

FRANCHISE AGREEMENT
BETWEEN
EL DORADO COUNTY
AND
SOUTH TAHOE REFUSE CO.
FOR
RECYCLING, ORGANICS, AND SOLID WASTE COLLECTION
AND
RECYCLING AND ORGANICS PROCESSING SERVICES

NOVEMBER 21, 2023

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1 **Franchise Agreement**
2 **between**
3 **El Dorado County**
4 **and**
5 **South Tahoe Refuse Co.**
6 **for Recycling, Organics, and Solid Waste Collection**
7 **and Recycling and Organics Processing Services**

8 THIS FRANCHISE AGREEMENT is made and entered into as of December 12, 2023 between the El Dorado
9 County, California, (hereinafter "County"), and South Tahoe Refuse Co. (hereinafter referred to as the
10 "Contractor") (each a "Party" and collectively the "Parties").

11 **RECITALS**

12 This Agreement is entered into with reference to the following facts and circumstances:

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

17 **WHEREAS**, the State of California has found and declared that the amount of refuse generated in
18 California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from
19 landfilling and the need to conserve natural resources, have created an urgent need for State and local
20 agencies to enact and implement an aggressive integrated waste management program. The State has,
21 through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs
22 and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016
23 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of
24 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible
25 State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste
26 reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must
27 be Disposed; and

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

31 **WHEREAS**, SB 1383 requires the County to implement Collection programs, meet Processing Facility
32 requirements, conduct Contamination monitoring, provide education, maintain records, submit reports,
33 monitor compliance, conduct enforcement, and fulfill other requirements; and, the County has chosen to
34 delegate some of its responsibilities to the Contractor, acting as the County's designee, through this
35 Agreement; and

36 **WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2), the County has determined
37 that the public health, safety, and well-being require that an exclusive right be awarded to a qualified
38 Contractor to provide for the Collection of Recyclable Materials, Organic Materials, and Solid Waste and

39 other services related to meeting the County's economic and environmental goals; and

40 **WHEREAS**, the County further declares its intent to approve and maintain reasonable Rates for the
41 Collection, Recycling, Processing, Composting, and/or Disposal of Recyclable Materials, Organic Materials,
42 and Solid Waste; and

43 **WHEREAS**, the County desires, having determined that Contractor, by demonstrated experience,
44 reputation and capacity is qualified to provide for both the Collection of Recyclable Materials, Organic
45 Materials, and Solid Waste within the corporate limits of the County and the Transportation of such
46 material to appropriate places of Processing, Recycling, Composting, and/or Disposal, that Contractor be
47 engaged to perform such services on the basis set forth in this Agreement; and,

48 **WHEREAS**, the County and Contractor have attempted to address conditions affecting their performance
49 of services under this Agreement but recognize that reasonably unanticipated conditions may occur
50 during the Term of this Agreement that will require the Parties to meet and confer to reasonably respond
51 to such changed conditions; and,

52 **WHEREAS**, under El Dorado County Code Chapter 8.42.120, the County may enter into a contract for the
53 Collection, removal and Disposal of all refuse in and from the County and the collection of Rates therefor,
54 and the County Board of Supervisors is authorized to enter into such contract with any terms it deems
55 necessary to protect the best interests of the County; and

56 **WHEREAS**, on May 1, 2012, the County and Contractor entered into a Solid Waste Services Agreement
57 with a term ending on December 31, 2023, which was amended on December 14, 2014, by adoption of
58 County Council Resolution No. 227-2014, (together, the "Prior Agreement"); and

59 **WHEREAS**, Contractor has requested a 20-year term to be able to amortize the capital expenses
60 Contractor will incur to implement the 3-Cart residential collection system required to implement SB
61 1383, and the County is willing to enter into a new franchise agreement with such a term based on
62 Contractor's prior satisfactory service and to ensure successful implementation of SB 1383, and with
63 inclusion of other contractual provisions that advance the County's economic and environmental goals.

64 **WHEREAS**, this franchise grants Contractor the privilege to use County streets to provide its services,
65 including running Collection routes with large vehicles and other heavy equipment that causes damage
66 and wear and tear on County streets in excess of that caused by day-to-day travel, the right for Contractor
67 to use County streets for placement of Bins for Collection, and use rights given to Contractor's customers
68 to encroach upon County streets to place their Bins for Collection upon the dates and times designated,
69 such that the parties agree that the franchise fee represents the reasonable value of the franchise and
70 the reasonable cost to the County of granting the franchise.

71 **NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions contained in this
72 Agreement and for other good and valuable consideration, the Parties agree as follows:

73 **ARTICLE 1.**
74 **GRANT AND ACCEPTANCE OF FRANCHISE**

75 **1.1 GRANT AND ACCEPTANCE OF FRANCHISE**

76 By the signing of this Agreement, the County grants to Contractor and Contractor accepts an exclusive
77 franchise within the corporate limits of the County. The franchise granted to Contractor shall be for the
78 scope of services described in this Agreement, subject to the limitations described in Section 1.2 and
79 except where otherwise precluded by Federal, State, and local laws and regulations.

80 **1.2 LIMITATIONS TO THE FRANCHISE**

81 The award of this Agreement shall not preclude the categories of Recyclable Materials, Food Waste, Solid
82 Waste, or other materials listed below from being delivered to and Collected and Transported by others,
83 provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from
84 obtaining any authorization from the County which is otherwise required by law:

85 A. **Donated or Sold Materials.** Any items which are Source Separated at any Premises by the
86 Generator and (a) sold or (b) that are donated to youth, civic, or charitable organizations.
87 Materials will not be deemed donated if they are Collected by a non-franchised waste hauler that
88 is not a 501(c)(3) organization.

89 B. **Food Waste.** Other Persons shall maintain the right to: (1) accept Food Waste and Food-Soiled
90 Paper donated from the service recipient, or (2) to pay the service recipient for Food Waste and
91 Food-Soiled Paper provided that there is no net payment made by the service recipient to such
92 other Person in either case.

93 C. **Edible Food.** Edible Food which is Collected from a Generator by other Person(s), such as a Food
94 Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or which is
95 Self-Hauled by the Generator to another Person(s), such as a Food Recovery Organization, for the
96 purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to
97 the other Person(s) to Collect or receive the Edible Food.

98 D. **Food Scraps.** Food Scraps that are separated by the Generator and used by the Generator or
99 distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section
100 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled
101 by another party.

102 E. **Materials That Contractor Does Not Divert.** Discarded Materials which the Contractor is not
103 required to Process and Divert under this Agreement as of the Effective Date of this Agreement
104 which subsequently, in the County's reasonable judgment, become economically feasible to
105 Divert. In such event, Contractor shall have the exclusive right to Collect and Process such
106 materials if Contractor agrees to do so without any change in Rates. If Contractor is unwilling to
107 Process and Divert such new materials at existing Rates, the County may provide for Collection,
108 Processing, and Diversion of such materials in any manner it deems appropriate. Such materials
109 may include, but not be limited to, Organic Materials which Contractor would otherwise Dispose.
110 Contractor may not enforce its exclusive franchise rights in a manner that would prevent the
111 Diversion of material that Contractor is unable or unwilling to Divert.

- 112 F. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container
 113 Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.
- 114 G. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Recyclable
 115 Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a
 116 contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential
 117 clean-out service) as an incidental part of the service being performed, rather than as a separately
 118 contracted or subcontracted hauling service.
- 119 H. **On-site or Community Composting.** Organic Materials Composted or otherwise legally managed
 120 at the site where it is generated (e.g., backyard Composting, or on-site anaerobic digestion) or at
 121 a Community Composting site.
- 122 I. **Excluded Waste.** Excluded Waste regardless of its source.
- 123 J. **Materials Generated by State and County Facilities.** Materials generated by State and County
 124 facilities located in the County, provided that the Generator has arranged services with other
 125 Persons or has arranged services with the Contractor through a separate agreement.
- 126 K. **Construction and Demolition Debris.** The Collection, removal, and Recycling of C&D Debris in
 127 accordance with Section 8.43.060 et seq. of the El Dorado County Code.

128 Contractor acknowledges and agrees that the County may permit other Persons besides the Contractor
 129 to Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
 130 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other
 131 Persons are servicing Collection Containers or are Collecting and Transporting Recyclable Materials,
 132 Organic Materials, and/or Solid Waste in a manner that is not consistent with this Agreement or the
 133 County's Code, it shall report the location, the name and phone number of the Person or company to the
 134 County's Contract Manager along with Contractor's evidence. In such case, County shall notify the
 135 Generator and Person providing service of Contractor's rights under this Agreement.

136 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now
 137 and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
 138 regulations, or judicial interpretations limit the ability of the County to lawfully contract for the scope of
 139 services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees
 140 that the scope of the Agreement will be limited to those services and materials which may be lawfully
 141 included herein and that the County shall not be responsible for any lost profits or losses claimed by
 142 Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such
 143 an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial
 144 interpretations or new laws and the Contractor may meet and confer with County and may petition for a
 145 Rate adjustment pursuant to Section 8.3.

146 **1.3 OBLIGATIONS OF PARTIES**

147 In addition to the specific performance required under the Agreement, County and Contractor shall:

- 148 1. Use their commercially reasonable efforts to enforce the exclusive nature of the franchise by the
 149 Contractor's identification and documentation of violations of this Agreement and the County's
 150 notification of Generators and collection Persons reasonably believed to be violating the franchise

151 regarding the terms of this Agreement.

152 2. Provide timely notice to one another of a perceived failure to perform any obligations under this
153 Agreement and access to information demonstrating the Party's failure to perform.

154 3. Provide timely access to the County Contract Manager and the Contractor's designated
155 representative and complete and timely responses to requests of the other Party.

156 4. Provide timely notice of matters which may affect either Party's ability to perform under the
157 Agreement.

