and with all required content on or before the application date identified in Section 8.3.A.1, and the Director does not approve adjusted Tipping and Transfer Service Fees under this Agreement to be effective on or before {March 1} of a Rate Year, the County shall provide a payment(s), adjustment(s), or surcharge(s) such that Contractor receives payment for any shortfall in Contractor's Compensation resulting from the delay in approval of appropriate adjustments to Tipping and Transfer Service Fees. To determine the amount of a shortfall, if any, the County and Contractor shall meet and confer to determine the effect the delayed approval of appropriate adjustments in Tipping and Transfer Service Fees has on the Contractor's compensation. The assessment of the revenue impact

shall consider the Contractor's Billing cycle (e.g., impact to Subscribers billed in advance and to Subscribers billed in arrears), the ability of Contractor to delay issuance of bills, and other variables.

If the Contractor does not submit the application in a correct and compliant format and with all required content on or before the application date identified in Section 8.3.A.1, adjusted Tipping and Transfer Service Fees may not be approved by {March 1} of a Rate Year and therefore, may not become effective by {July 1} of a Rate Year. In such case, appropriate adjustments of Tipping and Transfer Service Fees shall be approved and made effective as soon as practical, but County shall not be required to provide retroactive payment(s), adjustment(s), or surcharges(s) to allow the Contractor to recover compensation that Contractor would have collected had the application been timely submitted and the Tipping and Transfer Service Fee adjustment been implemented in accordance with the prescribed schedule.

8.4 Special Review of Fees

- A. **Eligible Items.** The Contractor is entitled to apply to the County for consideration of a Special Tipping and/or Transfer Service Fee Review, or the County may initiate such a review, should one (1) or more of the following events occur:
1. Change in Scope. County-approved change in scope, as provided for under Section 3.5, 4.3, 6.3 and 8.5.
 2. Emergency Services. Provision of emergency services pursuant to Section 6.2.
 3. Uncontrolled Circumstance. Occurrence of Uncontrollable Circumstances (other than Change in Law). Labor unrest is not an Uncontrollable Circumstance.
 4. Change in Law. Change in Law after the Effective Date that were not reasonably known to the Contractor before the Effective Date.
- B. **Ineligible Items.** In addition to the specific circumstances identified in Sections 4.3, 8.4.A.1 and 8.4.A.4 above, a Special Tipping and/or Transfer Service Fee Review may not be initiated for the following items and the Contractor shall not be compensated for such items over the Term of the Agreement.
1. Cost Increases. Increases in the cost of providing all services and performing all obligations under this Agreement which are in excess of the increases provided through the annual adjustment mechanism described in Section 8.2 unless cost increases are related to eligible items listed in Section 8.4.A above.
 2. Change in Facility Conditions. Increases in the cost of providing all services and performing all obligations under this Agreement that may be impacted by change in operating conditions of an Approved Facility unless such change is initiated by, resulting from a contract modification with, or at the direction of the County.
 3. Change in Material Quantities and Composition. Change in the Tonnage or composition of Recyclable Materials.
 4. Change in General Economic Conditions. Changes in general economic conditions including but not limited to: inflation, deflation, recession, depression, supply chains, default on the debts of any government agency, commodity markets, stock markets, pension systems, automation, labor availability, or other factors broadly impacting businesses that are not explicitly contemplated in Section 8.4.A above.

5. Decreases in Revenues from Sale of Materials. In the event that the Contractor relies upon sales of materials that the Contractor is entitled to under this Agreement and the value of those materials change over time. Nothing in this Agreement shall entitle the Contractor to retain, market, sell, or otherwise make use of any material that the County has contracted to a designated facility or that the Contractor is required to deliver to a designated facility.
- C. **Review of Costs.** If the Contractor or the County requests a Special Tipping and/or Transfer Service Fee Review, the County shall have the right to review any or all financial and operating records of Contractor and Affiliates.
- D. **Submittal of Request.** If the Contractor is requesting a Special Tipping and/or Transfer Service Fee Review, the Contractor must submit its request along with cost and operational data, in a form and manner specified by the County, at least six (6) months before the proposed effective date of any Tipping Fee adjustment. The County may waive the six- (6-) month submittal requirement if the reason for the special review is a Change in Law that will become effective in less than six (6) months, as described below.

If the County is requesting a Special Tipping and/or Transfer Service Fee Review, the County shall notify the Contractor at least seven (7) months before the proposed effective date of any Tipping and/or Transfer Service Fee adjustment. Upon such notification, the Contractor shall, within thirty (30) Days, submit reasonable cost and operational data as requested by the County, in a form and manner specified by the County.

A Special Tipping and/or Transfer Service Fee Review shall include a proposal on whether the Tipping Fee adjustment resulting from the special review shall be an adjustment in addition to or in lieu of the annual adjustment to Tipping and Transfer Service Fees performed in accordance with Section 8.2.C above.

- E. **Burden of Justification.** The Contractor shall bear the burden of justifying to the County by substantial evidence any entitlement to current, as well as increased, Tipping and/or Transfer Service Fees under this Section 8.4. Records required to be maintained pursuant to Article 10 shall be subject to review, in accordance with appropriate professional standards, and inspection for the primary purpose of reviewing Contractor's change in costs attributable to the circumstances that triggered the Special Tipping and/or Transfer Service Fee Review, at any reasonable time by the Director or a third party selected by the County. The Contractor shall not interfere with, or have any right to object to, the selection of the third party nor the scope of work provided by the County's chosen third-party reviewer. The independent reviewer shall provide a final draft of its review to the County and the Contractor. The Party requesting the Special Tipping and/or Transfer Service Fee Review shall bear the cost of the review.

If the County determines that the Contractor has not met its burden, the Contractor may request a meeting with the County to produce additional evidence. Upon such request, the County shall permit said additional hearing. Any resulting disputes shall be managed pursuant to Article 13.

- F. **Grant of Request.** Notwithstanding Section 8.5 below and based on evidence submitted by the Contractor, the County Board may grant some, all, or none of Contractor's requested adjustment to Tipping and/or Transfer Service Fees, exercising reasonable discretion.
- G. **Compensation.** If Contractor requests a Special Tipping and/or Transfer Service Fee Review, Contractor shall pay all of County's reasonable costs for participating in such review up to a maximum of fifty thousand dollars (\$50,000) and such costs shall not be reimbursed through Tipping

and Transfer Service Fees. If a Special Tipping and/or Transfer Service Fee Review occurs in response to a County-directed change in scope (pursuant to Section 10.4.A.1), the County shall be considered the Party requesting the Special Tipping and Transfer Service Fee Review and the County's costs of the review may be reimbursed through the Tipping and Transfer Service Fees.

8.5 Adjustment to Fees for Changes in Scope

As part of Contractor's written proposal under Section 3.5.B of this Agreement, the Contractor shall furnish the County with projected operational and cost data for the change in scope to support any requested Special Tipping and Transfer Service Fee Review. For the purpose of analyzing cost impacts resulting from changes in scope, the Contractor's profit shall be calculated using an operating ratio of ninety percent (90%) of actual reasonable and necessary costs. The County reserves the right to require that the Contractor supply any additional cost data or other information the County may reasonably need to ascertain the appropriate adjustment to Tipping and Transfer Service Fees, if any, for the change in scope. The County shall review this operational and cost data, and the County Board shall approve Tipping and Transfer Service Fees for the change in scope, if warranted.

The granting of any change in scope shall be contingent upon the County's written approval and establishment of new Tipping and Transfer Service Fees, if appropriate. The County Board shall approve Tipping and Transfer Service Fee adjustments in good faith, coincident with any adjustment made pursuant to this Section so that the change in scope and the corresponding Tipping and Transfer Service Fees become effective on the same date. In the event that such alignment is not practical for reasons including, but not limited to, the involvement of other County contracts, the County shall be entitled to compensate Contractor over time or through alternative methods as described above in Section 8.3.C.

8.6 Coordination with Other County Contractors

The Contractor acknowledges that it is one of several contractors to the County whose compensation adjustments impact the Maximum Rates. The Contractor shall provide timely notice to the County of any anticipated delays in Contractor's schedule for obtaining data related to or submitting applications required for the coming Rate Year. The Contractor shall timely incorporate and resubmit its application based on revised or updated data from the County.

ARTICLE 9 REVIEW OF SERVICES AND PERFORMANCE

9.1 Right to Enter Facility and Observe Operations

The County and its designated representative(s) reserve the right to: (i) enter, observe, and inspect the Approved Facilities during Facility operations at any time and without notice; (ii) to conduct studies or surveys of the Approved Facilities that do not interfere with or impede Contractors' operations without at least forty-eight (48) hours advance notice; and (iii) to meet with the Approved Facility manager(s) or their representatives at any time, provided that the County and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with the work of the Contractor or its Subcontractors. If County exercises its right to enter the Approved Facilities, Contractor is obligated to allow entry to the Approved Facilities and allow for representatives to conduct observations, inspections, studies, or surveys. However, if the Contractor representative or Approved Facility manager is not at the Approved Facility when the County or its designated representative(s) visit without prior announcement,

Contractor may limit the visit of the County or its designated representative to a portion of the Facility including, but not limited to, offices, container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for County or its designated representative(s) to return for a visit of the complete Facility within twenty-four (24) hours of the County's visit. Upon County direction, Contractor shall make personnel available to accompany County employees or representatives on inspections. The Contractor shall ensure that its employees cooperate with the County and respond to the County's reasonable inquiries. The Contractor shall facilitate similar observation and inspection at Approved Facilities owned by it or an Affiliate upon County request and within three (3) Business Days after receiving such request.

9.2 Performance Review

The County reserves the right to conduct a performance review to verify Contractor has fulfilled its obligations under the Agreement, to review complaints, to review billings, to review payments to County and/or designated facilities, and to determine if Contractor has met performance standards. The Contractor shall cooperate with the review including by providing a thorough, complete, and accurate response to any requests for information within ten (10) Business Days after County's request. The Contractor shall not request a confidentiality agreement from County or its agents in order to conduct the performance review and audit, nor shall it claim privilege over any record or documents that the Director is entitled to under this Agreement unless this Agreement already specifically acknowledges some privilege related to that record.

If any partial compliance or noncompliance with the Agreement is found, County may elect any remedy available under the Agreement including, but not limited to, assessing Liquidated Damages, determining that a breach or default has occurred, and/or directing the Contractor to correct the inadequacies in accordance with Article 14 of this Agreement.

ARTICLE 10 RECORD KEEPING AND RECORDING

{Note to Proposers: this Article 10 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 10 may be moved to Exhibit C: Reporting Requirements.}

10.1 General Record Keeping Provisions

Contractor shall maintain, in its principal office in the County, such accounting, statistical, and other records required to conduct its operations, to support requests it may make to County, to respond to requests from County, and as shall be necessary to develop the financial statements and other reports required by this Agreement. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically-maintained data/records shall be protected and a second copy of data/records shall be saved to a protected source, such as a combination of off-site and cloud-based backup with the ability to restore complete functionality within twenty-four (24) hours, or a hot fail-over database configuration.

Contractor shall account for revenues received and expenses incurred as a result of this Agreement separately from the accounting for other operations performed by Contractor or its Affiliates.

10.2 Review and Inspection

Any record or report that is specifically required by this Agreement shall not be considered proprietary, confidential, or trade secret. Contractor agrees to provide or make available its records of any and all companies conducting operations addressed in this Agreement to the County and its official representatives for review during normal business hours. During the Term of this Agreement, the County, its auditors, and other agents, shall have the right, during normal business hours, to conduct unannounced on-site inspections of the records and accounting systems of Contractor and to make copies of any documents it deems relevant to this Agreement. In the event the custodian of such records and systems is not on the premises at the time of inspection, Contractor shall not be in breach of this Agreement, the County shall then give notice to Contractor requesting access to the records, and Contractor shall make arrangements to allow for inspection within twenty-four (24) hours of such notice. The County's right to inspection of records under this paragraph shall continue for five (5) years after the expiration or early termination of this Agreement. However, after expiration or early termination of this Agreement, the County shall provide Contractor with a written request to inspect records, and Contractor shall make records available for inspection within two (2) weeks of such request.