158 **ARTICLE 2.**
159 **TERM OF AGREEMENT**

160 **2.1 TERM AND OPTION TO EXTEND**

161 The Term of this Agreement shall commence January 1, 2024 (Commencement Date) and continue in full
162 force for a period of twenty (20) years, through and including December 31, 2043, unless the Agreement
163 is extended in accordance with this Section or terminated pursuant to Section 10.2. Upon the
164 Commencement date, the Prior Agreement shall terminate.

165 At County's sole discretion, this Agreement may be extended one or more times on the same terms and
166 conditions without amendment for a period of no more than five (5) additional years for a total Term that
167 does not extend beyond March 31, 2049. If County desires to extend the Agreement, County shall provide
168 the Contractor with written notice of its decision to extend the Agreement at least one (1) year before
169 the expiration of the initial Term and at least six (6) months before the expiration of any extended term.
170 Such notice by County shall specify the duration of the extension.

171 Between the Effective Date and the Commencement Date, Contractor shall perform all activities
172 necessary to prepare itself to start providing services required by this Agreement on the Commencement
173 Date.

174 **2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

175 The obligation of County to permit this Agreement to become effective and to perform its undertakings
176 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may
177 be waived, in written form only, in whole or in part by County.

178 **A. Accuracy of Representations.** The Contractor's representations and warranties made in
179 Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the
180 Effective Date.

181 **B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the
182 insurance and performance bond required by Article 9 that is satisfactory to the County.

183 **C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation,
184 there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or
185 governmental authority, commission, board, agency or instrumentality decided, pending or

186 threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single
187 case or in the aggregate, would:

- 188 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
- 189 2. Adversely affect the validity or enforceability of this Agreement; or,
- 190 3. Have a material adverse effect on the financial condition of Contractor, or any surety or
191 entity guaranteeing Contractor's performance under this Agreement.

192 **D. Permits Furnished.** Contractor has provided County with copies of all permits necessary for
193 operation of all Approved Facilities owned or operated by Contractor or any Subcontractor for
194 use under the terms of this Agreement.

195 **E. Legal Challenge.** Contractor understands and acknowledges that the award of this Agreement and
196 related decisions may be subject to various types of legal and environmental challenges (such
197 legal and environmental challenges being referred to collectively as "Legal Challenges").
198 Accordingly, this Agreement shall not become effective until the County reasonably determines
199 that (1) any Legal Challenges that had been initiated as of the time of such determination have
200 been resolved in favor of the County's award of this Agreement to Contractor; and (2) the deadline
201 to initiate any additional Legal Challenges has expired; provided, however, that Contractor shall
202 be entitled to rescind this Agreement upon thirty (30) days' prior written notice to the County if
203 such determination is not made by November 30, 2023.

204 **ARTICLE 3.**
205 **SCOPE OF AGREEMENT**

206 **3.1 SUMMARY SCOPE OF SERVICES**

207 The Contractor or its Subcontractor(s) shall be responsible for the following:

- 208 A. Providing a 3-Cart Collection program for the separate Collection of Recyclable Materials, Organic
209 Materials, and Solid Waste generated by and placed for Collection by Customers pursuant to the
210 requirements of Article 4 and Exhibit B.
- 211 B. Transporting Collected materials to the appropriate Approved Facilities pursuant to requirements
212 of Article 4 and Exhibit B;
- 213 C. Processing Collected Recyclable Materials and Organic Materials at the appropriate Approved
214 Facilities pursuant to the requirements of Article 4 and Exhibit B;
- 215 D. Performing all other services required by this Agreement including, but not limited to, Customer
216 billing, public education, Customer service, Contamination monitoring, record keeping, and
217 reporting pursuant to Articles 4 and 6 and Exhibits C (Public Education & Outreach) and D
218 (Reporting);
- 219 E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and
220 all other items and services necessary to perform its obligations under this Agreement;

221 F. Paying all expenses related to provision of services required by this Agreement including, but not
222 limited to, taxes, regulatory fees (including County Fees and Reimbursements), and utilities;

223 G. Performing or providing all services necessary to fulfill its obligations in full accordance with this
224 Agreement at all times using best industry practice for comparable operations; and,

225 H. Complying with all Applicable Laws.

226 The enumeration and specification of particular aspects of service, labor, or equipment requirements shall
227 not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its obligations
228 under this Agreement, regardless of whether such requirements are enumerated elsewhere in the
229 Agreement, unless excused in accordance with Section 10.7.

230 **3.2 USE OF APPROVED FACILITIES**

231 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
232 agrees to use the Approved Facilities for the purposes of Processing and/or Disposing of all Recyclable
233 Materials, Organic Materials, Solid Waste, and other materials Collected in the County. Use of a facility
234 must be approved, in writing, by the County prior to use consistent with the requirements of Article 4.
235 Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law
236 regarding Flow Control limitations or any definition thereof.

237 **3.3 SUBCONTRACTING**

238 Contractor shall not engage any Subcontractors for Collection, Transportation, or Processing of Recyclable
239 Materials, Organic Materials, or Solid Waste services without the prior written consent of County Contract
240 Manager. As of the Effective Date of this Agreement, County has approved Contractor's use of
241 Subcontractors as set forth in Exhibit H. If the Contractor plans to engage any Affiliate in the provision of
242 services, Contractor shall provide County Contract Manager with thirty (30) days written notification of
243 its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of
244 providing services under this Agreement. All insurance documents must be reviewed and approved by the
245 County's Risk Manager prior to County acceptance. Contractor shall require that all Subcontractors file
246 insurance certificates with the County, name County as an additional insured, and comply with all material
247 terms of this Agreement.

248 **3.4 RESPONSIBILITY FOR MATERIALS**

249 Once Recyclable Materials, Organic Materials, and/or Solid Waste are placed in the Contractor's
250 Containers and at the Collection location, the responsibility for their proper handling shall Transfer directly
251 from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can identify the
252 Generator pursuant to Section 5.8.B. Once Recyclable Materials, Organic Materials, and/or Solid Waste
253 are deposited by Contractor at the appropriate Approved Facility, such materials shall become the
254 responsibility of the owner or operator of the Approved Facility except for Excluded Waste pursuant to
255 Section 5.8.C.

256 Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain
257 with the Contractor if it cannot identify the Generator, and Contractor shall assume all responsibility for
258 its proper Disposal.

259 **3.5 COUNTY-DIRECTED CHANGES TO SCOPE**

260 County may require a proposal from Contractor to establish the scope of any modification to existing
261 services (which may include use of Approved Facilities) to be provided under this Agreement. In such case,
262 Contractor shall present, within thirty (30) calendar days of County's request, unless an alternate schedule
263 is mutually agreed-upon, a written proposal to provide such modified or additional services. County shall
264 review the Contractor's Proposal for the change in scope of services. County and Contractor may meet
265 and confer to negotiate Contractor's proposed revisions and costs and shall amend this Agreement, as
266 appropriate, to reflect the mutually agreed-upon changes in scope. If the County and Contractor are
267 unable to agree on terms and conditions, including compensation adjustments, of such services within
268 ninety (90) calendar days from County receipt of Contractor's Proposal for such services, the County may
269 permit other Persons to provide such services. Nothing herein shall prevent the County from soliciting
270 cost and operating information from other Persons in order to inform the County's evaluation of
271 Contractor's Proposal.

272 At any time during the Term of this Agreement, the County may solicit proposals from other Persons for
273 services not contemplated under this Agreement. In the event that contracting with other Persons for
274 such services will reduce Contractor's Compensation under this Agreement, as described in Article 8, the
275 Contractor shall be offered the opportunity to match any other Person's proposed pricing and retain the
276 added scope of services. However, nothing in this Agreement shall prevent the County from contracting
277 with other Persons in the event that Contractor is unable or unwilling to provide such services at or below
278 the cost proposed by the other Person.

279 **ARTICLE 4.**
280 **SCOPE OF SERVICES**

281 Contractor shall (a) Collect Solid Waste generated at Residential Premises, Commercial Premises, County
282 facilities, and other events and locations within the County, and deliver the Solid Waste to the Approved
283 Transfer Facility or other Approved Facility, and (b) Collect Recyclable Materials, Yard Trimmings, Food
284 Scraps, and other items specified in Exhibit B that are placed for Collection by participating Residential
285 Customers, Commercial Customers, County facilities and other events and locations within the County,
286 and deliver the Recyclable Materials, Yard Trimmings, Food Scraps, and other items specified in Exhibit B
287 to the Approved Recyclable Materials Processing Facility or other Approved Facility.

288 Contractor shall perform the Recyclable Materials, Organic Materials, Solid Waste, and Bulky Items
289 services described in this Article 4, for any Customer in the County that subscribes to Contractor's
290 Collection services. Contractor's Collection services shall be offered to any Customer that places
291 Containers in a public right-of-way or that provides a waiver for Contractor to access the Private Road(s)
292 where Customer places its Containers.

293 This Article 4 describes the general requirements for the services to be provided. More specific
294 requirements for how each service shall be provided to each Customer Type are described in Exhibit B.
295 Failure to specifically require an act necessary to perform the service does not relieve Contractor of its
296 obligation to perform such act.

297 **4.1 RECYCLABLE MATERIALS**

298 **A. Collection.** Contractor shall provide Recyclable Materials Collection services as described in
299 Exhibit B.

300 **B. Processing.** Contractor shall Transport and deliver all Source Separated Recyclable Materials
301 placed in Recyclable Material Containers in the County to the Approved Recyclable Materials
302 Processing Facility. All costs associated with Transporting to and Processing of such Recyclable
303 Materials at the Approved Recyclable Materials Processing Facility and Disposing of the Residue
304 as required in Section 4.1.D below shall be paid by Contractor.

305 Contractor guarantees sufficient County at the Approved Recyclable Materials Processing Facility
306 to Process all Source Separated Recyclable Materials Collected by Contractor under this
307 Agreement throughout the Term of the Agreement.