10.3 Retention of Records

Unless otherwise herein required, Contractor shall retain all records and data required by this Agreement for five (5) years after the expiration or early termination of this Agreement. Additionally, in the case of litigation or audit, all records shall be maintained until all findings, claims or litigation is resolved and final action is taken.

10.4 Other Information Requirements

Contractor agrees to conduct data collection and other reporting activities as needed to comply with Federal, State, and local laws and regulations, and the requirements of this Agreement. To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

10.5 Reporting

- A. **General.** The Contractor shall submit quarterly reports within thirty (30) Days after the end of the calendar month and annual reports no later than thirty (30) Days after the end of each calendar year. Quarterly and annual reports shall include at a minimum, all data and information described in Exhibit C, unless otherwise specified under this Agreement.
- B. **Report Format.** The Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the Director, in their sole discretion. The Director may, from time to time during the Term, review, and request changes to the Contractor's report formats and content and Contractor shall not unreasonably deny such requests.

The Contractor shall submit all reports to the Director electronically via e-mail using software acceptable to the County. The County reserves the right to require the Contractor to maintain records and submit the reports required herein through use of a County-selected web-based software platform, at the Contractor's expense.

- C. **No Claim of Confidentiality, Proprietary, or Trade Secret.** The Contractor shall not claim confidentiality, proprietary, trade secret or similar status as an excuse from providing any records

or data required to be maintained or required to evidence data that is required to be maintained under this Agreement. The Contractor further acknowledges that such information may be subject to the California Consumer Privacy Act. The California Consumer Privacy Act requires Contractor to notify any party from which they are gathering sensitive information to disclose that such information may be shared with the County. The Contractor may mark certain records provided to County as confidential, proprietary, trade secret, or otherwise exempt from disclosure by stamping each page of such records with the appropriate designation under the law. Notwithstanding such marking, the County may disclose such records without any prior notice to the Contractor if the records are required to be reported to any regulatory agency or to demonstrate the Contractor's compliance with this Agreement or Approved Facility's compliance with their contracts with the County. In the event that the County believes that records marked by the Contractor are required to be disclosed under the California Public Records Act, County shall provide timely notice to Contractor so that Contractor can pursue, if it desires and at its sole cost, a judicial determination that the records are exempt from disclosure.

10.6 Recycling and Disposal Reporting System Reporting

The County places the utmost importance on accurate reporting and transparency. Further, the County is a regional agency under AB 939 with a single jurisdictional origin under AB 901 and the County is not included under the regional agency for AB 901. The County is therefore interested in ensuring accurate completion and timely submittal of reports into the CalRecycle Recycling and Disposal Reporting System (RDRS).

The Contractor acknowledges its affirmative obligation under this Agreement and Applicable Law to timely, accurately, and completely track and report on the Tonnages Processed at its Approved Processing Facility for the purposes of the County setting Maximum Rates, as well as Contractor's reporting in RDRS. The County understands the Contractor is reliant on the County to provide the jurisdiction of origin data for all Materials Delivered to and Accepted by Contractor at the Contractor's Approved Processing Facility and requires the following from County:

{Note to Proposers: If Recyclable Materials are proposed to be Transferred prior to arriving at the Processing Facility, the following paragraph would apply.}

- The Transfer Service, as part of their Transfer Agreement(s) and obligations under AB 901, must 1) accurately track and timely report to the County, all inbound Recyclable Materials tonnage data received at the Transfer Service's Transfer Facility, and 2) all outbound recyclable materials, tonnage data Transferred from the Transfer Service's Transfer Facility to Contractor's Approved Processor Facility. This data must reconcile to inbound and outbound weight data. The County reserved the right at any time to review the Transfer Service's data for accuracy and make any necessary adjustments.

The Contractor shall track and report the jurisdiction of origin to the County; however, it may report regional agency data to the RDRS provided that County data is reported separately. The Contractor shall track and use the jurisdiction of origin tonnage data provided by the Transfer Service for each Load of recyclable materials delivered to the Contractor and shall use any revised jurisdiction of origin inbound tonnage allocations and/or data provided by the County to the Contractor in its AB 901 reporting. The Contractor shall use the inbound jurisdiction of origin allocations to track and allocate outbound Tons of Residue by jurisdiction of origin in its reports to the County and its quarterly RDRS submittals. The Contractor shall provide the County with any and all reports and data that the Director reasonably requires

to validate the accuracy of RDRS submittals attributable to the County and/or relative other Tons received by the Contractor at the Transfer Service's Transfer Facility where Loads of recyclable materials Delivered by the Transfer Service may or may not have been commingled with Tons attributable to other jurisdictions. Additional information on the Contractor's reporting obligations relative to AB 901 are further described in Exhibit C.

10.7 CERCLA Reporting

The County views its ability to defend itself against CERCLA, and related litigation as a matter of great importance. For this reason, the County regards its ability to prove where Solid Waste is taken for Transfer or Disposal. The Contractor shall maintain records that can establish the Disposal location of all County Material. This provision shall survive the expiration or earlier termination of this Agreement. The Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. The Contractor shall provide these records to the County (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

ARTICLE 11 INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND

11.1 General Indemnification

Contractor shall indemnify, defend with counsel acceptable to County, and hold harmless (to the full extent permitted by law) County and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of County. The provisions of this Article 11 shall survive the termination or expiration of this Agreement.

11.3 CalRecycle Indemnification

In addition to any other indemnity obligations set forth herein, Contractor agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all fines and/or penalties imposed by CalRecycle or the Local Enforcement Agency ("LEA"), in proportion to its fault, and subject to other restrictions set forth in California Public Resources Code Section 40059.1, if the requirements of AB 939, AB 341, SB 901, and/or SB 54, are not met with respect to the Recyclable Materials Accepted by Contractor under this Agreement, and such failure is due to the failure of Contractor to meet its obligations under this Agreement or due to Contractor delays in providing information that prevents Contractor or County from submitting accurate reports required by CalRecycle in a timely manner. The Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

11.4 Environmental Indemnity

Contractor shall defend, indemnify, and hold harmless Indemnitees against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind, and description including attorneys' fees and costs incurred, attributable to and to the extent of the negligence or willful misconduct

of Contractor in handling Excluded Waste. For purposes of clarity, the Transfer Service is prohibited from knowingly Delivering Excluded Waste to Contractor under this Agreement.

11.5 Insurance

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the Term of this Agreement, or as may be further required herein, insurance against claims for injuries to Persons (including in this instance County) or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, their agents, representatives, employees, contractors (including, without limitation, any Subcontractors), or independent operators that perform facility services. For the purposes of this Section, the term "Subcontractors" is to be broadly construed to mean any person, firm, or entity hired by Contractor to carry out any of Contractor's duties under this Agreement. Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
2. Automobile Liability covering all owned, non-owned, hired auto, Insurance Services Office form CA0001. Policy shall contain pollution coverage endorsements MCS-90 or CA 99 48 03 06 or equivalent.
3. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
4. Contractor's Pollution Liability - Applies to operators of transfer stations, materials recovery facilities, composting facilities, other Processing facilities, and/or landfills.

B. Minimum Limits of Insurance. The Contractor shall maintain limits no less than:

1. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
2. Automobile Liability: \$2,000,000 each accident for bodily injury and property damage.
3. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Joaquin.
4. Pollution Legal Liability: \$2,000,000 per claim and aggregate limit of not less than \$4,000,000. The policy shall include limited contractual liability coverage. This coverage shall be maintained for a minimum of three (3) years following termination or completion of Contractor's work pursuant to the Agreement.
5. If the Collector maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this Agreement, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Joaquin. Nothing in this Article 11 shall require the Contractor to maintain broader coverage than is required by this Article.

C. Self-Insurance. Contractor may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-

insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Agreement.

- D. **Deductibles and Retentions.** Regardless of the existence or amount of any deductibles or self-insured retentions that may exist under Contractor's insurance policies, Contractor shall provide to the County the benefits of policy coverages, so that the policy coverage shall apply starting with the first dollar of any covered defense cost or indemnity obligation.
- E. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:
 - 1. Additional Insured Endorsement. The County, the members of the Board of Supervisors of the County and the officers, agents, employees, and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (current additional insured endorsement form number CG D2 46 04 19).
 - 2. Primary Insurance Endorsement. For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its Board members, officers, agents, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - 3. Notice of Cancellation. Notice of cancellation shall be in accordance with policy provisions.
 - 4. Severability of Interest Clause. Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.
- F. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance company or companies approved to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless County agrees in writing to alternative ratings. To the extent permitted by law, all or any part of the required insurance may be provided under a plan of self-insurance, only if, in the sole discretion of County, Contractor can provide adequate assurances that the self-insured coverage provides commercially equivalent protection to County, their officials, employees, volunteers, and agents.
- G. **Verification of Coverage.** The Contractor shall furnish the County with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by the insurer(s) to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to County and are to be received and approved by County on or before the Effective Date.

- H. **Approved Subcontractors and Affiliates.** The Contractor shall include all Approved Subcontractors and Affiliates as additional insureds under its policies, except Workers' Compensation/Employer's Liability or shall furnish separate certificates and endorsements for each Subcontractor or Affiliate. All coverages for Subcontractors and Affiliates shall be subject to all of the requirements stated herein. The Contractor shall require any Approved Subcontractors and Affiliates to provide Workers' Compensation and Employer's Liability insurance for Approved Subcontractors' and Affiliates' employees. The Contractor's Workers' Compensation and Employer's Liability coverage will be the Contractor's employees only.
- I. **Delivery of Proof of Coverage.** Within fifteen (15) Days of the Effective Date, Contractor shall furnish the County certificate(s) of insurance evidencing each policy of insurance required hereunder, in form and substance satisfactory to County. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies and shall have all required endorsements. Renewal certificates will be furnished periodically to County to demonstrate maintenance of the required coverages throughout the Term. Furthermore, in the event of a coverage dispute between the County and an insurance carrier of Contractor that names the County as an additional insured under this Agreement, the Contractor shall, at the County's request, provide the County's counsel with the copy of the policy in question.
- J. **Claims Made Coverage.** If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
1. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
 2. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement.
 3. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least three (3) years to report claims arising in connection with the Agreement.
 4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- K. **Subcontractor's Insurance.** For the purposes of this Section, the term "Subcontractor" is to be broadly construed to mean any person, firm, or entity hired by Contractor to carry out any of Contractor's duties under this Agreement. Contractor shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from Subcontractors. Such Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038 and CG 2037 forms if later revisions used. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost or expense, including attorney's fees and court costs, incurred by County as a result of the failure to maintain required coverage.
- L. **Other Insurance Requirements.**
1. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person

against Contractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to County.

2. Contractor's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Agreement, and County may, at its option, terminate the Agreement for cause in accordance with Article 12 for any such default by Contractor.
 3. The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.
- M. **Waiver of Subrogation.** Contractor and County release each other, and their respective authorized representatives, from any and all claims, actual damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorney's and expert witness fees and court costs) of any kind whatsoever, but only to the extent that the proceeds received from any policy of insurance carried by County or Contractor, other than any self-insurance, covers any such claim. Included in any policy or policies of insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against County by the insurance company issuing said policy or policies.

11.5 Performance Bond

Within seven (7) calendar days of the Effective Date, Contractor shall file with the County a bond or irrevocable letter of credit, payable to the County, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually, if necessary, so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be Two Hundred Thousand Dollars (\$200,000), which is an amount set to equal three months of projected revenue. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the County.

ARTICLE 12 BREACH, DEFAULT, REMEDIES, AND TERMINATION

12.1 Events of Breach

All provisions of this Agreement are considered material and Contractor's failure to perform any provision shall constitute an Event of Breach. In addition, each of the following shall also constitute an Event of Breach:

- A. **Failure to Maintain Coverage.** The Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

- B. **Violations of Applicable Law.** The Contractor violates Applicable Law relative to this Agreement, provided that Contractor may contest any such orders or filings in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred upon final resolution of the contest or appeal in favor of Contractor.
- C. **Failure to Pay or Report.** The Contractor fails to make any payments to the County required under this Agreement, and/or refuses to provide County with required information, reports, and/or records in a timely manner as provided for in this Agreement.
- D. **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor's operating equipment, including, without limitation, its maintenance or office facilities, or any part thereof.
- E. **Breach or Default of Other County Agreement.** If the Contractor or its Affiliate has entered into an agreement with the County for services outside the scope of this Agreement and is in breach or default of that Agreement.
- F. **Failure to Achieve Processing Standards.** The Contractor materially contributes to a failure or fails to achieve the Processing standards specified in Article 4 and/or Article 7, which are essential for the County to achieve compliance with Applicable Law.
- G. **Failure to Provide Capacity.** The Contractor fails to provide adequate capacity in accordance with Section 4.1.C.
- H. **Labor Unrest.** Pursuant to Section 3.6, Contractor fails to perform services as required under this Agreement for any period of time due to labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor or an Affiliate; or any labor action initiated by Contractor including, but not limited to, a lock-out.

12.2 Contractor's Right to Remedy Breach

Except for labor unrest, the County shall promptly, or as soon as practicable, provide Contractor written notice of an Event of Breach. Upon written notice, Contractor shall have ten (10) Days to cure the breach. However, if Contractor demonstrates that: (a) the breach is curable; and, (b) ten (10) Days is insufficient to cure the breach, then Contractor may receive thirty (30) Days or another extension of time agreed to by the County in order to cure the breach.

An Event of Breach caused by labor unrest shall not require any written notice by the County. Beginning on the first day of labor unrest, Contractor shall have ten (10) Days to cure the breach. Labor unrest shall not be allowed any extension of time beyond this initial ten (10) Day cure period.

12.3 Acts Necessary to Perform Service

The County's failure to specifically require an act necessary to perform any of the services required under this Agreement and/or comply with applicable law does not relieve Contractor of its obligation to perform such act, or the service(s) dependent on such act, or comply with all Federal, State, and local law and regulation at all times throughout the Term of this Agreement. To the extent that the Contractor engages or fails to engage in performing an act or service in violation of this Agreement or applicable law and fails to obtain explicit written permission from the County in advance, the Contractor shall be solely liable and the County shall not be responsible for any payment, compensation adjustments, or administrative support arising from the Contractor's actions or inactions.

In the event of any ambiguity as to the interpretation of the Agreement or the requirements of the Contractor under this Agreement, the Contractor shall be responsible for seeking written clarification and approval from the County prior to engaging in actions to resolve ambiguities or not otherwise explicitly stated in the Agreement. The Contractor acknowledges that any informal suggestions or recommendations, whether verbal or in writing, made by the County to Contractor shall not be relied upon by Contractor to the extent such suggestions or recommendations may compromise or inhibit Contractor's performance under this Agreement or ability to comply with applicable law.

The Contractor assumes all liability and responsibility for actions and inactions to perform services under this Agreement in accordance with applicable law and expressly waives any claims against the County or use of the County's actions or inactions as a legal defense for the Contractor's failure to perform or comply with applicable law in the performance of this Agreement. To the extent the Contractor's non-compliance results in increased costs to the County, the County shall notify the Contractor, identifying the dollar value of such cost impacts, and the Contractor shall, within thirty (30) Days after written notice from the County, remit such costs to the County in the form of a direct payment sent or delivered to the County or paid to the County via an electronic payment method. The County retains the right to pursue any remedies specified in this Article in the event of non-compliance, at the Director's sole discretion.

12.4 Event of Default

Each of the following shall constitute an Event of Default, upon which County shall promptly or as soon as practicable provide Contractor written notice of the default:

- A. **Failure to Cure Breach.** The Contractor fails to cure an Event of Breach as provided above in Section 12.2.
- B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the combination of breaches constitutes a material failure by Contractor to perform its obligations, even if the Contractor cures each individual breach.
- C. **Fraud or Deceit.** The Contractor practices, or attempts to practice, any fraud or deceit upon the County.
- D. **False or Misleading Statements.** Any representation or disclosure made to the County by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement. In addition, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting typographical and grammatical errors.
- E. **Failure to Perform.**
 - 1. General. Except as provided under Section 12.10, Contractor fails to provide Processing services as required under this Agreement for a minimum of either two (2) consecutive Business Days or three (3) non-consecutive Business Days within one (1) week. The County may give notice of the Contractor's failure to perform verbally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such verbal notification shall be sent to the Contractor within twenty-four (24) hours of the verbal notification.

2. **Facility Disruption.** The County is unable to use any of the Approved Facilities under this Agreement for more than thirty (30) Days in a consecutive twelve (12) month period.
- F. **Criminal Activity.** The Contractor, its officer, managers, or employees are found guilty of Criminal Activity related directly or indirectly to performance of this Agreement or any other Agreement held with the County.
- G. **Assignment without Approval.** The Contractor transfers or assigns this Agreement without express written approval of the County, unless the assignment is permitted without County approval pursuant to Section 14.7.
- H. **Insolvency or Bankruptcy.** The Contractor becomes insolvent, unable, or unwilling to pay its debts, a receiver is appointed, or Contractor's assets are involuntarily assigned, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

12.5 Event of Default Not Curable

Contractor shall have no right to cure an Event of Default.

12.6 County's Remedies in the Event of Default

Upon a determination by County that an Event of Default has occurred, County has the following remedies:

- A. **Waiver of Default.** The County may waive any Event of Default if County determines that such waiver would be in the best interest of the County. The County's waiver of an Event of Default is not a waiver of future events of default that may have the same or similar conditions.
- B. **Right to Terminate.** The County Board may terminate this Agreement. The County Board shall conduct a hearing upon ten (10) Days written notice to the Contractor to determine if termination is in the best interests of the public health, safety, and welfare of the County. In the event the County Board decides to terminate this Agreement, termination shall be effective thirty (30) Days, or such other period determined by the County Board, after County has given written notice to Contractor.
- C. **Right to Suspend.** The Director may suspend this Agreement, in whole or in part, if Contractor fails to cure within the time frame specified in Section 12.2, until Contractor can provide assurance of performance in accordance with Section 12.11.
- D. **Other Available Remedies.** The County's election of one or more remedies described herein shall not limit County from any and all other remedies at law and in equity, such as a right to immediately contract with another service provider.

12.7 Specific Performance

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service, the lead time required to effect alternative service, and the rights granted by County to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and County shall be entitled to injunctive relief.

12.8 County's Remedies Cumulative

County's rights to suspend or terminate this Agreement, to obtain specific performance, and to perform under this Article are not exclusive, and County's exercise of one (1) such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and

remedies that the County may have, including a legal action for damages or imposition of Liquidated Damages under Section 12.9 and Exhibit D.

12.9 Liquidated Damages

The Parties agree that, as of the time of execution of this Agreement, it is impractical and extremely difficult to reasonably ascertain the extent of damages that County will suffer as a result of a breach by Contractor of its obligations under this Agreement. The Parties acknowledge that consistent and reliable Transfer, Transport, Processing, Diversion, and Disposal services are of utmost importance to the County. The Parties further recognize that some quantifiable standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. Therefore, without prejudice to County's right to treat such non-performance as an Event of Default, and in addition to any other remedies provided for in this Agreement, except as otherwise provided in Section 12.10, County may assess Liquidated Damages for Contractor's failure to meet specific performance standards, and Contractor agrees to pay the Liquidated Damages amounts specified in Exhibit D. Liquidated Damages are paid as damages, and not as a penalty. The Parties agree that the amounts set forth in Exhibit D represent a reasonable estimate of the amount of the damages that County will suffer for the specified breaches, considering all of the circumstances existing on the date of this Agreement.

- A. Prior to assessing Liquidated Damages, the County shall give Contractor written notice of its intention to do so. The notice shall include a brief description of the incident(s)/non-performance giving rise to the damages. Within five (5) days after receiving the notice of intent, Contractor shall have the right to request that the County meet and confer regarding the notice of intent; the Parties should promptly meet and confer in good faith.
- B. County shall assess Liquidated Damages and provide Contractor with a written explanation of its determination for each incident(s)/non-performance. The County may assess Liquidated Damages for each Day or incident of non-performance with the Agreement. The decision of the Director or designee shall be final, and subject only to the right to appeal the imposition of the Liquidated Damages to the County Board when the amount imposed exceeds ten thousand dollars (\$10,000) per month in total for multiple events of non-performance. Thereafter, it is deemed the Contractor has exhausted all required administrative remedies.
- C. Contractor shall pay any Liquidated Damages assessed by County within thirty (30) Days after they are assessed. If they are not paid within the thirty (30) Day period, County may proceed against the performance bond required by the Agreement, treat such failure as an Event of Default subject to the remedies in this Article.

12.10 Excuse from Performance

In the event that a Party is prevented from performing all or some of its obligations under this Agreement by an Uncontrollable Circumstance, it shall not constitute an Event of Breach or Default of, or otherwise form the basis to assess Liquidated Damages under this Agreement, so long as the Party in good faith has used its best efforts to perform its respective obligations. The Party claiming excuse from performance shall, within five (5) Days after such Party has notice of the effect of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section. Specifically, such information shall include the following:

- A. The Uncontrollable Circumstance and the cause thereof (to the extent known).

- B. The date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the Party's performance of its obligations hereunder will be delayed.
- C. Potential mitigating actions that might be taken by either Party and any areas where costs might be reduced and the approximate amount of such cost reductions.

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

Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees, directed at Contractor, or a contractor or supplier of Contractor, is not an Uncontrollable Circumstance and will not excuse performance, and Contractor will be obligated to continue to perform in accordance with this Agreement, as further described in Section 3.7.

In no event shall Contractor be excused from performance of a payment obligation under this Agreement.

12.11 Right to Demand Assurances of Performance

If the County believes in good faith that the Contractor's ability to perform under this Agreement has been placed in substantial jeopardy, the County may require that the Contractor provide reasonable assurances that none of the events listed below will prevent the Contractor from timely and proper performance of its obligations under this Agreement. Such events include, but are not limited to:

- A. The Contractor or an Affiliate is the subject of any labor unrest including work stoppages or slowdown, sick-out, picketing, or other concerted job action affecting this Agreement.
- B. Contractor or an Affiliate appears, in County's reasonable judgment, unable to regularly pay its bills as they become due.
- C. Contractor or an Affiliate is the subject of a civil or criminal judgment or order entered by a Federal, State, regional, or local agency for violation of a law that may affect performance under this Agreement, including but not limited to environmental laws, or laws related to fraud and malfeasance of public contracts.

If the Contractor fails or refuses to provide the County with adequate information to establish its ability to perform within thirty (30) Days, such failure or refusal shall be an Event of Default for the purposes of Section 12.4.

12.12 Waiver of Defenses

In order to ensure the non-interruption of a vital public service, except as provided in Section 12.10, the Contractor acknowledges that it is solely responsible for providing the services described herein, and hereby irrevocably waives the following defenses to the payment and performance of its obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that may be a basic assumption of the Contractor with regard to any provision of this Agreement.

12.13 Guaranty of Contractor's Performance

The Guarantor has agreed to guaranty Contractor's performance of this Agreement including Contractor's indemnification obligations hereunder pursuant to a Guaranty Agreement in the form attached as Exhibit G. The Guaranty Agreement is provided to Contractor concurrently with this Agreement.

ARTICLE 13 RESOLUTION OF DISPUTES

13.1 Cooperation and Disputes Between Contractors

The Contractor shall fully comply with its obligations to provide services under this Agreement including Acceptance of Materials delivered by the Transfer Service in a manner that meets the requirements of this Agreement and Applicable Law. In the event of disputes between the Contractor and the Approved Facility(ies), either party may provide written notice of the dispute to the County and the other that includes a summary of the dispute, the section(s) of the Agreement or agreements the asserted dispute arises from, an estimate of the financial implications to Contractor asserted, and a proposed resolution. Contractor agrees to timely meet and confer directly with the Approved Facility(ies) in good faith to resolve the dispute for thirty (30) Days following the initial notice to the County and the other party, or a longer period may be established if mutually agreed upon between the parties. If, at the end of this meet and confer period, Contractor and Approved Facility(ies) have met and conferred in good faith but have not resolved the dispute, either party to the dispute may notify the County and the County shall follow the dispute resolution procedures provided in Section 13.2, 13.3, and 13.4 of this Agreement as well as any applicable provisions of the other party's contract with County. In the event of a dispute, Contractor shall continue performance of Contractor's obligations under this Agreement and shall attempt to continue to resolve that dispute in a cooperative manner including, but not limited to, negotiating in good faith.