308 Contractor shall keep all existing permits and approvals necessary for use of the Approved
309 Recyclable Materials Processing Facility in full regulatory compliance. Upon request, Contractor
310 shall provide copies of facility permits and/or notices of violations (obtained from its Processing
311 Facility Subcontractor if necessary) to County Contract Manager.

312 If Contractor is unable to use the Approved Recyclable Materials Processing Facility due to an
313 event that meets the requirements for excusing Contractor from performance of this specific
314 obligation as described in Section 10.7, Contractor shall use an alternative Processing Facility
315 provided that the Contractor provides written notice to County Contract Manager. Within forty-
316 eight (48) hours of such emergency or sudden and unforeseen closure, the Contractor shall
317 provide a written description of the reasons the use of the Approved Recyclable Materials
318 Processing Facility is not feasible, and the period of time Contractor proposes to use the
319 alternative Processing Facility. Such a change in Processing Facility shall be temporarily permitted
320 until such time as the County Contract Manager is able to consider and respond to the use of the
321 proposed alternative Processing Facility. If the use of the proposed alternative Processing Facility
322 is anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month
323 period, the use of such Processing Facility shall be subject to approval by the County Contract
324 Manager. The County Contract Manager may, in their sole discretion, approve, conditionally
325 approve, temporarily approve, or disapprove of the use of the proposed alternative Processing
326 Facility. If the County disapproves the use of the proposed alternative Processing Facility, the
327 Parties shall meet and confer to determine an acceptable Processing Facility.

328 If the use of an alternative Processing Facility is for reasons within Contractor's, or its Processing
329 Facility Subcontractor's control, Contractor's Compensation shall not be adjusted for any change
330 in Transportation and Processing costs associated with use of the alternative Processing Facility.
331 However, if the use of an alternative Processing Facility is due to reasons beyond Contractor's or
332 its Subcontractor's control, then County shall adjust, either up or down, Contractor's
333 Compensation for changes in Transportation and Processing costs associated with the use of the
334 alternative Processing Facility. The performance of Recyclable Materials commodity markets shall
335 not be considered an acceptable basis for use an alternative Processing Facility nor shall it serve
336 as the basis for any adjustment in Contractor's Compensation under this Agreement, other than
337 as specifically contemplated in Exhibit E to this Agreement. If the change in the Processing Facility
338 results in increased costs, County may identify and direct Contractor to an alternative Processing

339 Facility which results in less cost than the Contractor-identified alternative.

340 Except for the emergency conditions described in this section, Contractor shall not change its
341 selection of the Approved Recyclable Materials Processing Facility without County's written
342 approval, which may be withheld in the County's sole discretion. If Contractor elects to use a
343 Recyclable Materials Processing Facility that is different than the initial Approved Recyclable
344 Materials Processing Facility, it shall request written approval from the County Contract Manager
345 sixty (60) calendar days prior to use of the site and obtain County's written approval no later than
346 ten (10) calendar days prior to use of the site. Failure to meet the requirements of this Section
347 shall result in Liquidated Damage as identified in Exhibit F.

348 Contractor shall observe and comply with all regulations in effect at the Approved Recyclable
349 Materials Processing Facility and cooperate with and take direction from the operator thereof
350 with respect to delivery of Recyclable Materials. Contractor shall actively work with the Approved
351 Recyclable Materials Processing Facility operator throughout the Term of this Agreement to
352 ensure that Contamination of the Recyclable Materials Collected under this Agreement and
353 delivered to the Processing Facility remains below the limits established by Applicable Law
354 including, without limitation, SB 1383.

355 C. **Marketing.** The Contractor shall be responsible for marketing Recyclable Materials Collected in
356 County that are delivered for Processing at Contractor's Approved Recyclable Materials
357 Processing Facility. Contractor's marketing strategy shall promote the highest and best use of
358 materials presented in the waste management hierarchy established by AB 939. Where practical,
359 the marketing strategy should include use of local, regional, and domestic markets for Recyclable
360 Materials.

361 D. **Residue Disposal.** Residue from the Processing of Source Separated Recyclable Materials
362 Collected under this Agreement at Contractor's Approved Recyclable Materials Processing
363 Facility, which cannot be marketed, shall be Disposed of by Contractor, or the Processing Facility
364 Subcontractor, at one or more Disposal Facilities selected by Contractor or such Processing
365 Facility. Residue delivered for Disposal shall not include any Excluded Waste.

366 4.2 ORGANIC MATERIALS

367 A. **Collection.** Contractor shall provide Organic Materials Collection services as described in Exhibit
368 B. County is currently subject to a high-elevation waiver from CalRecycle from the residential
369 food-waste collection requirements of SB 1383. Contractor agrees to work with the County
370 annually to evaluate implementation of residential food-waste programs, which may include cost
371 analysis and pilot programs.

372 B. **Transfer.** Contractor plans to Transport Organic Materials to the Approved Transfer Facility where
373 the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles
374 and Transported to the Approved Organic Materials Processing Facility. Contractor shall keep all
375 existing permits and approvals necessary for use of the Approved Transfer Facility in full
376 regulatory compliance.

377 C. **Processing.**

378 1. General. Contractor shall Transport and deliver all Source Separated Organic Materials

379 placed in Organic Material Containers in the County to the Approved Organic Materials
380 Processing Facility. All tipping fees and other costs associated with Transporting such
381 Organic Materials to the Approved Organic Materials Processing Facility and Disposing of
382 the Residue as required in Section 4.2.E below shall be paid by Contractor.

383 i. **Capacity Guarantee.** Contractor will use commercially reasonable efforts
384 to secure guarantees of sufficient capacity at the Approved Organic
385 Materials Processing Facility to Process all Source Separated Organic
386 Materials Collected by Contractor under this Agreement throughout the
387 Term of the Agreement.

388 ii. **Compliance with Regulatory Requirements and Applicable Law.**
389 Contractor shall keep all existing permits and approvals necessary for use
390 of the Approved Organic Materials Processing Facility in full regulatory
391 compliance. Upon request, Contractor shall provide copies of facility
392 permits and/or notices of violations (obtained from its Processing Facility
393 Subcontractor if necessary) to County Contract Manager.

394 iii. **Notification of Emergency Conditions.** Each Approved Facility shall notify
395 the County of any unforeseen operational restrictions that have been
396 imposed upon the Facility by a regulatory agency or any unforeseen
397 equipment or operational failure that will temporarily prevent the Facility
398 from Processing the Discarded Materials Collected under this Agreement.

399 iv. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If
400 Contractor is unable to use the Approved Organic Materials Processing
401 Facility due to an event that meets the requirements for excusing
402 Contractor from performance of this specific obligation as described in
403 Section 10.7, Contractor shall use an alternative Processing Facility
404 provided that the Contractor provides written notice to County Contract
405 Manager. Within forty-eight (48) hours of emergency or sudden and
406 unforeseen closure, the Contractor shall provide a written description of
407 the reasons the use of the Approved Organic Materials Processing Facility
408 is not feasible, and the period of time Contractor proposes to use the
409 alternative Processing Facility. Such a change in Processing Facility shall
410 be temporarily permitted until such time as the County Contract Manager
411 is able to consider and respond to the use of the proposed alternative
412 Processing Facility. If the use of the proposed alternative Processing
413 Facility is anticipated to or actually does exceed thirty (30) days in a
414 consecutive twelve (12) month period, the use of such Processing Facility
415 shall be subject to approval by the County Contract Manager. The County
416 Contract Manager may, in their sole discretion, approve, conditionally
417 approve, temporarily approve, or disapprove of the use of the proposed
418 alternative Processing Facility. If the County disapproves the use of the
419 proposed alternative Processing Facility, the Parties shall meet and
420 confer to determine an acceptable Processing Facility.

421 If the use of an alternative Processing Facility is for reasons within

422 Contractor's, or its Processing Facility Subcontractor's control,
423 Contractor's Compensation shall not be adjusted for any change in
424 Transportation and Processing costs associated with use of the
425 alternative Processing Facility. However, if the use of an alternative
426 Processing Facility is due to reasons beyond Contractor's or its
427 Subcontractor's control, then County shall adjust, either up or down,
428 Contractor's Compensation for changes in Transportation and Processing
429 costs associated with the use of the alternative Processing Facility. In the
430 event that the change in the Processing Facility results in increased costs,
431 County may identify and direct Contractor to an alternative Processing
432 Facility which results in less cost than the Contractor-identified
433 alternative.

434 Except for the emergency conditions described in this section, Contractor shall not change
435 its selection of the Approved Organic Materials Processing Facility without County's
436 written approval, which may be withheld in the County's sole discretion. If Contractor
437 elects to use an Organic Materials Processing Facility that is different than the initial
438 Approved Organic Materials Processing Facility, it shall request written approval from the
439 County Contract Manager sixty (60) calendar days prior to use of the site and obtain
440 County's written approval no later than ten (10) calendar days prior to use of the site.
441 Failure to meet the requirements of this Section shall result in Liquidated Damage as
442 identified in Exhibit F.

443 Contractor shall observe and comply with all regulations in effect at the Approved Organic
444 Materials Processing Facility and cooperate with and take direction from the operator
445 thereof with respect to delivery of Organic Materials. Contractor shall actively work with
446 the Approved Organic Materials Processing Facility operator throughout the Term of this
447 Agreement to ensure that Contamination of the Organic Materials Collected under this
448 Agreement and delivered to the Processing Facility remains below the limits established
449 by Applicable Law including, without limitation, SB 1383.

450 **D. Marketing.** The Contractor shall be responsible for marketing Organic Materials Collected in the
451 County that are delivered for Processing at the Approved Organic Materials Processing Facility.
452 Contractor's marketing strategy shall promote the highest and best use of materials presented in
453 the waste management hierarchy established by AB 939. Where practical, the marketing strategy
454 should include use of local, regional, and domestic markets for Organic Materials.