13.2 Informal Resolution

Should a dispute arise with respect to the performance and obligations of the Parties hereunder at any time during the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give the other written notice of such dispute. Such notice shall specify a date and location for the Parties to meet and confer in good faith to resolve any dispute that may arise in a cooperative and mutually-satisfactory manner. The Parties shall attempt to resolve their disputes informally to the maximum extent possible.

13.3 Mediation

In the event the Parties cannot resolve such dispute within thirty (30) Days after such notice, either Party may propose the appointment of a mediator for advice and non-binding mediation, and the other Party shall attend such mediation. If the mediator is unable, within thirty (30) Days thereafter, to reach a determination as to the matter in dispute in a manner acceptable to the Parties hereto, then either Party may refer the matter to a Court of competent jurisdiction.

13.4 Pendency of Dispute

During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall not be tolled. In addition, the pendency of any dispute shall not stay or affect the County's

remedies under this Agreement including, but not limited to, the County's rights to terminate, suspend, or take possession of Contractor's property.

ARTICLE 14 OTHER AGREEMENTS OF PARTIES

14.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by County and nothing in this Agreement shall be deemed to constitute either Party an employee, partner, joint venturer, officer, agent, or legal representative of the other Party or to create any fiduciary relationship between the Parties. Neither Contractor nor its officers, employees, Subcontractors, Affiliates, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to County employees by virtue of the Contractor's Agreement with the County.

14.2 No Third-Party Beneficiaries

This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

14.3 Compliance with Law

In providing the services required under this Agreement, the Contractor shall at all times comply with all Federal, State, and Local laws and regulations now in force and as may be enacted, issued, or amended during the Term.

14.4 Governing Law

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

14.5 Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of San Joaquin County in the State of California and/or the United States District Court for the Eastern District of California which shall have exclusive jurisdiction over such lawsuits. Nothing in this Agreement shall be construed to limit the rights of either Party to seek judicial review of or remedies for any alleged breach of this Agreement by either Party.

14.6 Notice to Parties

All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) Days after deposit. A Party may change the address to which notice is given by giving notice as provided herein.

To County:

Solid Waste Division
San Joaquin County
1810 E. Hazelton Avenue
Stockton, CA, 95205

To Contractor:

{Insert Title}
{Insert Company Name}
{Insert Address}
{Insert City/State/Zip}

14.7 Assignment and Transfer of Agreement

Neither Party shall assign its rights or delegate, subcontract, or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

- A. For purposes of this Section when used in reference to Contractor, “assignment” shall include, but not be limited to (1) a sale, exchange or other transfer of any greater than fifty percent (50%) all of Contractor’s assets dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, subcontracting or lease-back arrangement, or other transaction that results in a change of ownership or control of Contractor; (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor’s property, or transfer occurring in the event of a probate proceeding; and, (5) any combination of the foregoing (whether or not in related or contemporaneous transactions) that has the effect of any such transfer or change of ownership, or change of control of Contractor.
- B. Contractor acknowledges that this Agreement involves rendering a vital service, and that the County has selected the Contractor to perform the services specified herein based on (1) the Contractor’s experience, skill and reputation for conducting its materials management operations in a safe, effective and responsible fashion, at all times in keeping with Applicable Law, regulations and good materials management practices, and (2) the Contractor’s financial resources to maintain the required equipment and to support its indemnity obligations to the County under this Agreement. The County has relied on each of these factors, among others, in choosing the Contractor to perform the services to be rendered by the Contractor under this Agreement.
- C. If the Contractor requests the County’s consideration of and written consent to an assignment, the County may deny or approve such request in its complete discretion. Under no circumstances shall any proposed assignment be considered by the County if the Contractor is in default at any time during the period of consideration.

- D. No request by the Contractor for consent to an assignment need be considered by the County unless and until the Contractor has met the following requirements. However, the County may, in its sole discretion, waive one or more of these requirements:
1. The Contractor shall pay the County its reasonable expenses for consultants' fees, attorneys' fees, and investigation costs necessary 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. The Contractor shall furnish the County with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
 3. The Contractor shall furnish the County with satisfactory proof that: (1) the proposed assignee has at least ten (10) years of Recyclable Materials, management experience on a scale equal to or exceeding the scale of operations conducted by the Contractor under this Agreement; (2) in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any Federal, State, or local agency having jurisdiction over its materials management operations due to, in the County's sole and reasonable discretion, any material or significant failure to comply with State, Federal or local waste management laws and that the assignee has provided the County with a complete list such citations and censures; (3) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (4) the proposed assignee conducts materials management practices in full compliance with all Federal, State, and local laws regulating the processing, of all solid waste, including Hazardous Waste; and, (5) any other information required by the County to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and effective manner.
- E. The Contractor shall provide the County with any and all additional records or documentation which, in the County's sole determination, would facilitate the review of the proposed assignment. The County shall not unreasonably withhold its consent to any such assignment.
- F. On the date the County provides notice to the Contractor that the County intends to approve the Contractor's written request for an assignment, the Contractor shall pay the County a transfer fee in the amount of ten percent (10%) of the Gross Receipts for the most-recently-completed Rate Year. The County's approval of such an assignment shall be conditioned on the receipt of the transfer fee.

14.8 Transition to Next Contractor

If the transition of services to another contractor occurs through expiration of the Term, default and termination, or otherwise, then Contractor will cooperate with County and subsequent contractor(s) to assist in an orderly transition.

14.9 Compliance Audit

In the event the Contractor has requested the County's consideration of an Assignment, as provided in Section 14.7 of this Agreement or, if, in County's sole determination, there is any doubt regarding the compliance of Contractor with this Agreement, in addition to the Performance Review described in Section 9.2 of this Agreement, the County may require an audit of Contractor's compliance and the costs of such an audit shall be paid by Contractor in advance of the performance of said audit.

14.10 Binding on Successors

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

14.11 Non-Waiver

Failure of either Party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or subsequent failures to perform, whether determined to be a breach, excused performance, or unexcused defaults, by the other Party.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Entire Agreement

This Agreement, including the Exhibits and any attachments or appendices, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

15.2 Amendment

Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except in written agreement duly executed by and between the County and Contractor.

15.3 Section Headings

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

15.4 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.

15.5 Interpretation

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

15.6 Severability

If any clause, provision, subsection, section, or article of this Agreement is for any reason deemed to be invalid and unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such portion shall not affect any of the remaining parts of this Agreement, which shall be enforced as if such invalid or unenforceable portion had not been contained herein.

15.7 Further Assurance

Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

15.8 Counterparts

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

15.9 Exhibits

Each of the Exhibits identified as Exhibits A through L are attached hereto and incorporated herein and made a part hereof by this reference.

15.10 Electronic Signatures

The Parties hereby agree that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement, or such other documents, are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

15.11 Actions of the Authority in its Governmental Capacity

Nothing herein shall be interpreted as limiting the right of the Contractor to bring any legal action against the County arising out of any act or omission of the County in its governmental or regulatory capacity.

IN WITNESS WHEREOF, County and Contractor have executed this Agreement as of _____.

COUNTY OF SAN JOAQUIN,
a Political Subdivision of the
State of California

By _____
PAUL CANEPA, Chairman, Board of Supervisors
County of San Joaquin, State of California

"COUNTY"

{Insert Contractor Legal Name and any DBAs}

By _____
{TITLE}

"CONTRACTOR"

ATTEST: RACHÉL DeBORD
Clerk of the Board of Supervisors of the County of
San Joaquin, State of California

By _____
Deputy Clerk

APPROVED AS TO FORM:
COUNTY COUNSEL

By _____
MATTHEW P. DACEY
Deputy County Counsel

RECOMMENDED FOR APPROVAL

By _____
FRITZ BUCHMAN, C.E., T.E., CFM
Director of Public Works
San Joaquin County, California

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: LIST OF ALLOWABLE RECYCLABLE MATERIALS

{Note to Proposers: The following list may be modified upon receipt of proposals and final negotiations}

1. Allowable Recyclable Materials

Allowable Recyclable Materials are the materials listed in this Exhibit, that may be replaced by a list posted by the County's Director in their sole discretion from time to time and provided to the Contractor.

A. Paper:

1. Kraft paper, all forms (with or without plastic component)
2. Molded fiber packaging (without plastic component)
3. Cardboard (with or without plastic component)
4. Paperboard, all forms (with or without plastic component)
5. White paper, all forms (with or without plastic component)
6. Other/mixed paper, all forms (with or without plastic component)
7. Small paper (no side greater than 2", with or without plastic component)

B. Metal:

1. Aluminum:
 - a. Containers, non-aerosol (with or without plastic component)
 - b. Foil sheets (with or without plastic component)
 - c. Foil molded containers (with or without plastic component)
 - d. Aerosol can (with plastic component)
2. Tin, steel, and bi-metal containers
3. Scrap metal
4. Small metal (no side greater than 2", with or without plastic component)

C. Glass:

1. Bottles (with or without plastic component)
2. Jars (with or without plastic component)
3. Small glass (no side greater than 2", with or without plastic component)

D. Plastic:

1. PET (#1):
 - a. Bottles, jugs, and jars (clear/natural)
 - b. Bottles, jugs, and jars (pigmented/color)
 - c. Thermoformed containers, cups, lids, plates, trays, tubs
 - d. Other rigid items (including containers)
2. HDPE (#2):
 - a. Bottles, jugs and jars (clear/natural)
 - b. Bottles, jugs, and jars (pigmented/color)
 - c. Pails and buckets
 - d. Other rigid items (including containers)
3. PP (#5)
 - a. Bottles, jugs and jars
 - b. Thermoformed containers, cups, lids, plates, trays, tubs
 - c. Other rigid items

EXHIBIT C: REPORTING REQUIREMENTS

{Note to Proposer: This exhibit will be modified based on the negotiations process and applicable services selected. For example, if Transferring Services are included, then additional reporting requirements will be added}

1. GENERAL

- A. Contractor shall prepare and submit quarterly and annual reports to the County as provided below. Contractor may propose report formats that are responsive to the objectives and audience for each report. With written direction from the Director, the reports to be maintained and provided by the Contractor may be adjusted in number, format, frequency, and content. At the County's request, the Contractor shall use standardized reporting forms provided by the County or an electronic reporting system specified by the County. Each report shall:
 - 1. Present the required data separately for each jurisdiction and in total for the County.
 - 2. Include a certification statement by the responsible Contractor official that, under penalty of perjury, the report being submitted is true and correct to the best knowledge of the responsible official after their reasonable inquiry.
- B. Records shall be maintained in forms and by methods that facilitate flexible use of the data contained in them to structure reports as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:
 - 1. Ensure that the County only compensates the Contractor for Processing of Recyclable Materials originating from the County.
 - 2. Ensure that the County only compensates Approved Facilities for receipt of Materials originating from the County.
 - 3. Determine and set Per-Ton Rates and evaluate the financial efficacy of operations.
 - 4. Allocate Collection, Transfer, Processing, and Disposal costs.
 - 5. Evaluate past and expected progress towards achieving the County's Diversion goals and objectives.
 - 6. Provide information needed by the County for the purpose of determining compliance with and fulfilling its State reporting requirements pursuant to AB 341, AB 901, AB 939, SB 54, and all Applicable Law
 - 7. Provide concise and comprehensive operational information, Tonnage, sector, and program information and metrics for use in fulfilling reporting requirements under Applicable Law.
 - 8. Determine needs for adjustment to programs and/or operations.
 - 9. Coordinate operational and logistical matters by and between the Contractor and the County's Transfer Service(s) and/or Disposal Contractor, as applicable.

The Contractor shall timely submit all reports by email (or in another digital format in the event email communications are unsuccessful) to pwswdiversion@sjgov.org.

Upon written request by the Director, reports shall also be submitted in hard copy to:

Solid Waste Division
 San Joaquin County
 1810 E. Hazelton Avenue
 Stockton, CA 95205

2. Quarterly Reports

The Contractor shall submit the quarterly reports within thirty (30) Days after the end of the reporting quarter. The quarterly tonnage reports shall be presented by the Contractor to show the information described below for each month. In addition, each quarterly report shall show the quarterly data for the past twelve (12) months and the most recently completed four (4) calendar quarters, and totals for the twelve (12) months and each calendar quarter represented. Except when noted below, all tonnages requested are to be net weights of the payload contents of the Transfer vehicle.

All reports shall include, at a minimum, the following information for each Approved Facility and Approved Alternate Facility as appropriate, separated by material type:

A. Recyclable Materials Processing Tonnage Report

1. Inbound Tons to the Approved Processing Facility(ies).
 - a. Recyclable Materials Loads – Inbound Weight Ticket (Receipt) Data
 - i. Actual Tonnage of each inbound Load of Recyclable Materials Delivered or Transferred to the Approved Processing Facility. The Contractor shall submit this data in Excel or a similar format approved by the County that allows the data to be summed, divided, etc. and supporting documentation in the form of weight tickets may be requested by the County at any time. Data for each Load shall include, at a minimum:
 - Weight ticket number
 - Date Delivered
 - Time Delivered
 - Vehicle identification number
 - Material type
 - Gross weight
 - Tare weight
 - Net weight
 - Vehicle type (transfer vehicle, County/Contractor)
 - Apply those percentage allocations to all Inbound Recyclable Materials Tons by Sector of origin (Commercial, Single-Family, Multi-Family).
 - b. Inbound Tons to the Approved Facility

Total Tons of all material Delivered by all facility users to the Approved Facility by material type, Facility User type (e.g. Recyclable Materials Delivered by the Transfer Services and/or Self-Haul materials) and jurisdiction of origin, including the relative percentages of all materials by Facility User type, during the reporting period.

c. Approved Alternate Facilities

If the Contractor uses any Approved Alternate Facility, then the Tonnage data required in this Section shall also be provided individually for the Approved Alternate Facility and aggregated to represent all the Recyclable Materials during the reporting period.

2. Processing Report

{Note to Proposer: If Mixed Waste Processing services are proposed, the report under this Section 2.A.2 would be duplicated if the Mixed Waste Processing services include both Processing and Composting}

- a. Total Tons of material Processed during the reporting period, by material type
- b. Total Tons of Recyclable Materials Diverted and the Diversion rate listed separately by each recovered material Commodity, calculated using the approved allocation method described in Section 4.3.C of the Agreement.
- c. Total Tons of Residue generated from Processing of all materials Delivered to the Approved Recyclable Materials Processing Facility and the Tons of Residue allocated to the County calculated using the approved Residue allocation method described in Section 4.3 of the Agreement.
- d. Tons of Recovered Recyclable Materials Marketed (by commodity and including average commodity value for each).

3. Outbound Residue from the Approved Recyclable Materials Processing Facility

- a. The Contractor shall report on the actual Tonnage of each outbound Load of Residue that the Contractor Transports from the Recyclable Materials Processing Facility to the Contractor's selected County-owned Disposal facility, in accordance with Section 4.3.C. If Contractor does not weigh outbound Loads, then Contractor shall provide actual Tonnage of each outbound Load of Residue based on weight tag data, in the same format provided in Section 2.A.1.a.i above.

4. Marketing of Recovered Recyclable Materials.

{Note to Proposer: The marketing of Recovered material quarterly reporting requirements will be updated to reflect the requirements of Section 4.3 and Exhibit J of the Agreement that may based, in part, on proposer's proposal.}

B. Vehicle Turnaround Times

- 1. Upon County request, the Contractor shall and report actual vehicle Turnaround Time for each vehicle transferred by County (determined in accordance with Section 7.8 of the Agreement). The vehicle turnaround time shall be measured as the elapsed time from the vehicle entering the Approved Facility or Approved Alternate Facility property to the vehicle leaving the property. The duration of vehicle turnaround time tracking and reporting period shall be determined by the County.

C. Regulatory Compliance

1. List of any Violation(s) received at any of the Approved Facility(ies) or Approved Alternate Facility(ies) during the reporting period and the current status of Violation(s). If the Violation(s) were not remedied by the Contractor during the reporting period, the Contractor shall provide a narrative description of the steps to be taken to remedy the Violation and the associated timeline(s).
2. List of any Violation(s) prior reported and remedied during the reporting period.

D. Load Classification, Rejection, and Contamination

1. Total tons of Recyclable Materials Delivered by the Transfer Service, separated by route vehicle Tons and roll-off Vehicle Tons, and Accepted by the Approved Recyclable Materials Processing Facility or the Approved Alternate Facility, as applicable.
2. Total Tons of Unpermitted Waste Delivered by the Transfer Services and Rejected by the Approved Recyclable Materials Processing or the Approved Alternate Facility, as applicable, in accordance with Section 4.3 and Section 7.5 of the Agreement.
3. Total Tons of Recyclable Materials Delivered to and Rejected by the Approved Recyclable Materials Processing Facility due to Contamination in accordance with Section 4.3.D of the Agreement.
4. Date, time, route number, Transfer truck number, material type, and reason for Contractor rejection of any Delivered Loads.
5. Photographs of Rejected load.
6. Copy of correspondence to the County notifying them of the Unpermitted or contaminated materials, the County response, and a narrative of the County's remedy following the notification including the date and time of the remediation, and action(s) taken.

E. Financial Records

1. Any operational or financial records related to Extended Producer Responsibility Programs, if any, including but not limited to:
 - a. Invoices or receipts for new or retrofitted equipment or vehicles purchased or received to implement the Extended Producer Responsibility Program.
 - b. Changes to labor costs, if any, as a result of implementing the Extended Producer Responsibility Program.
 - c. Records of reimbursements, payments, or in-kind contributions made to Contractor by the Extended Producer Responsibility Programs or Stewardship Organization.
 - d. Supporting documents related to the calculation used to determine costs allocated to the County versus other facility users.
 - e. Any operational records required by the Extended Producer Responsibility Program or Stewardship Organization, if any, related to the Contractor's participation in the Extended Producer Responsibility Program.

3. Quarterly Report

The Contractor shall submit the quarterly reports within thirty (30) Days after the end of the reporting quarter. At a minimum, quarterly reports shall include the following:

A. RDRS Reconciliation

1. Copies of all Recycling and Disposal Reporting System (RDRS) Quarterly Report Summaries submitted to CalRecycle during the reporting quarter and underlying supporting data.
2. Reconciliation of quarterly data from Sections 2.A.1.b and 2.A.1.c against Section 2.A.2.c of this Exhibit D with an explanation of any variance.

B. Waste Evaluation Reports

1. Copies of the waste evaluation reports conducted in accordance with 14 CCR Section 17409.5.7.

4. Annual Report

The Contractor shall submit an annual report (Annual Report) no later than thirty (30) days after the end of each calendar year. The Annual Reports shall include, at a minimum, the following information:

- A. Documentation that Contractor paid all government fees and taxes necessary to provide services under this Agreement in accordance with Applicable Law.
- B. An Approved Facility capacity status report that identifies, for each Approved Facility, the remaining permitted capacity, the aggregate capacity committed to other entities through Contractor's contracts, and the available, uncommitted Approved Facility capacity.
- C. A description of any advances in environmental mitigation measures; any advanced technologies utilized in the course of business; any pilot programs which test advanced technologies; any new third-party certifications for Diversion or other Facility standards; and reports on any recent, pending, or planned changes in facility permits.
- D. A description of any issues, plans, and concerns related to the use of the Approved Facility(ies) during the past year and anticipated changes for the following year, including but not limited to, additional services provided or available, actual or anticipated need for use of Alternate Facilities, regulatory issue or concerns, permit and regulatory violations, or changes in staffing, equipment, or operations.
- E. A certified statement of fact pertaining to whether an Approved Alternate Facility was used during the report year to provide services under this Agreement and if so, documentation of all Recyclable Materials Loads Delivered to the Approved Alternate Facility.
- F. An explanation of any recently adopted laws or regulations, or changes to laws or regulations that Contractor expects may impact this Agreement or Contractor's operations during the Agreement Term.
- G. Any State facility report Contractor submits to CalRecycle or to Contractor's Disposal Reporting System coordinator. Such State facility reports includes those submitted for any of the Approved

Facilities Contractor is utilizing under this Agreement. Such annual submittals shall be in accordance with Applicable Law.

- H. Any public education and outreach materials created and distributed, as applicable.
- I. A report describing Contractor's marketing of Recovered Materials, including:
 - 1. Tonnage of Recovered Materials marketed, by Recovered Material type.
 - 2. The actual prior year and estimated coming year per unit or per-ton market values and revenue received for each Recovered Material.
 - 3. The brokers, markets, and end uses for each Recovered Material marketed, including name of broker or purchaser and physical address of the final destination of marketed Recovered Materials.
 - 4. The specified end-use of each marketed Recovered Material.
 - 5. Documentation that the County's Recovered Materials were Delivered to, and Recycled and/or Processed at Responsible End Markets.
- J. A list of all secondary Processing Facilities used during the report year to materials originating from the County, if any. Such list shall include the facility's name, physical address, and the name of the owner/facility operator.
- K. Documentation of all materials originating from the County sent to secondary Processing Facilities including the type of materials sent to each secondary Processing Facility and the total Tons sent to each secondary Processing Facility by material type.
- L. Documentation of Recovered Materials and Residue standards.

{Note to Proposer: The Recovered Materials and Residue standards annual reporting requirements will be updated to reflect the requirements of Section 7.14 and Exhibit I of the Agreement that may be based, in part, on proposer's proposal.}

EXHIBIT D: LIQUIDATED DAMAGES

Except as otherwise provided in Section 12.10 of the Agreement, the County may assess Liquidated Damages in the event Contractor fails to meet specific quantifiable standards of performance in accordance with the terms and conditions of the Agreement.

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of Liquidated Damages. The table describes the incident(s) or event(s) that trigger Liquidated Damages the thresholds by which Liquidated Damages may be assessed, and the unit measures and dollar amounts of Liquidated Damages. The dollar amounts of all Liquidated Damages listed in the table below.