455 **E. Residue Disposal.** Residue from the Processing of Organic Materials Collected under this
456 Agreement at the Approved Organic Materials Processing Facility, which cannot be marketed,
457 shall be Disposed of by Contractor, or the Processing Facility Subcontractor, at one or more
458 Disposal Facilities selected by Contractor or such Processing Facility. Residue delivered for
459 Disposal shall not include any Excluded Waste.

460 **F. Biomass Project.** Contractor is in the planning and permitting phase to construct and install a
461 biomass energy generation facility at the Approved Recyclable Materials Processing Facility. If and
462 when this biomass facility becomes operational, appropriate Organic Materials Collected under
463 this Agreement will have first priority to be used in order to satisfy part or all of the County's
464 procurement obligations under SB 1383.

465 **4.3 SOLID WASTE**

466 Contractor shall offer and provide Solid Waste Collection services as described in Exhibit B.

467 Contractor acknowledges that County is committed to Diverting materials from Disposal through the
468 implementation of source reduction, reuse, Recycling, Composting, and other programs, and that County
469 may implement new programs, with or without the involvement of the Contractor, that may impact the
470 overall quantity or composition of Solid Waste to be Collected by Contractor. Contractor shall not be
471 entitled to any compensation or other relief resulting from a decline in Solid Waste volumes or Tonnage
472 or from a change in the composition of Solid Waste.

473 Contractor plans to Transport Solid Waste to the Approved Transfer Facility where the materials will be
474 unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the
475 Approved Disposal Facility. Contractor shall keep all existing permits and approvals necessary for use of
476 the Approved Transfer Facility in full regulatory compliance. Upon request, Contractor shall provide copies
477 of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if
478 necessary) to County Contract Manager. If the Contractor is unable to use the Approved Transfer Facility,
479 then the Contractor shall be responsible for making other Transportation arrangements. In such event,
480 Contractor shall not be compensated for any additional costs. However, if the use of an alternative
481 Transfer Facility is due to reasons beyond the Contractor's or its Subcontractor's control, then County
482 shall adjust, either up or down, Contractor's Compensation for changes in Transportation and Processing
483 costs associated with the use of the alternative Transfer Facility. In the event that the change in the
484 Transfer Facility results in increased costs, County may identify and direct Contractor to an alternative
485 Transfer Facility which results in less cost than the Contractor-identified alternative. If the Contractor
486 plans to change its Transfer method, Contractor shall obtain written approval from the County prior to
487 making the change.

488 Contractor shall Transport all Solid Waste Collected in County to the Approved Disposal Facility.
489 Contractor shall pay all costs associated with Transportation and Disposal of Solid Waste including
490 payment of any gate fees charged at the Approved Disposal Facility. Contractor shall observe and comply
491 with all regulations and posted rules in effect at the Approved Disposal Facility and cooperate with and
492 take direction from the operator thereof with respect to delivery of Solid Waste.

493 Upon implementing a Zero Emission Vehicle fleet or once a disposal facility closer to the County than the
494 Approved Disposal Facility implements methane capture, Contractor shall cooperate with the County to
495 work towards Transporting Solid Waste Collected in County to a disposal facility which captures methane.

496 **4.4 BULKY ITEMS AND REUSABLE MATERIALS**

497 Contractor shall offer Bulky Item and Reusable Materials Collection services as described in Exhibit B.
498 Contractor shall Transport all Bulky Items or Reusable Materials Collected under this Agreement to the
499 Approved Reusable or Recyclable Materials Processing Facility. Contractor shall observe and comply with
500 all regulations in effect at the Approved Reusable or Recyclable Materials Processing Facility and
501 cooperate with and take direction from the operator thereof with respect to delivery of Bulky Items
502 and/or Reusable Materials.

503 **4.5 SPECIAL EVENTS**

504 Contractor shall offer annual Special Event services as described in Exhibit B.

505 **4.6 PUBLIC EDUCATION AND OUTREACH**

506 The public education and outreach activities included in the scope of services provided by Contractor
507 under this Agreement are described in Exhibit C. Contractor shall produce and distribute public education
508 and outreach materials upon County request.

509 **A. Program Objectives.** Contractor shall be responsible for designing and conducting a public
510 education and outreach program for County review and approval, and Contractor shall be
511 responsible for the production and distribution of all materials under this program in accordance
512 with this Agreement. The public education and outreach strategy shall focus on improving
513 Generator understanding of the benefits of and opportunities for source reduction, reuse, and
514 landfill Disposal reduction and supporting compliance with Applicable Laws and regulations,
515 including, but not limited to AB 341, AB 1826, and SB 1383. Examples of goals of the public
516 education and outreach program include, but are not limited to: (i) informing Generators about
517 the services that are provided under this Agreement with specific focus on describing the methods
518 and benefits of source reduction, reuse, Recycling, and Composting; (ii) instructing Generators on
519 the proper method for placing materials in Containers for Collection and setting Containers out
520 for Collection, with specific focus on minimizing Contamination of Recyclable Materials and
521 Organic Materials; (iii) clearly defining Excluded Waste and educating Generators about the
522 hazards of such materials and their opportunities for proper handling; (iv) discouraging
523 Generators from buying products if the product and its packaging are not readily reusable,
524 Recyclable, or Compostable; (v) informing Generators subject to Food Recovery requirements
525 under SB 1383 of their obligation to recover Edible Food and actions they can take to prevent the
526 creation of Food Waste; (vi) encouraging the use of Compost and recovered Organic Waste
527 products; and, (vii) encouraging Generators to purchase products/packaging made with Recycled
528 content materials. The cumulative intended effect of these efforts is to reduce generation of Solid
529 Waste and, ultimately, Disposal of Solid Waste by each Generator in the County. Contractor
530 agrees to support and not undermine or interfere with such efforts, and the County agrees to
531 amplify all such outreach efforts through all means necessary, appropriate, and available to the
532 County. The parties agree to cooperate on applications for available grant funding for outreach
533 programs.

534 **B. Contractor Public Education Requirements.** Contractor agrees to print, produce, and distribute
535 education materials and conduct outreach, as required by the County, based on the County's
536 adopted program, the extent of these requirements may be similar to the example public
537 education and outreach requirements detailed in Exhibit C. Contractor shall provide these
538 materials in English and Spanish.

539 Contractor will evaluate changing to a billing system that allows education materials to be
540 included with bills mailed to customers.

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

545 Contractor shall obtain approval from the County Contract Manager on all Contractor-provided
546 advertising, promotional, or service-related materials used within the County before publication,

547 distribution, and/or release. The County Contract Manager, in their sole discretion, shall have the
548 right to deny the use of any materials or content or may request that Contractor include County
549 identification and contact information on materials and Contractor's approval of such requests
550 shall not be unreasonably withheld.

551 **4.7 BILLING**

552 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in
553 accordance with Article 8. Individual contracts between Contractor and a Customer for services provided
554 under this Agreement shall be prohibited.

555 Contractor shall bill all Customers for scheduled and regularly recurring services on a quarterly, bi-
556 monthly, or monthly basis. Contractor shall bill Customers for any on-call and/or non-recurring services
557 no more frequently than bi-monthly and may only bill for services provided during the previous two (2)
558 months.

559 Contractor shall develop, maintain, and regularly update a Customer Account Information Database,
560 which shall include but is not limited to:

- 561 i. Customer name;
- 562 ii. Phone number;
- 563 iii. Service address;
- 564 iv. Email address; and,
- 565 v. Customer Service Levels, including:
 - 566 a. Customer Service Levels exceptions, and,
 - 567 b. Customer service waivers.

568 Contractor shall make such database available, upon no more than five (5) Working Days request from
569 the County Contract Manager, in accordance with this Section and Section 6.1. Failure to maintain
570 database in accordance with this Section shall result in Liquidated Damages as identified in Exhibit F.

571 Contractor shall use commercially reasonable efforts to bill Customers electronically using paperless
572 invoices, however Contractor shall bill Customers who decline or are otherwise unable to provide email
573 contact information by standard mail, using standard (paper) invoices. Contractor shall permit Customers
574 the ability to pay their bills through an electronic check or credit card and include the ability for Customer
575 billings to be automatically charged on a recurring basis. Contractor shall prepare, mail, and collect bills
576 from Customers who decline to use such internet-based billing system. Contractor shall make
577 arrangements to allow such Customers to pay bills by cash, check, electronic check, money order, and
578 credit card.

579 Up to once per billing cycle, County may direct Contractor to attach inserts relating integrated waste
580 management activities to Customer invoices. Contractor shall provide electronic bill inserts to Customers
581 who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill

582 inserts/attachments must be readily available for the Customer to view upon receipt of the invoice
583 (attachments shall not be provided as links). Upon County request for such attachments, Contractor shall
584 comply with such request during its next billing cycle for the targeted Customer group. If a postage
585 increase is incurred because of the inserts, the County will be responsible for the actual cost of the
586 increase.

587 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of
588 this Agreement, for inspection and verification by the County Contract Manager at any reasonable time
589 but in no case more than thirty (30) calendar days after receiving a request to do so.

590 Contractor shall be responsible for collection of payment from Customers with past due accounts (“bad
591 debt”) in accordance with this Section 4.7. Contractor shall make reasonable efforts to obtain payment
592 from delinquent accounts through issuance of late payment notices and telephone requests for payments.
593 Mandatory collection fees which remain unpaid for a period of 180 days or more may be collected through
594 the lien process set forth in Section 8.42.810 of the El Dorado County Code.

595 In the event that any account becomes more than fifteen (15) calendar days past due, Contractor shall
596 notify such Customer of the delinquency via written correspondence, instructing the Customer that
597 unpaid bills which become more than thirty (30) calendar days delinquent may be assessed a 0.833% late
598 fee per month. Contractor shall provide a second written notice of delinquency to any account which
599 becomes more than sixty (60) calendar days past due. Should any account become more than sixty (60)
600 calendar days past due, Contractor may discontinue providing service to the Customer. No less than seven
601 (7) calendar days prior to discontinuing service to a Customer, Contractor shall notify the County Contract
602 Manager of the address, Service Level, service frequency, and delinquent billing amount. Contractor may
603 withhold service from a delinquent account until past delinquencies are paid in full.

604 If Contractor fails to invoice a Customer, or otherwise under-charges a Customer for services provided for
605 more than six (6) months, Contractor may not subsequently attempt to collect the under-charged amount
606 for more than six months of service. If Contractor over-charges a Customer for a period of more than six
607 (6) months, Contractor shall reimburse or credit the Customer for at least six months of the over-charged
608 service, but is not required by this Agreement to reimburse or credit the Customer for more than six (6)
609 months of overcharges.

610 **4.8 CUSTOMER SERVICE PROGRAM**

611 **4.8.1 Program Requirements**

612 **A. Business Office and Customer Service Center.** Contractor shall establish and maintain a business
613 office at the Approved Recyclable Materials Processing Facility or another location within the
614 County for purposes of carrying out its obligations under this Agreement. Contractor shall also
615 provide a full customer service center within County limits.

616 **B. Customer Service Center Hours.** Contractor’s business office and customer service center,
617 including telephone access, shall be open to the public to include at least the hours from 8:00 a.m.
618 to 5:00 p.m. Monday through Friday. The business office and customer service center may be
619 closed on Saturdays, Sundays, and Holidays.

620 A representative of the Contractor who is knowledgeable of the service area, services, and Rates
621 shall be available from 8 a.m. to 5 p.m. Monday through Friday at both the business office and

622 customer service center to communicate with the County and the public by in person and by
623 telephone and to assist Customers making payment in person. Contractor shall maintain a local
624 telephone number which it shall publicize, and Contractor shall maintain a voicemail system
625 available twenty-four (24) hour per day.

626 **C. Telephone.** County shall secure, and Contractor shall use, pay all costs incurred by, and maintain
627 during the Term of this Agreement, a local phone number which shall serve as the primary point
628 of contact between Contractor and the public during normal business hours. Upon expiration or
629 early termination of this Agreement, the County shall retain the control of the local phone
630 number. The Contractor shall provide the County with a separate emergency telephone number
631 for use by the County Contract Manager outside normal business hours. The Contractor shall have
632 such representative available at the emergency telephone number during all hours other than
633 normal office hours.

634 Contractor shall maintain a telephone system in operation from 8 a.m. to 5 p.m. and shall have
635 sufficient equipment in place and staff a representative, or an answering service to available to
636 handle the volume of calls experienced on the busiest days and such telephone equipment shall
637 be capable of recording the responsiveness to calls. Contractor's telephone system shall offer
638 Customers who have been placed on-hold to opt to leave a voice message or email, rather than
639 remain on-hold. If Contractor's telephone Customer service performance falls below the
640 performance standards established in Exhibit F, the County shall have the right to require
641 Contractor to increase its staffing levels and/or call handling capacity without requirement for any
642 additional compensation to the Contractor. Recording of Contractor's responsiveness to calls shall
643 include, at a minimum, all items included in the "Service Quality and Reliability" and "Customer
644 Service" performance standards listed in Exhibit F. An answering machine or voicemail service
645 shall record Customer calls and voice messages between 5:00 p.m. and 8:00 a.m. Contractor shall
646 provide a live, not automated, call back on the same day to all Customers who leave voice
647 messages by 3:00 p.m. on a Working Day and shall provide a live call back by noon of the following
648 Working Day for any voice messages left after 5:00 p.m.

649 **D. Web Site and Email Access.** Contractor shall develop and maintain a web site that is accessible by
650 the public and dedicated, in part, to the operations under this Agreement in the County.
651 Contractor's web site shall include all Rates allowed to be charged under the Agreement, all public
652 education and outreach materials produced and distributed under this Agreement, and provide
653 the public the ability to e-mail Contractor questions, service requests, or Complaints. Contractor
654 shall respond the same day to all Customers who leave e-mail messages by 3:00 p.m. on a Working
655 Day and shall respond by noon of the following Working Day for any e-mail messages left after
656 5:00 p.m. Contractor may respond to Customer e-mails either via e-mail or phone.

657 **4.8.2 Service Requests, Compliments, Complaints**

658 Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable
659 resolution of, all Customer service requests and Complaints. Contractor shall record, in its computer
660 system or a separate log, approved as to form by County Contract Manager, all Complaints, noting the
661 name and address of Complainant, date and time of Complaint, nature of Complaint, and nature and date
662 of resolution. The Contractor shall retain this Complaint log for the Term. Contractor shall record and
663 respond to all Complaints as communicated by the Customer, utilizing a "Customer is always right"
664 approach, shall not challenge or dispute the Customer's assertions or Complaints, and shall always
665 prioritize Customer satisfaction. Upon request by the County Contract Manager, Contractor shall compile

666 and submit a summary statistical table of the Complaint log.

667 Contractor shall respond to all Complaints received in accordance with the requirements of Section
668 4.8.1.B, and 4.8.1.C. Complaints related to missed Collections shall be addressed in accordance with
669 Section 4.8.3. Complaints related to repair or replacement of Carts or Bins, shall be addressed in
670 accordance with Section 5.6.

671 **4.8.3 SB 1383 Non-Compliance Complaints**

672 For Complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements,
673 Contractor shall document the information listed in Exhibit D. Contractor shall provide this information in
674 a brief Complaint report to the County for each SB 1383-noncompliance Complaint within seven (7) days
675 of receipt of such Complaint, and a monthly summary report of SB 1383-non-compliance Complaints in
676 accordance with Exhibit D.

677 Upon County request, Contractor shall conduct follow-up inspections and/or outreach to the violating
678 entity, and shall document the information in the reports provided pursuant to Exhibit D.

679 **4.9 SERVICE EXEMPTIONS**

680 **4.9.1 General Exemptions**

681 Upon Customer request, and with written approval from the County Contract Manager, Contractor shall
682 cease providing, and collecting payment for, Collection services to a Residential or Commercial Premises
683 that is not connected to water and electric power and where water or electric power cannot be provided
684 to such Premises without action by a utility; provided that such exemption shall terminate upon
685 connection or reconnection of water and electric power. Upon request of a Commercial Customer, and
686 with written approval from the County Contract Manager, Contractor shall cease providing, and collecting
687 payment for, Collection services to a Premises for which all operations is suspended due to the seasonal
688 nature of its particular business.

689 **4.9.2 Commercial and Multi-Family Customer Waivers**

690 **A. General.** The County may grant waivers described in this Section to Commercial Customers or Multi-
691 Family Residential Customers that impact the scope of Contractor's provision of service for those
692 Customers; provided, the Generator shall continue to subscribe with Contractor for franchised
693 Collection services to the extent such services are not waived by the County. Waivers issued shall
694 be subject to compliance with SB 1383 requirements, pursuant to 14 CCR Section 18984.11, or other
695 requirements specified by the County.

696 **B. De Minimis Waivers.** The County may waive a Commercial Customer or Multi-Family Residential
697 Customer's obligation to comply with some or all of the Recyclable Materials and Organic Materials
698 requirements set forth in this Agreement, SB 1383, and of the County Code if the Customer provides
699 documentation or the County has evidence demonstrating one of the following de minimis
700 conditions:

701 1. The Commercial Customer or Multi-Family Residential Customer's total Discarded
702 Materials Collection service is two (2) cubic yards or more per week, and Organic Waste
703 subject to Collection in an Organic Materials Container comprises less than twenty (20)
704 gallons per week, per applicable Container, of the Customer's total waste; or,

705 2. The Commercial Customer or Multi-Family Residential Customer's total Discarded
706 Materials Collection service is less than two (2) cubic yards per week, and Organic Waste
707 subject to Collection in an Organic Materials Container comprises less than ten (10)
708 gallons per week, per applicable Container, of the Customer's total waste.

709 C. **Space Waivers.** The County may waive a Commercial Customer or Multi-Family Residential
710 Customer's obligation to comply with some or all of the Solid Waste, Recycling and Organic Waste
711 Collection service requirements if the County has evidence from its own staff, Contractor, a licensed
712 architect, or a licensed engineer demonstrating that the Customer's Premises lacks adequate space
713 for the Collection Containers required for compliance with such requirements.

714 A Commercial Customer or Multi-Family Residential Customer may request a physical space waiver
715 through the following process:

- 716 1. Submit an application form specifying the type(s) of Collection services for which they are
717 requesting a compliance waiver.
718 2. Provide documentation that the Premises lacks adequate space for one or more Containers,
719 including documentation from Contractor, a licensed architect, or a licensed engineer.
720 3. Provide written verification to the County that it is still eligible for a physical space waiver
721 every five (5) years if the County has approved a previous application for a physical space
722 waiver.
723

724 D. **Contractor Review of Waiver Requests.** Generators may submit requests for de minimis waivers
725 and physical space waivers to the County. The County shall notify Contractor of the request, and
726 Contractor shall within thirty (30) days of receipt of the County's request, inspect the Generator's
727 Premises to verify the accuracy of the application. Contractor shall provide documentation of the
728 inspection, including the date of the inspection, Customer name and address, a description of the
729 Premises, evaluation of each criterion for the waiver, and photographic evidence. The Contractor
730 shall send this information and documentation to the County in a timely manner, not to exceed
731 three (3) days after the date of inspection. The County ultimately retains the right to approve or
732 deny any application, regardless of the information provided by the Contractor. Contractor shall
733 report information regarding waivers reviewed within the month, if any, in accordance with this
734 Section and Exhibit D.

735 E. **Service Level Updates.** When the County grants a waiver to a Customer, or the Customer's waiver
736 status changes after a re-verification determination, the County shall notify the Contractor within
737 seven (7) days of the waiver approval or status change with information on the Customer and any
738 changes to Service Level or Collection service requirements for the Customer. Contractor shall have
739 seven (7) days to modify the Customer's Service Level, Customer account data, and billing
740 statement, as needed.