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
Performance Area No. 1: Contractor Operations		
<u>Vehicle Turnaround Guarantees</u>	Failure to meet vehicle turnaround guarantees.	\$100 per vehicle delayed
<u>Operating Hours/Days</u>	Failure to open the Approved Recyclable Materials Processing Facility to receive Materials from the County's contractors during operating days and hours.	\$1,000 per day that the Approved Facility is not open to receive County Material
<u>Scale Operations</u>	Failure to provide substitute scales.	\$250 per hour
<u>Licensed Drivers</u>	Failure to have a vehicle driver properly licensed.	\$500 per incident or \$100 per Day, whichever is greater
<u>Marketing</u>	Failure to market or meet the marketing standards set forth in Section 7.13.	\$500 per ton
Performance Area No. 2: Facility-Related Services		
<u>Capacity Guarantee</u>	Failure to provide sufficient capacity needed to fulfill Contractor's obligation to the County, whether through the Approved Recyclable Materials Processing or any Approved Alternate Facility.	\$1,000 per Day (not to exceed \$100,000 total) and the greater of either (a) \$150 per Ton of Recyclable Material the Contractor does not Accept at the Approved Facilities or an Approved Alternate Facility, or (b) the actual cost of Transfer and Transport to an alternate facility
<u>Maintaining Source Separation</u>	Failure to maintain segregation of any Recyclable Materials if Delivered to the Approved Processing Facility.	\$500 per Ton of Source Separated Material Delivered to Contractor's Approved Processing Facility that Contractor mixes with any other type of material at the Approved Processing Facility
<u>Disposal of Materials Delivered for Processing</u>	Each individual occurrence of Disposal of Recyclable Materials without Processing at the Approved Facility, as applicable.	\$500 per Ton

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Preventing Contamination</u>	Failure of Contractor to separately receive, store, Process, or otherwise manage Recyclable Materials with acceptable levels of Contamination in a manner that does not result in Contamination (i.e., Contractor's actions shall not result in Contamination of materials).	150% of the per Ton Tipping Fee that would have been otherwise paid to the Contractor for services for the material type that became Contaminated
<u>Effective Recovery Rate for Recyclable Materials</u>	Failure to meet the Effective Recovery Rate for Recyclable Materials, for any given material type, as determined by the characterization methodology.	For a shortfall of <input type="text"/> % to <input type="text"/> % per calendar year: \$ <input type="text"/> , per material type. For a shortfall of <input type="text"/> % or greater: \$ <input type="text"/> per calendar year, per material type.
<u>Allowable Materials</u>	Failure to accept all materials on the Allowable materials list at the Approved Facility or Approved Alternate Facility or failure to obtain Director approval prior to making a change in the Allowable materials list.	\$ <input type="text"/> per day Allowable materials not accepted and/or \$ <input type="text"/> per incident of changing Allowable materials list.
<u>Recyclable Materials Characterization</u>	Failure to conduct the Recyclable Materials Characterization studies, in accordance with the required methodology.	\$ <input type="text"/> per study or \$ <input type="text"/> per violation of the study methodology
<u>EPR Programs</u>	Failure to perform Contractor's responsibilities under Extended Producer Responsibility Programs, as applicable.	\$ <input type="text"/> per incident or \$ <input type="text"/> per Ton if the material is weighed
Performance Area No. 3: Recordkeeping and Reporting		
<u>Timeliness of Report</u>	Failure to submit any report on time to the County (any report shall be considered late until such time as a correct and complete report is received by the County).	\$250 per day for each day a report is late

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Record Retention and Access to Records</u>	Failure to provide or make available to the County and its authorized representatives reports, records, recordings, and data that are required to be generated or collected and retained by the Contractor.	\$250 per day for each day that the requested records are not available to the County
<u>Contractor Responsiveness</u>	Failure to provide a complete and accurate written response to the County's request within the timeframe specified in the Agreement or within the timeframe specified in the County's request (which shall be less than ten (10) Business Days) if no timeframe is specified in the Agreement.	\$250 per day for each day that the requested information is late
<u>Information Accuracy</u>	Contractor's failure to provide information, or providing incomplete, misleading or otherwise inaccurate information or reporting, to the County under or in regard to this Agreement. (Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.)	\$500 per event per jurisdiction per month
Performance Area No. 4: Miscellaneous		
<u>Use of Subcontractors</u>	Failure to secure written approval from the County prior to using a Subcontractor to perform any obligations of the Agreement.	\$1,000 per incident that the Contractor fails to secure written approval from the County prior to using a Subcontractor

By placing initials at the places provided, each Party specifically confirms the accuracy of the statements made above, the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made, and that the amounts specified are a reasonable estimate of the amount of the damages that County will suffer for the specified breaches, considering all of the circumstances existing on the date of this Agreement.

Contractor

County

Initial Here: _____

Initial Here: _____

EXHIBIT E:
APPROVED SUBCONTRACTORS AND AFFILIATES

EXHIBIT F: IRAN CONTRACTING CERTIFICATION

CONTRACTOR'S IRAN CONTRACTING ACT CERTIFICATION

Pursuant to Contract Code Section 2200 et. Seq., ("Iran Contracting Act of 2010"), Contractor certifies that:

1. Contractor is not identified on the list created by the California Department of General Services ("DGS") pursuant to California Public Contract Code Section 2203(b) as a Person engaging in investment activities in Iran; and
2. Contractor is not a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another Person, for 45 days or more, if that Person will use the credit to provide goods or services in the energy sector in Iran and is identified on the DGS list made pursuant to Section 2203(b).

As used herein, "Person" shall mean a "Person" as defined in Public Contract Code Section 2202.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Contractor to this Certification, which is made under the laws of the State of California.

_____ (Company Name)

By: _____ (Signature)

Name: _____ (Printed Name)

Title: _____

EXHIBIT G: GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty") is given as of the [] day of [], 2026.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. {Insert Contractor Name}., hereinafter ("CONTRACTOR") is a corporation organized under the laws of the State of [], all of the issued and outstanding stock of which is owned indirectly [], (Guarantor).
- B. CONTRACTOR and San Joaquin County ("COUNTY") have negotiated an Agreement for Recyclable Materials Processing Services, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the COUNTY entering into the Agreement, that Guarantor guaranty CONTRACTOR'S performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the COUNTY to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- 1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the COUNTY the complete and timely performance, satisfaction and observation by CONTRACTOR of each and every term and condition of the Agreement, which CONTRACTOR is required to perform, satisfy, or observe. In the event that CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully cause performance, satisfy or observe them in the place of CONTRACTOR or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the COUNTY of any damages, costs, or expenses which might become recoverable by the COUNTY from CONTRACTOR due to its breach of the Agreement.
- 2. Guarantor's Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional, and unlimited, and with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to CONTRACTOR in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).
- 3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of CONTRACTOR; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the COUNTY'S rights or remedies against CONTRACTOR; or (4) any merger or consolidation of CONTRACTOR with any other corporation, or any sale, lease or transfer of any or all the assets of CONTRACTOR. Without

limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code §2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code §2846, 2849, and 2850 as may be amended from time to time, including without limitation, the right to require the COUNTY to (a) proceed against CONTRACTOR, (b) proceed against or exhaust any security or collateral the COUNTY may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that COUNTY may proceed against Guarantor for the obligations guaranteed herein without taking any action against CONTRACTOR or any other guarantor or pledge or and without proceeding against or exhausting any security or collateral the COUNTY may hold now or hereafter hold. The COUNTY may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against CONTRACTOR or any other guarantor or pledge or without impairing the COUNTY'S rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the COUNTY to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to CONTRACTOR'S obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the COUNTY'S approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the COUNTY as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or CONTRACTOR prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the COUNTY of any performance bond or other collateral to assure the performance of CONTRACTOR'S obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the COUNTY against CONTRACTOR arising out of the Agreement based on CONTRACTOR'S failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of the COUNTY in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the COUNTY to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the COUNTY and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.
6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the COUNTY in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder, providing the County is the prevailing party, otherwise, in all instances in which Guarantor is the prevailing party, Guarantor shall be entitled to recover from County its reasonable attorney's fees and reasonable costs and expenses incurred by the Guarantor in defending this Guaranty against the COUNTY.
7. Governing Law: This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity, and performance. Guarantor agrees that any suit, action, and other proceeding brought by the COUNTY or other party to enforce this Guaranty may be brought and concluded in the courts of the State of California, in San Joaquin County or Federal District court for northern California, which shall have exclusive jurisdiction over such suit, action, or proceeding. Guarantor appoints the following person as its agents for service of process in California: .
8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
9. Binding on Successors. This Guaranty shall inure to the benefit of the COUNTY and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.
10. County. Guarantor represents and warrants that it has the corporate power and the County to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the County to do so.
11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the COUNTY: Solid Waste Division
 San Joaquin County
 1810 E. Hazelton Avenue
 Stockton, CA, 95205

with a copy to the COUNTY COUNSEL at the same address.

To the Guarantor: General Counsel
{Company}
{address line 1}
{address line 2}

Copy to: {email}

With a copy to the CONTRACTOR:

{Name}
{Company}
{address line 1}
{address line 2}

EXHIBIT H:
CAPITAL REQUIREMENTS AND SPECIFICATIONS

EXHIBIT I: RECYCLABLE MATERIALS CHARACTERIZATION STUDY METHODOLOGY

(I-1 through I-2) describe protocols related to the Recyclable Materials Characterization Study requirements under Section 6.5 of the Agreement that will be used to quantify Contractor's compliance with its performance standards to achieve the minimum Effective Recovery Rate of Recyclable Materials, pursuant to Section 7.14.

EXHIBIT I-1

RECYCLABLE MATERIALS CHARACTERIZATION PROTOCOL

{Note to Proposer: The following is a draft sample methodology for the Recyclable Materials Characterization Study, as required by Section 6.5 of the Agreement. The final methodology will be determined based on receipt of proposals and final negotiations. Please fill in areas below where more detail is necessary to describe your Characterization Study approach.}

1. General

Contractor shall, at its sole expense, conduct studies to measure the composition of Recyclable Materials and Recyclable Materials Processing Residue (collectively “Characterization Study”) on a quarterly basis, in accordance with this exhibit and Section 6.5 of the Agreement. Each day of the Characterization Study shall be comprised of two parts: i) characterization of the composition of Recyclable Materials in the initial Characterization Study sample (“Composition Study”); and, ii) characterization of a Residue sample taken from the Residue sorted during the Composition Study portion (“Residue Study”). Contractor shall conduct four (4) Characterization Studies throughout the year to obtain final annual results (collectively “Annual Characterization Study”), in accordance with this Exhibit.

2. Schedule

The Contractor shall conduct and complete the first and second quarterly Characterization Studies no later than July 1, 2027, and on quarterly basis thereafter, in accordance with this Exhibit.

No later than _____ of each calendar year, the Contractor shall submit its proposed schedule for the performance of each quarterly Characterization Study for that calendar year. The County shall review and approve, in its sole discretion, the proposed schedule. The County, and designees, shall be permitted to observe the Characterization Study, and Contractor shall make adjustments to the schedule in order to accommodate observation of the Characterization Study by the County or its designees.

The Contractor shall perform a Characterization Study one (1) time per calendar quarter, on a schedule approved in accordance with this subsection, over a period of ____ (__) consecutive days, _____ through _____. Contractor shall characterize at least one hundred (100) Tons of the County’s Recyclable Materials per Characterization Study, for a total of not less than four hundred (400) Tons per year. The one hundred (100) Tons of Recyclable Materials per Characterization Study shall be selected in accordance with the sampling approach set forth in Exhibit N-1.4 below.

3. Study Planning and Preparation

{Note to Proposer: This section to be filled in based on Contractor’s proposal for how it plans to prepare for the Characterization Study. Examples of potential categories of information to be included are listed below and will be updated upon receipt of proposals and negotiations.}

- A. List of background information to be provided by Contractor, and details on County requests for information.
- B. Pre-Characterization Study kick-off meeting or other communications.
- C. Confirmation of methodology.
- D. Pre-Characterization Study site visit.

4. Sample Selection and Frequency

{Note to Proposer: Details will be added to this section in response to proposed sample size and selection approach. Examples of potential categories of information to be included are listed below, for example purposes only, and will be updated upon receipt of proposals and negotiations.}

- A. **Sample Selection.** For each quarterly Characterization Study, the Contractor shall collect _____ (____) number of samples of _____ (____) lbs. or Tons each, for a total sample size of no less than one hundred (100) Tons per quarterly Characterization Study, and four hundred (400) Tons per Annual Characterization Study. Contractor shall ensure the sample selected is representative of the County's Material, statistically valid, and adequately randomized, in accordance with the following:

{Note to Proposer: Insert your plan for collecting representative samples in accordance with this section. The plan should include factors such as, but not limited to, ensuring representation of: geographic distribution, number of route days covered, days of the week, sector, and cart or bin service. Describe the selection and randomization approaches you plan to use.}

Contractor shall document its specific sample selection plan for each Characterization Study and provide such plan to the County along with its annual Schedule in accordance with Section 2, and no less than _____ (____) Business Days prior to the Characterization Study. County shall review and approve the sampling plan and schedule, at its sole discretion.

- B. **Residue Study Sample.** During each Characterization Study Day, Contractor shall select a sub-sample from the pile of Residue sorted during the Composition Study, in order to perform the Residue Study portion of each Characterization Study day. Contractor shall collect a sample of at least two hundred (200) lbs. per quarterly Characterization Study Day for further sorting in the Residue Study. The two hundred (200) lb. -sample for the Residue Study shall be collected in such a manner that is representative of the samples processed during the full Composition Study. Contractor shall mix, spread, and select areas of the of the Residue pile that ensure adequate randomization and representative sampling by _____

{Note to Proposer: Insert your proposed approach to selecting the 200 lb. Residue subsample based on your operations }

- C. **Sample Storage and Facility Arrangements.** Contractor shall ensure that the County's material is segregated from any other materials stored or Processed at the Approved Recyclable Materials Facility. Contractor shall ensure each sample is labeled and that no additional material is added to that area that is not part of the County's Characterization Study. Contractor shall inform all staff and users of the Approved Facility this requirement

and monitor the area for compliance. Contractor shall obtain, transfer (if applicable), label, segregate, and store the material in accordance with its proposed sampling plan.