741 F. **Waiver Re-verification.** The County shall be responsible for re-verification of waivers. Upon request
742 of the County, the Contractor shall support the County in this re-verification Process by providing
743 requested Customer information as per Customer database requirements in Section 4.7 In the event
744 that a waiver status changes, Contractor shall update the Customer's information and Service Level
745 in accordance with subsection 4.9.2.D above.

746 **4.9.3 Contractor Service Exemptions**

747 **A. Disaster Waivers.** In the event of a disaster, the County may grant Contractor a waiver of some or
748 all Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7,
749 Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such
750 waiver has been approved by CalRecycle. Any resulting changes in Collection requirements shall be
751 addressed as a change in scope in accordance with Section 3.5.

752 **B. Removal of Material from Homeless Encampments and Illegal Disposal Sites.** The Contractor may,
753 but is not required to, separate or recover Organic Waste that County removes from homeless
754 encampments and illegal disposal sites as part of an abatement activity to protect public health and
755 safety. Contractor shall report the amount of Discarded Materials removed for Disposal from
756 homeless encampments and illegal disposal sites, in accordance with Exhibit D.

757 **C. Quarantined Waste.** If approved by the County, the Contractor may Dispose of, rather than Process,
758 specific types of Organic Materials and/or Recyclable Materials that are subject to quarantine and
759 meet the requirements described in 14 CCR Section 18984.13(d) for a period of time specified by
760 the County or until the County provides notice that the quarantine has been removed and directs
761 Contractor to Transport the materials to the Approved Facilities for such material.

762 In accordance with Exhibit D, the Contractor shall maintain records and submit reports regarding
763 compliance agreements for quarantined Organic Materials and Recyclable Materials that are
764 Disposed of pursuant to this subsection.

765 **D. Extreme Snow Events.** In the case of extreme snow events where certain roads remain unplowed
766 and inaccessible for a period of time, the County may grant Contractor a temporary waiver of some
767 or all Discarded Materials Collection requirements under this Agreement, for the duration of time
768 that those certain roads remain inaccessible.

769 **4.10 CONTAMINATION MONITORING**

770 **4.10.1 Annual Route Reviews**

771 **A. Methodology.** At least once annually, beginning in 2024, Contractor shall conduct a route review
772 for each of its routes in compliance with the requirements of 14 CCR section 18984.5(b). The
773 number of Containers to review per route shall be calculated on the basis of the number of
774 Customers on a specific route for one week. For each route review, Contractor shall inspect at
775 least the minimum number of Containers set forth in 1. through 4. below, but may inspect more
776 if Contractor deems necessary. Each inspection shall involve lifting the Container lid and observing
777 the contents but shall not require Contractor to disturb the contents or open any bags. If
778 Contractor observes Contamination, Contractor shall follow the provisions outlined in Exhibit B.
779 Contractor may select the Containers to be inspected at random, or (if mutually agreed with the
780 County), by any other method not prohibited under the SB 1383 regulations. Contractor will also
781 collect photographic documentation during route reviews. For the avoidance of doubt, Contractor
782 shall not be required to annually inspect every Container on a route. Contractor shall include the
783 results of each route review in its next regularly scheduled report to the County as required by
784 Exhibit D.

785 1. For weekly routes with less than one thousand five hundred (1,500) Generators, the
786 Contractor shall sample a minimum of twenty-five (25) Containers;

- 787 2. For weekly routes with one thousand five hundred to three thousand nine hundred
788 ninety-nine (1,500-3,999) Generators, the Contractor shall sample a minimum of thirty
789 (30) Containers;
- 790 3. For weekly routes with four thousand to six thousand nine hundred ninety-nine (4,000-
791 6,999) Generators, the Contractor shall sample a minimum of thirty-five (35)
792 Containers; and,
- 793 4. For weekly routes with seven thousand (7,000) or more Generators, the Contractor
794 shall sample a minimum of forty (40) Containers.

795 **B. Contamination Notification.** Upon identification of Prohibited Container Contaminants in
796 a Customer's Container, Contractor shall provide the Customer with a notice of Contamination in
797 the form of either a Courtesy Pick-Up Notice or a Non-Collection Notice as determined by the
798 route auditor.

799 **C. Courtesy Pick-Up Notice.** Upon identification of Prohibited Container Contaminants in a
800 Customer's Container, Contractor shall provide the Customer a Courtesy Pick-Up Notice at the
801 Customer's door or gate; or, subject to County's approval, may deliver the notice by mail, e-mail,
802 or text message. Contractor shall also attach or adhere Courtesy Pick-Up Notice to Customers'
803 contaminated Containers.

804 The courtesy pick-up notification shall, at a minimum:

- 805 1. Inform the Customer of the observed presence of Prohibited Container Contaminants;
- 806 2. Include the date and time the Prohibited Container Contaminants were observed;
- 807 3. Include information on the Customer's requirement to properly separate materials
808 into the appropriate Containers, and the accepted and prohibited materials for
809 Collection in each Container;
- 810 4. Inform the Customer of the courtesy pick-up of the contaminated materials on this
811 occasion with information that the Contractor may assess Contamination Processing
812 fees and/or issue a Non-Collection Notice in the future; and,
- 813 5. Include photographic evidence, when providing notice by mail, e-mail, or text
814 message.

815 The format of the Courtesy Pick-Up Notice shall be approved by the County Contract Manager
816 and must be a distinct color from the Non-Collection Notices.

817 Contractor shall Collect the contaminated Recyclable Materials and/or Organic Materials
818 Containers and either Transport the material to the appropriate Approved Facility for Processing;
819 or Contractor may Collect the contaminated materials with the Solid Waste and Transport the
820 contaminated materials to the Approved Disposal Facility. A Courtesy Collection of contaminated
821 Recyclable Materials or Organic Materials where the materials are sent to the Approved Disposal
822 Facility may be made with a Solid Waste Collection vehicle, provided that the contaminants may
823 safely and lawfully be Collected as Solid Waste.

824 **D. Non-Collection Notices**

825 1. Non-Collection Notice. Upon identification of Prohibited Container Contaminants in a
826 Container in excess of standards agreed upon by the Parties or Excluded Waste, Contractor
827 shall provide a Non-Collection Notice to the Generator.

828 The Non-Collection Notice shall, at a minimum:

- 829 a. Inform the Customer of the reason(s) for non-Collection;
- 830 b. Include the date and time the notice was left or issued;
- 831 c. Describe the premium charge to Customer for Contractor to return and
832 Collect the Container after Customer removes the Contamination;
- 833 d. Provide a warning statement that a Contamination Processing Fee may be
834 assessed; and,
- 835 e. Include photographic evidence of the violation(s), when providing notice by
836 mail, e-mail, or text message.

837 2. Communications with Customer. Whenever a Container at the Premises of a Commercial or
838 a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the
839 scheduled Collection day or within two (2) hours of the scheduled Collection day by
840 telephone, email, text message, or other verbal or electronic message to explain why the
841 Container was not Collected. Whenever a Container is not Collected because of Prohibited
842 Container Contaminants, a Customer service representative shall contact the Customer to
843 discuss, and encourage the Customer to adopt proper Discarded Materials preparation and
844 separation procedures.

845 3. Contractor Return for Collection. Upon request from Customer, Contractor shall Collect
846 Containers that received Non-Collection Notices within one (1) Working Day of Customer's
847 request if the request is made at least two (2) Working Days prior to the regularly scheduled
848 Collection Day. Contractor may bill Customer for the extra Collection service event ("extra
849 pick-up") at the applicable County-approved Rates only if Contractor notifies Customer of
850 the premium Rate for this service at the time the request is made by Customer.

851 **E. Assessment of Contamination Processing Fees.** If the Contractor observes twenty percent (20%)
852 or more Prohibited Container Contaminants and has issued a Courtesy Pick-Up Notice or Non-
853 Collection notice, as appropriate, the Contractor may impose a Contamination Processing Fee
854 approved by the County for that Customer's Service Level. The intent of Contamination Processing
855 Fees is to provide a behavioral tool to educate and prevent Customers from placing Source
856 Separated Discarded Material into the improper designated Container(s), not to generate
857 revenue, and the Contamination Processing Fee should be set accordingly to achieve this intent.

858 Failure to comply with the requirements of this section shall equate to Liquated Damages in
859 accordance in Exhibit F.

860 Contractor shall leave a Contamination Processing Fee notice attached to the Generators'

861 contaminated Container(s). Contractor must also deliver notice by mail to the bill-payer's address
862 within twenty-four (24) hours of assessing the Contamination Processing Fee.

863 1. Contamination Processing Fee Notice. Contamination Processing Fee Notices shall be in a
864 format approved by the County Contract Manager. Contractor shall notify the County in its
865 monthly report of Customers for which Contamination Processing Fees were assessed per
866 Section 4.10.1(F).

867 Each Contamination Processing Fee Notice shall, at a minimum:

- 868 i. Describe the specific material(s) of issue;
- 869 ii. Explain how to correct future set outs; and,
- 870 iii. Indicate that the Customer will be charged a Contamination
871 Processing Fee on their next bill.

872 **F. Reporting Requirements.**

873 1. **Container Contaminant Log:** The driver or other Contractor representative shall record
874 each event of identification of Prohibited Container Contaminants in a written log or in the
875 on-board computer system including, but not limited to: date, time, Customer's address,
876 type of Container, and maintain photographic evidence.

877 2. **Contaminant Fees Assessment Report:** Additionally, on no less than a weekly basis,
878 Contractor's Contract Administrator shall update the Customer's account records to note
879 the contaminant event(s) as identified by driver(s). Contractor shall maintain records and
880 report to the County monthly on Contamination monitoring activities and actions taken,
881 consistent with the submittal timing and content requirements of Exhibit D. Failure to meet
882 the requirements of this Section 4.10.1(F)(2), shall equate to Liquidated Damages as
883 identified in Exhibit F.

884 3. **Quarterly Report:** The quarterly report shall include, but is not limited to: list of Customers
885 that were assessed charges; photographic evidence of each Contamination event(s) where
886 a fee(s) was assessed; verification processes to assure accurate fee assessment; date of
887 notification, form(s) of notification given to Customer; list of efforts made in educating the
888 Customer that was assessed a fee; list of Customer Complaints in response to fee
889 assessment; Contractor's response and actions taken in response to Customer Complaints;
890 and, the dollar amount of Contamination Processing Fees assessed during the reporting
891 period. Failure to meet the requirements of this Section 4.11.1(F)(3), shall equate to
892 Liquidated Damages as identified in Exhibit F.

893 **4.10.2 Waste Characterization Studies**

894 Contractor will conduct annual waste characterization studies as required by SB 1383.
895

896 **A. Methodology**

897 The study shall include samples from each waste stream (Solid Waste, Recyclables, and Organic

898 Materials) To determine the ratio of Prohibited Container Contaminants, the Contractor shall use
899 the following protocol:

900 1. The Contractor shall take one sample of at least two hundred (200) pounds from the
901 material Collected from each material stream for sampling. For example, Contractor shall
902 take a two hundred (200) pound sample taken from the combined contents of the Organic
903 Materials Container samples.

904 2. The two hundred (200) pound sample shall be randomly selected from different areas of
905 the pile of Collected material for that material stream.

906 3. For each two hundred (200) pound sample, the Contractor shall remove any Prohibited
907 Container Contaminants and determine the weight of Prohibited Container Contaminants.

908 4. The Contractor shall determine the ratio of Prohibited Container Contaminants in the
909 sample by dividing the total weight of Prohibited Container Contaminants by the total
910 weight of the sample.

911 5. All weights shall be recorded in pounds.

912 **B. Recordkeeping and Reporting.** Contractor shall maintain records of each study conducted and
913 report results directly to the County within fourteen (14) days of completing the study as well as
914 include the results in the Contractor's annual report, in accordance with Exhibit D.

915 **C. General.** Pursuant to the requirements of SB 1383, 14 CCR, Division 7, Chapter 12, Article 10, the
916 County is responsible for developing and implementing a Food Recovery program in the County.
917 The Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or
918 interfere with the implementation, expansion, or operation of Food Recovery program efforts in
919 the County.

920 **D. Identification of Commercial Edible Food Generators.** Contractor shall assist the County with
921 identifying Tier One and Tier Two Commercial Edible Food Generators for the purpose of the Food
922 Recovery program. No later than six (6) months after the Effective Date of the Agreement, and
923 annually thereafter, the Contractor shall identify and provide a list to the County of Commercial
924 Customers that qualify, or appear to qualify, as Tier One or Tier Two Commercial Edible Food
925 Generators, as defined by this Agreement. The list shall include, at a minimum: the Customer
926 name; service address; contact information; Tier One or Tier Two classification; and, type of
927 business as it relates to the categories of entities specified under the definitions of Tier One and
928 Tier Two Commercial Edible Food Generators. The Contractor shall update this information
929 annually; maintain an up-to-date database; and include this information in the Contractor's
930 annual report, in accordance with Exhibit D.

931 **ARTICLE 5.**
932 **STANDARD OF PERFORMANCE**

933 **5.1 GENERAL**

934 Contractor shall at all times comply with Applicable Law and provide services in a manner that is safe to

935 the public and the Contractor's employees.

936 **5.2 OPERATING HOURS AND SCHEDULES**

937 **A. Hours of Collection.** Unless otherwise authorized by the County Contract Manager, Contractor's
938 days and hours for Collection operations shall be as follows:

939 1. **Residential Premises.** Collection from Residential Premises shall only occur between the
940 hours of 7:00 a.m. and 7:00 p.m., Monday through Friday.

941 2. **Commercial Premises.** Collection from Commercial Premises shall only occur between
942 the hours of 5:00 a.m. and 8:00 p.m., Monday through Saturday.

943 3. **County Facilities.** The Collection schedule for County facilities shall be the same as
944 Commercial Premises specified in subsection 5.2.A.2 above.

945 **B. Changes in Collection Routes.** Prior to March 1, 2024, Contractor shall provide the County with
946 route maps identifying at a minimum: the type of route (e.g. Single-Family, Multi-Family,
947 Commercial, etc. and Solid Waste, Recycling, and Organic) and the service day. County shall either
948 approve or deny proposed standard Collection routes prior to April 1, 2024. If County denies any
949 standard Collection routes, Contractor may request a meet and confer with the County Contract
950 Manager to discuss potential options. The County Contract Manager's decision shall be final with
951 respect to any routing changes that may impact the day of service of any Customer. Contractor
952 may, at any time during the Term of this Agreement, propose changes or additional routes,
953 subject to County approval. If a standard Collection route change is approved, Contractor must
954 notify all affected Customers fourteen (14) days prior to Contractor implementing the new route.
955 Failure to obtain County approval on route changes resulting in service day changes for Customers
956 shall be subject to Liquidated damages as identified in Exhibit F.

957 **C. Holiday Collection.** Contractor, at its sole discretion, may choose not to provide Collection
958 services on a Holiday. In such event, Contractor shall provide Single-Family Collection services on
959 the day following the Holiday thereby adjusting subsequent work that week with normally
960 scheduled Friday Collection Services being performed on Saturday; however, Customer service
961 days shall be returned to the normal schedule within one (1) week of the Holiday. Multi-Family,
962 Commercial, and County Collection Services shall be adjusted as agreed between the Contractor
963 and the Customer but must meet the minimum frequency requirement of one (1) time per week.
964 The Contractor shall provide Customers notice of Holiday-related changes in Collection schedules
965 at least two (2) weeks prior to the change.

966 **5.3 COLLECTION STANDARDS**

967 **A. Servicing Containers.** Contractor shall Collect and return each Container to the Curbside location
968 where the Occupant is required to place the Container for Collection. Contractor shall place the
969 Containers upright with lids properly secured. During snow removal conditions, Contractor shall,
970 without additional charge, Collect and return Containers to a location 10 feet outside of the right-
971 of-way to avoid interference with or damage from County snow removal operations, so long as
972 Occupant has cleared a path.

973 Contractor shall Collect and return each Cart located in a Bear Box that is installed on the Premises

974 as of the Effective Date of this Agreement. A list of Premises with an installed Bear Box subject to
975 this requirement is attached hereto as Exhibit I.

976 Contractor and County shall meet and confer at least annually regarding County snow removal
977 operations with respect to trash pickup to work together cooperatively to minimize conflicts.

978 **B. Non-Collection, Courtesy Noticing.** Prior to the Commencement Date, Contractor shall develop,
979 and submit to the County Contract Manager for review and approval, and as per the requirements
980 of Section 4.11.1(D)

981 1. A template Non-Collection Notice, for use in instances of acceptable non-Collection of
982 Discarded Materials; and,

983 2. A template Courtesy Pick-Up Notice, for use in instances of improper set-out of Discarded
984 Materials, which the Contractor, at its sole option, elects to Collect as a courtesy to the
985 Customer.

986 Per the requirements identified in Section 4.10.1, in the event that Contractor encounters
987 circumstances at a Customer Premises which prevents the Contractor from Collecting Discarded
988 Materials which have been placed for Collection, Contractor shall leave a Non-Collection Notice
989 at the Customer Premises clearly explaining Contractor's reason for refusal to Collect the
990 Discarded Materials. Contractor shall not be required to Collect Discarded Materials which are
991 reasonably believed to contain Excluded Waste, pursuant to the requirements of Section 5.8.

992 In the event that Contractor encounters circumstances at a Customer Premises which allow for
993 safe Collection of Discarded Materials, but do not otherwise reflect proper set-out procedures
994 (including, but not limited to spills not caused by the Contractor, Carts placed too close together,
995 Carts placed in front of one another, and/or Carts placed too close to parked cars), Contractor
996 shall Collect the material and leave a Courtesy Pick-Up Notice at the Customer Premises clearly
997 explaining how the Customer failed to comply with proper set-out procedures.

998 Contractor may educate the public on proper set-out procedures designed to maximize the
999 efficiency of Collection. However, Contractor acknowledges that such procedures are not practical
1000 in all circumstances and failure of the Customer to follow such procedures does not constitute a
1001 reason for non-Collection if the Discarded Materials may be safely and reasonably serviced.
1002 Contractor's route drivers shall dismount their Collection vehicles and reposition Containers as
1003 necessary to provide Collection service. Contractor may not require a Customer to set out the
1004 Customer's Containers in such a manner that would block vehicle access to Customer's driveway.
1005 Contractor and Customers may mutually agree to uncommon service locations if necessary for
1006 Collection in specific areas.

1007 Contractor may refuse to Collect Recyclable Materials or Organic Materials Containers which are
1008 contaminated in accordance with Exhibit B and Section 4.10, and shall leave an approved Non-
1009 Collection notice informing Customer how to properly separate materials.

1010 **C. Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for
1011 Collection, fuel, and other vehicle fluids while providing services under this Agreement. If any
1012 materials are spilled or leaked during Collection and Transportation, the Contractor shall clean up
1013 all spills or leaks before leaving the site of the spill.

1014 Contractor shall not Transfer loads from one vehicle to another on any Public Street, unless it is
1015 necessary to do so because of mechanical failure, combustion of material in the truck, or
1016 accidental damage to a vehicle.

1017 Contractor shall cover all open Drop Boxes at the pickup location before Transporting materials
1018 to the Approved Facility.

1019 Contractor shall conduct public outreach and staff training to Customers on best management
1020 practices for litter abatement at no extra charge. Such best management practices include,
1021 without limitation:

1022 1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers
1023 with Courtesy Pick-Up Notices, which will serve as outreach and education to the Customer.
1024 Photos of the Container will be taken by drivers, attached to the Customer's account, and
1025 will be available to outreach and Customer service staff in order to demonstrate to the
1026 Customer where a problem exists.