{Note to Proposer: Insert additional details around facility arrangements, sample transport, and sample storage that may be needed here.}

- D. **Sampling Documentation.** Contractor shall maintain records demonstrating how Contractor selected its samples, including, but not limited to list of samples, Tonnage, receipts or load weight tickets, route selection information, photographic evidence of storage conditions prior to and after delivery of samples, and a description of how the Contractor ensured that a statistically valid and representative sample was selected.

5. Equipment and Supplies

- A. **Scale Standards.** Scales used in during the Characterization Study shall be certified by *{insert certification body(ies)}*. Within () days prior to the first Characterization Study Day, Contractor shall submit documentation from its the most recent scale certification. Contractor shall ensure that scales are properly calibrated each day of the Characterization Study as follows, . Contractor shall ensure that the scale and area under the floor scale are free of debris prior to calibration or weighing of any material.

Contractor shall use the following types and number of scales for the Characterization Study: *{Insert number, type, and location of scales to be used, and any other relevant details}*

- B. **Containers.**

1. **Container List.** Contractor shall use a sufficient number and type of containers or receptacles to contain the material sorted during the Characterization Study. Within () days prior to the Characterization Study, Contractor shall provide the County with a list of containers to be labeled and weighed during the Characterization Study.
2. **Container Tare Weights.** During each day of the Characterization Study, the Contractor shall weigh each container to be used in the audit while empty to obtain a baseline tare weight. Contractor shall weigh, document, and maintain inventory of these containers as follows:

{Note to Proposer: Insert details regarding your approach for container weighing, inventory, and labeling.}

Contractor shall ensure that the County or its designees are able to observe and record the weighing and labeling of each container. Contractor shall re-weigh containers upon County request.

- C. **Sorting Equipment.** Contractor shall utilize the same type and level of sorting equipment across each Characterization Study. In the event that a piece of equipment is no longer operational, has been replaced, or has otherwise changed, Contractor shall notify the County immediately and shall propose a plan to ensure adequate level of service, for the County's approval, at its sole discretion. If the County does not approve this plan and the Contractor cannot provide a sufficient level of service in accordance with this Exhibit, the County may initiate the resolution process specified in Section 8 of this Exhibit I-1.

6. Daily Study Methodology

A. Facility Conditions and Inspection.

1. Pre-Study Walk Through.

{Note to Proposer: Please complete this section with any additional details you plan to include to ensure the facility is in proper condition prior to commencing the Characterization Study. This section may be updated upon receipt of proposals and negotiations.}

- a. On each day of the Characterization Study, the Contractor shall conduct a pre-Characterization Study walk through, including inspecting for the following:
 - i. The facility, including, but not limited to, ensuring that all lines, conveyors, bunkers, silos, drum feeders, holding containers, material holding or storage areas, floors, sorting station areas, are swept and free of debris.
 - ii. All containers are free of debris, have been tared and labeled in accordance with Section 5 above, and have been placed at their proper sorting stations.
 - iii. If any material is remaining in the balers from prior facility activity outside of the Characterization Study that cannot practically be removed prior to the sorting, such bales shall be clearly marked to distinguish it from County material and a holding area for such material shall be identified.
 - iv. Final storage areas for sorted materials are established, clear of any material, and properly labeled or otherwise designated for the County's sorted materials.
 - v. Scales have been calibrated and are free of any debris, on, around, or under the scale.
- b. Contractor shall prepare and complete a pre-Characterization Study checklist to document the review for each Characterization Study Day. Contractor shall maintain a record of the completed pre-audit walk through checklist, including indicated of completion by activity, relevant notes, time-stamped photographic evidence, date and time of inspection, list of people in attendance for the inspection, and the signature of the inspector certifying accuracy of the inspection.
- c. If any areas are found unsatisfactory for the Characterization Study during the inspection the Contractor shall promptly correct the issue prior to loading material or commencing any sorting activities. For example, if the Contractor or County representative observe remaining material on a sort line and document the issue and resolution. Contractor shall take timestamped photographic evidence of the unsatisfactory condition and a photo of the area after the issue has been remedied. Contractor shall make a detailed note on the checklist regarding the issue and remedy taken.
- d. *{Insert other details regarding facility inspection and pre-Characterization Study conditions.}*

2. **Post-Study Walk-Through.** Contractor shall develop a post-Characterization Study walkthrough checklist to document inspection of the facility after sorting has been completed and submit the proposed checklist to the County with its methodology for approval. Upon completion of each Characterization Study Day, Contractor shall utilize the post-Characterization Study walkthrough checklist to conduct a final inspection of the facility. If inspection conditions or timing differ between the Composition Study and the Residue Study, Contractor shall clearly note that on its post-Characterization Study checklist; and, shall conduct two inspections: one prior to commencing the Residue Study and one upon full completion of the Characterization Study Day. Upon observation of unsatisfactory conditions, Contractor shall record written and photographic evidence of the issue and correct the deficiency. For example, if material remained on the sort line, the Contractor shall clean up and weigh that material to be included in the Characterization Study. Contractor shall clearly document this request in writing and obtain written approval from the County, in the County's sole discretion. Contractor shall take timestamped photographs of each component of the checklist during the inspection, and any corrections made. Contractor shall maintain records of the completed checklist, notes, and timestamped photographs, to be provided to the County with its Characterization Study results.

- B. Staffing.** Contractor shall provide consistent and adequate staffing for the Characterization Study, in accordance with its proposed staffing plan set forth in Exhibit ____ *{Note to Proposer: Please provide a staffing plan, which may be inserted into this section and/or included in Exhibit A. The staffing plan should include details on number and role of staffing for each specific sorting station and material type, staff type/position, number of staffing for the Composition Study vs. Residue Study, planned start, end, break, and lunch times, and any other staffing conditions relevant to the Characterization Studies or on-going facility operations. Proposer shall confirm that this staffing plan aligns with its operations on a regular basis.}*

Contractor shall provide staffing in accordance with this plan for each Characterization Study conducted during the Term of the Agreement, including overall number of staff as well as staff per individual sorting station. Contractor shall ensure that staffing remains consistent across Characterization Study days, as well as on an hourly basis throughout each Characterization Study Day. Contractor shall provide the County with schedule information such as planned break times and lunch breaks that may impact the level of staffing at given times of the day. Contractor shall be solely responsible for making arrangements for and providing this level of staffing throughout the entire Characterization Study. In accordance with Section 3.6.E of the agreement, an event of labor unrest shall not be considered an excuse from performance of the Contractor's Characterization Study requirements.

C. Recyclable Materials Composition Study Sorting

1. **Belt Speed.** Contractor shall run the infeed belt speed at ____ Hz for the duration of the Characterization Study. Contractor shall permit the County, or its designee, to view and record the belt speed of the infeed and full system, at periodic intervals during the Characterization Study, upon County request.
2. **Material Loading.** Material shall be segregated and staged for loading into the drum feeder at the facility, as follows:

{Note to Proposer: Insert details regarding sample staging and loading}.

Contractor shall ensure the drum feeder is loaded to allow even metering of material throughout the Characterization Study, to prevent overflow and unnecessary materials falling through the system, and to prevent undue equipment clogs and material surges. Contractor shall implement the following practices to ensure an even burden depth:

{Note to Proposer: Insert details regarding your plan for metering and burden depth.}.

If the County observes that repeated surges of materials or consistent clogs, the County may request a reduced belt speed, adjustment to sorting, or equipment maintenance to ensure similar conditions across Characterization Studies, and Contractor shall not unreasonably deny such requests.

3. **Material Sorting and Weighing.** Contractor shall sort materials into the required Recovered Recyclable Materials commodity categories listed below.

a. Glass:

i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*

ii. *{Insert information on material storage and weighing}*

iii. *{Insert other details as appropriate}*

b. Aluminum

i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*

ii. *{Insert information on material storage and weighing}*

iii. *{Insert other details as appropriate}*

c. Mixed Glass

i. *{Insert sorting processing details, including equipment, manual sorting, staff, and quality control procedure}*

ii. *{Insert information on material storage and weighing}*

iii. *{Insert other details as appropriate}*

d. HDPE -Color

i. *{Insert sorting processing details, including equipment, manual sorting, staff, and quality control procedure}*

ii. *{Insert information on material storage and weighing}*

iii. *{Insert other details as appropriate.}*

e. HDPE – Natural

i. *{Insert sorting processing details, including equipment, manual sorting, staff, and quality control procedure}*

ii. *{Insert information on material storage and weighing}*

- iii. *{Insert other details as appropriate}*
- f. Mixed Paper
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*
 - ii. *{Insert information on material storage and weighing}*
 - iii. *{Insert other details as appropriate}*
- g. Mixed Rigid Plastics
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*
 - ii. *{Insert information on material storage and weighing}*
 - iii. *{Insert other details as appropriate}*
- h. OCC
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*
 - ii. *{Insert information on material storage and weighing}*
 - iii. *{Insert other details as appropriate.}*
- i. News Print (ONP)
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*
 - ii. *{Insert information on material storage and weighing}*
 - iii. *{Insert other details as appropriate.}*
- j. Office Pack
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*
 - ii. *{Insert information on material storage and weighing}*
 - iii. *{Insert other details as appropriate}*
- k. PET
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*
 - ii. *{Insert information on material storage and weighing}*
 - iii. *{Insert other details as appropriate.}*
- l. Polypropylene
 - i. *{Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}*

- ii. {Insert information on material storage and weighing}
 - iii. {Insert other details as appropriate.}
- m. Scrap Metal
 - i. {Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}
 - ii. {Insert information on material storage and weighing}
 - iii. {Insert other details as appropriate}
- n. Tin/Steel
 - i. {Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}
 - ii. {Insert information on material storage and weighing}
 - iii. {Insert other details as appropriate}
- o. Residue
 - i. {Insert sorting process details, including equipment, manual sorting, staff, and quality control procedure}
 - ii. {Insert information on material storage and weighing}
 - iii. {Insert other details as appropriate}
- p. {Other}
- q. {Other}
- r. {Other}

{Note to Proposer: Insert similar subsections for any other materials you propose to Process or otherwise sort during the Characterization Study}

4. **Material Weighing.** Contractor shall weigh materials as follows: {Insert details below regarding weighing procedures}
 - a. {Insert scalehouse details}
 - b. {Insert floor scale details}
 - c. {Insert timing for weighing of materials during Characterization Study day}
 - d. {Insert weighing process for containers, bales, vehicles, or other items}
5. **Other Requirements.**
 - a. Sweepings. {Note to Proposer: Contractor shall be required to sweep material that falls off the sorting line and shall re-run these sweepings through the system one final time prior the finishing the Composition Study sorting, rather than being counted as shrinkage. Insert details about how material that falls off the lines will be handled.}

- b. Shrinkage. {Insert details on how the Contractor will measure shrinkage, and its plans to mitigate shrinkage during the Characterization Study.}
- c. Bags. Contractor shall break open bags of materials prior to the material leaving the pre-sort line in the Composition Study, and prior to being manually sorted in the Residue Study if any bags are remaining, as follows: {Insert details on Contractor's process for breaking open bags and ensuring this material is properly captured.}
- d. Liquids. {Insert approach for any unique handling or accounting for liquids contained in bottles, if any.}
- e. Moisture. {Insert details about whether moisture will be factored in, and if so, how it will be measured.}.
- f. Hazardous materials/sharps. {Insert details about any other safety or sorting practices that should be specified}.

D. **Residue Study Sorting**

{Note to Proposer: Below is an example of a Residue Study sorting procedure. This will be finalized pending receipt of proposals and negotiations. Please insert any additional details for how you plan to conduct the Residue Study}

1. **Sorting Process.** Contractor shall place the Residue from the sub-sample selected in accordance with subsection N-1.5 onto a sorting table in batches of approximately ____ () cubic yard each with {insert details on any other equipment, such as a lattice top for material size sorting}. The Contractor will sort each batch removing items that do not fall through the lattice (if applicable) into the same categories as in the Recyclable Materials Composition Study described above.

After each batch of approximately ____ () cubic yard is initially sorted, the lattice will be removed from the sorting table and the Contractor will examine the materials that passed through the lattice. From the materials remaining on the sorting table, the Contractor shall sort materials that are approximately ____ () square inches in size into the sorting containers designated for that material type. All remaining materials that fell through the lattice will be collected and considered Residue or shrinkage for the purposes of the Characterization Study.

After sorting, the categories of materials will be separately weighed, logged, and reported in the testing results. During the Residue Study sorting process, the Contractor shall take photographs and make and record visual observations regarding the marketability or recoverability of the Recyclable Materials in the Residue sample. The recorded observations shall be provided to the County with the results of the Characterization Study.

2. **Other Requirements.** {Note to Proposer: Insert any additional details similar to those described in the Composition Study section for special materials handling or procedures during the Residue Study. Example categories are included below}
 - a. **Bags:**

- b. Liquids:
- c. Hazardous materials:

8. Results and Documentation.

A. Results and Records.

1. At the end of each Characterization Study Day, Contractor shall provide the County with the following documentation: *{Note to Proposer: Insert the list of documentation to be provided at the end of each day of the Characterization Study, such as copies of checklists, handwritten data collection sheets, scalehouse tickets, route/truck info, photos, tare lists, etc.}*
2. Within ____ (__) days of the conclusion of each quarterly Characterization Study, Contractor shall provide the County with quarterly Characterization Study Results, including, at a minimum, a completed version of the results file described Exhibits N-2 and N-3. *{Note to Proposer: Insert list of additional documentation proposer will provide after each quarterly Characterization Study.}* Upon County request, Contractor shall provide supporting documentation to verify the quarterly Characterization Study results. In the event the results are incomplete or inaccurate, Contractor shall, at its sole expense, promptly correct the results, which shall not be an excuse from meeting the required submission timeline set forth in this section.
3. No later than ____ (__) days from completion of the final quarterly Characterization Study for that calendar year, the Contractor shall calculate and submit its Annual Characterization Study results to the County for approval, in accordance with Exhibit N-2 and Section 7.9 of the Agreement.

B. Disputes and Delays

{Note to Proposer: Language will be added to this section, upon receipt of proposals and negotiations, regarding requests for additional studies by the Parties, dispute or adjustment of results, delays in scheduling, and any associated impacts to application of results.}

EXHIBIT I-2

RECYCLABLE MATERIALS COMPOSITION AND RECOVERY RATE CALCULATION

1. General.

Pursuant to Section 6.5 of the Agreement, the Contractor shall document and submit the results of its quarterly Characterization Studies conducted in accordance with Exhibit I-1, for County approval. This Exhibit I-2 establishes the format and process for documenting and calculating the results of the Composition Study, Residue Study, and associated calculation of Effective Recovery Rate (collectively "Characterization Study Report").

The Contractor shall submit the results of its Characterization Study Report via e-mail in a file format acceptable to the County, using standard report template designated by or approved by the County. The Director may, from time to time during the Term, review, and request changes to the Contractor's Characterization Study Report submission, format, or content and Contractor shall not unreasonably deny such requests.

2. Recyclable Materials Composition Results.

- A. **Detailed Weight Log.** For each quarterly Characterization Study Contractor shall provide a detailed log, labeled as a separate sheet for each quarter, of each container and material weighed during the Composition Study portion, including, at a minimum: the specific material type, categorization (Recoverable or Residue), container number or type, gross weight (lbs.), tare weight (lbs.), net weight (lbs.), and notes taken during the Characterization Study.
- B. **Composition Study Summary.** The Contractor shall provide a summary report of the total pounds of material weighed and the relative composition of materials from the Composition Study in each category. The summary sheet will also include calculation of total inbound sample, weight of material sorted by material type, total weight of material sorted; which shall be used to calculate: the difference between the inbound sample and material sorted "shrinkage," the percentage composition of each material type, and the overall percentage of materials categorized as Diversion or Residue.

3. Residue Study Results.

- A. **Detailed Weight Log.** For each quarterly Characterization Study Contractor shall provide a detailed log, labeled as a separate sheet for each quarter, of each material sorted and weighed during the Residue Study portion, including, at a minimum: the specific material type, categorization (recyclable or residue), container number or type, gross weight (lbs.), tare weight (lbs.), net weight (lbs.), and any notes taken during the Residue Study.
- B. **Residue Study Summary.** The Contractor shall provide a summary report of the total pounds of material weighed during the Residue Study in each category, and the relative composition of the materials. The summary sheet will also include calculation of total sample size, weight of material sorted by material type, total weight of material sorted; which shall be used to calculate: the difference between the inbound sample and material sorted "shrinkage," the

percentage composition of each material type, and the overall percentage of materials categorized as Diversion or Residue.

4. Effective Recovery Rate Results

After each quarterly Characterization Study, the Contractor shall calculate the Effective Recovery Rate of Recyclable Materials (variable L below). The key factors and calculations related to the Effective Recovery Rate are as follows:

- A = Total sample input for the Characterization Study (which shall be no less than 100 tons per quarterly Characterization Study)
- B = Pounds of Recovered Recyclable Materials, per material type, sorted and weighed during Composition Study.
- C = Total sample size sorted and weighed (sum of B for all material types)
- D = Shrinkage, calculated as the total sample input (A) minus the total of all material sorted (sum of B for each material type). Shrinkage is considered Residue for the purposes of the Characterization Study.
- E = Quarterly Recovered Commodity Composition by material type is calculated as (B) divided by (A), per material type
- F = Annual Recovered Commodity Composition for each material type, calculated as the sum of (B) from each quarterly Characterization Study, by material type, divided by the sum of (A) from each Characterization Study.
- G = Total Sorted Residue, which is the residue sorted and weighed during the Composition Study, from which the Residue Study sub-sample of 200 lbs. per Characterization Study will be collected.
- H = Residue Study Sample is the approximately two hundred (200) pound sample, per Characterization Study, taken from the total sorted Residue (G) for further sorting during the Residue Study.
- I = Residue Study Composition is the pounds of each material type sorted during the Residue Study divided by the Residue Study sample (H).
- J = Estimated Amount Disposed from Residue is the calculated amount of Recyclable Materials that were captured as Residue rather than sorted for Recovery during the Characterization Study, which shall be calculated as the Residue Study Composition (I) for each Recyclable Material type, divided by the Total Sorted Residue (G).
- K = Guaranteed Recovery Rate is the Contractor's minimum guaranteed material Recovery rate, as proposed by the Contractor and in accordance with Section 7.14.
- L = Effective Recovery Rate is calculated, for each given Recyclable Material type, as the material properly sorted and Recovered during the Composition Study (B), divided by the estimated total amount of that Recyclable Material that was potentially recoverable. The amount of potentially recoverable material is calculated as the amount of that material type sorted in the Composition Study (B) plus the estimated amount Disposed from Residue (J).

M = Standard of Performance. The Contractor's performance metric shall be calculated the difference between the effective recovery rate (K) and the Contractor's guaranteed Recovery Rate (J). The Contractor's performance metric must be greater than or equal to zero.

EXHIBIT J: MARKETED RECOVERED MATERIALS STANDARDS

{Note to proposer: this exhibit will be modified in response to proposals received and negotiations. Please fill in proposed contamination rates for each recovered material commodity and include any additional recovered materials commodities, as applicable.}.

1. Recovered Materials Standards

- A. **General.** The Contractor shall meet standards for the quality of Recovered Materials (herein referred to as “Recovered Materials Quality Standards”) at all times during the Term to ensure that there is effective Recovery of materials and that quality commodities are produced by the Approved Recyclable Materials Processing Facility and marketed by the Contractor.

{Note to Proposer: The County may desire to verify the Approved Facility met the Recovered Materials Quality Standards intermittently during the Term of the Agreement. The frequency and approach to verification and/or testing will be established during negotiations.}.

All measurements of percentage in the Recovered Materials Quality Standards are by weight and the samples for testing the Recovered Materials Quality Standards (unless otherwise noted) will be randomly selected from Recovered Materials prepared by the Contractor for sale. *{Note to Proposer: This section to be modified to include specific details as outlined in your operations plan in Exhibit G. Please fill in proposed contamination rates for each Recovered Materials commodity}.*

- B. **Fiber Products.** Contractor is required to produce all fiber products of sufficient quality to attract the highest domestic market prices for which similar products, produced by other local materials recovery facilities that process single-stream Recyclable Materials, are sold. The Contractor’s operation of the Approved Recyclable Materials Processing Facility shall consistently produce fiber products that achieve Residue and contamination standards that meet, or exceed, the domestic market requirements to attract the highest current domestic market price for the specified products.
- C. **Container Glass Product.** Glass product sold by the Contractor shall consistently contain at least _____ percent (____%) usable glass by analysis of the end user that receives and processes the glass product.
- D. **Aluminum Product.** Aluminum used beverage containers shall be ejected by the eddy current separator(s) and then manually sorted at a quality control station(s) of the Approved Recyclable Materials Processing Facility system to produce an aluminum product that contains less than _____ percent (____%) non-aluminum contamination. Not more than _____ percent (____%) of the aluminum cans fed into the Approved Recyclable Materials Processing Facility system shall be Disposed as Residue.
- E. **PET Product.** PET product shall be optically ejected by optic sorting equipment and then manually sorted at a quality control station(s) of the Approved Recyclable Materials Processing Facility’s Processing system to produce a PET product that contains less than _____ percent (____%) non-PET contaminants. Not more than _____ percent (____%) of qualifying PET containers fed into the Approved Recyclable Materials Processing Facility system shall be Disposed as Residue.

- F. **HDPE Product.** HDPE product shall be sorted into natural and colored components. The HDPE-Natural (HDPE-Natural) product shall contain less than _____ percent (____%) non-HDPE. The HDPE-Colored (HDPE-Colored) product shall contain less than _____ percent (____%) non-HDPE. Not more than _____ percent (____%) of qualifying HDPE containers that are fed into the Approved Recyclable Materials Processing Facility system shall be Disposed as Residue.
- G. **Polypropylene Product.** The Polypropylene product shall contain less than _____ percent (____%) non-polypropylene. Not more than _____ percent (____%) of qualifying polypropylene containers that are fed into the Approved Recyclable Materials Processing Facility system shall be Disposed as Residual.
- H. **Mixed Rigid Plastics Product.** Mixed rigid plastics shall be Recovered and marketed to meet specifications that will support marketability of the product in the then-current market conditions.

2. Marketed Recovered Materials Commodities

- A. **Recovered Recyclable Materials Commodities.** Contractor shall market Recovered Recyclable Materials in the commodity categories and grades listed in this Section. If the Contractor wants to modify the commodity categories or grades during the Term of the Agreement, the Contractor shall request approval from the County, and such approval shall be obtained before changes are implemented. Recovered Recyclable Materials commodity categories and grades shall include, at minimum:

{Note to Proposer: Please insert additional Recovered Recyclable Materials commodity categories/grades you intend to Recover, as applicable.}

1. Fiber
 - a. Old corrugated Cardboard (OCC)
 - b. Mixed paper (MP)
 - c. Office Pack
 - d. Newsprint
2. Metals
 - a. Aluminum
 - b. Tin, steel, and bi-metal
 - c. Scrap metal
3. Plastics
 - a. PET
 - b. HDPE Natural
 - c. HDPE Color
 - d. Polypropylene
 - e. Mixed rigid plastics
4. Mixed Glass Containers
5. Other: _____
6. Other: _____
7. Other: _____
8. Other: _____
9. Other: _____
10. Other: _____

**EXHIBIT K:
RATES AND FEES FOR RATE YEAR ONE**

{Note to proposer: This exhibit will be modified in response to proposals received and after negotiations}