1027 2. Outreach to Customer on importance of bagging lightweight materials such as plastic bags,
1028 film plastics, foam peanuts, and other materials that can easily become litter due to their
1029 lightweight nature.

1030 3. Driver training on litter reduction techniques and litter removal best management
1031 practices.

1032 4. Affixing signage to the Contractor trucks which provides a phone number for residents to
1033 report material spills.

1034 5. Proper use of animal-resistant Carts and not placing Carts out for Collection prior to 6:00am
1035 on Collection day in order to minimize animal encounters.

1036 **D. Enclosure Standards.** Contractor shall work with the County to develop standard specifications
1037 for Collection Container enclosures at Commercial and Multi-Family Premises. These
1038 specifications shall be developed to ensure that the Collection Container enclosures are built to
1039 provide adequate space for and suitable configuration to allow the Contractor to safely and
1040 efficiently service Recyclable Materials, Organic Materials, and Solid Waste Containers.
1041 Contractor's Operations Manager or other appropriately qualified staff shall, upon request by the
1042 County Contract Manager, provide a review of plans for new Multi-Family and Commercial
1043 development or project design drawings. Contractor shall provide comments and
1044 recommendations resulting from the review in writing within ten (10) Working Days of receipt of
1045 the documents for review. In each review report, Contractor shall comment on the acceptability
1046 of the proposed enclosure arrangements in terms of: i) the adequacy of space for Recyclable
1047 Materials, Organic Materials, and Solid Waste Containers; ii) the accessibility of the Containers for
1048 Collection including whether additional charges (e.g., push/pull, etc.) would apply; and iii) ease of
1049 use by tenants.

1050 **E. No Commingling of Materials.** Contractor shall Collect materials generated in the County in
1051 Collection vehicles separately from other materials generated outside the County service area,
1052 unless otherwise approved by the County Contract Manager. Contractor shall not commingle
1053 materials which have been Source Separated with other material types (for example, Source

1054 Separated Recyclable Materials which have been properly placed for Collection shall not be
1055 combined with Solid Waste or Source Separated Organic Materials). The purpose of this
1056 requirement is to ensure the ability to process and accurately report quantities of the various
1057 materials.

1058 **5.4 TRANSFER AND PROCESSING STANDARDS**

1059 **5.4.1 Equipment and Supplies**

1060 Contractor shall use commercially reasonable efforts to ensure the Approved Processing Facilities are
1061 equipped and operated in a manner to fulfill Contractor's obligations under this Agreement. Contractor is
1062 responsible for ensuring the adequacy, safety, and suitability of the Approved Processing Facilities.
1063 Contractor shall use commercially reasonable efforts to modify, enhance, and/or improve the Approved
1064 Processing Facilities as needed to fulfill Services under this Agreement.

1065 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts,
1066 maintenance supplies, Transfer, Transport, and Processing equipment, and other consumables as
1067 appropriate and necessary to operate the Approved Processing Facilities and provide all services required
1068 by this Agreement. Contractor shall place the equipment in the charge of competent operators.
1069 Contractor shall repair and maintain all equipment at its own cost and expense.

1070 **5.4.2 Scales and Weighing**

1071 Contractor is solely responsible for ensuring accurate weighing of all materials entering and leaving the
1072 Approved Processing Facilities.

1073 **A. Facility Scales.** Contractor shall maintain State-certified motor vehicle scales in accordance with
1074 Applicable Law. All scales shall be linked to a centralized computer recording system at the
1075 Approved Processing Facilities to record weights for all incoming and outgoing materials. Contractor
1076 shall provide back-up generator(s) capable of supplying power to the scales in the event of a power
1077 outage. Contractor shall promptly arrange for use of substitute portable scales should its usual
1078 scales not be available for whatever reason. Pending substitution of portable scales, Contractor shall
1079 as necessary estimate the Tonnages of materials delivered to and Transported from the Approved
1080 Processing Facilities, on the basis of delivery vehicle and Transfer trailer volumes, tare weights,
1081 and/or other available facility weight records. These estimates shall take the place of actual weights
1082 while scales are inoperable, and shall be identified as estimates in electronic records and reporting.

1083 **B. Tare Weights.** No later than June 15, 2024, Contractor shall ensure that all vehicles used by
1084 Contractor to deliver Recyclable Materials, Organic Materials, and Solid Waste to the Approved
1085 Processing Facilities are weighed to determine unloaded ("tare") weights. Contractor shall
1086 electronically record the tare weight, identify vehicle as Contractor owned, and provide a distinct
1087 vehicle identification number for each vehicle. Contractor shall provide County with a report listing
1088 the vehicle tare weight information upon request. Contractor shall promptly weigh additional or
1089 replacement vehicles prior to placing them into service. Contractor shall check tare weights at least
1090 annually, or within fourteen (14) calendar days of a County request, and shall re-tare vehicles
1091 immediately after any major maintenance or service event.

1092 **C. Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least
1093 one (1) test and recalibration per scale every twelve (12) months or upon County request.

1094 **D. Records.** Contractor shall maintain computerized scale records and reports that provide
1095 information including date of receipt, inbound time, inbound and outbound weights of vehicles, and
1096 vehicle identification number. Contractor shall also maintain computerized scale records and
1097 reports providing historical vehicle tare weights for each vehicle and the date and location for each
1098 tare weight recorded.

1099 **E. Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
1100 cameras at the Approved Processing Facilities, Contractor shall make those videos available for
1101 County review during the Approved Processing Facility’s operating hours, upon request of the
1102 County, and shall provide the name of the driver of any particular load if available.

1103 **F. Volumetric Conversion.** For all material that an Approved Processing Facility operator is allowed to
1104 not weigh with scales, the operator shall use reasonable volumetric conversion factors to estimate
1105 the weight of the material. Volumetric conversion factors used shall meet the requirements in 14
1106 CCR Section 18809.2.

1107 **5.5 COLLECTION VEHICLE REQUIREMENTS**

1108 **A. Vehicle Requirements.** Contractor shall provide a fleet of Collection vehicles sufficient in number
1109 and capacity to efficiently perform the work required by the Agreement in strict accordance with
1110 its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection
1111 vehicle used to respond to scheduled and unscheduled maintenance, service requests, Complaints,
1112 and emergencies.

1113 1. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or
1114 overflow. All such vehicles shall meet On-Road Heavy Duty Vehicle emissions requirements
1115 for model year 2020, regardless of the actual model year of Contractor’s vehicles, and
1116 generally comply with all Federal, State, and local laws and regulations.

1117 2. Contractor does not propose the immediate use of Zero Emission Vehicles due to a lack of
1118 demonstrated feasibility in the El Dorado County climate and lack of charging infrastructure,
1119 however Contractor acknowledges the importance of this to the County’s sustainability goals
1120 and will continue to review the potential for this option throughout the Term of the
1121 Agreement. Contractor will annually investigate the ability to procure Zero Emission Vehicles
1122 to use in its fleet of Collection vehicles, including establishing a pilot program to test Zero
1123 Emission Vehicles on one or more Collection routes when feasible. Contractor and County will
1124 meet annually to discuss Contractor’s feasibility analysis and site planning concepts, and
1125 Contractor commits to implement a Zero Emission Vehicle fleet once determining that such
1126 implementation would be feasible and once the County agrees to the required increased
1127 costs, if any.

1128 3. Collection vehicles shall present a clean appearance while providing service under this
1129 Agreement.

1130 **B. Vehicle Display.** Contractor’s name and local telephone number shall be displayed in readable text
1131 on all vehicles. Vehicles shall be equipped with sign board holders or other hardware to allow public
1132 education signage to be displayed on both sides of the vehicle.

1133 C. **Vehicle Inspection.** Contractor shall inspect each vehicle daily to ensure that all equipment is
1134 operating properly. Vehicles that are not operating properly shall be taken out of service until they
1135 are repaired and operate properly. Contractor shall repair, or arrange for the repair of all its vehicles
1136 and equipment for which repairs are needed because of accident, breakdown or any other cause so
1137 as to maintain all equipment in a safe and operable condition. County Contract Manager may
1138 inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to
1139 determine compliance with sanitation requirements.

1140 D. **Vehicle Operations.** All Collection operations shall be conducted as quietly as possible and shall
1141 conform to applicable Federal, State, Tahoe Regional Planning Agency, and County noise level
1142 regulations. The County may request Contractor to check any piece of equipment for conformance
1143 with the noise limits in response to Complaints and/or when the County Contract Manager believes
1144 it is reasonable to do so.

1145 **5.6 CONTAINER REQUIREMENTS**

1146 A. **Containers Provided to Customers.** On or before September 15, 2024, Contractor shall provide
1147 Residential Customers with new Carts to implement the 3-Cart Collection program. Contractor may
1148 request an extension from the County based on good cause, which the County may grant or deny
1149 within its reasonable discretion. Contractor shall provide Containers to new Customers requesting
1150 service initiation within three (3) Working Days of Contractor's first receipt of the Customer request.
1151 Contractor-provided Containers for new Customers shall be new, and shall comply with the
1152 Container standards set forth in the Section. All Containers shall display Contractor's name, logo,
1153 and telephone number described in Section 4.8.1, website, capacity (yards or gallons) and some
1154 identifying inventory or serial number.

1155 B. **Container Standards**

1156 1. All Carts shall be manufactured by injection or rotational molding methods. The Cart handles
1157 and handle mounts may be an integrally molded part of the Cart body or molded as part of
1158 the lid. The Cart handles shall provide comfortable gripping area for pulling or pushing the
1159 Cart or lifting the lid. Pinch points are unacceptable. Carts provided to Customer shall have a
1160 useful life of ten (10) or more years or more as evidenced by a manufacturer's warranty or
1161 other documentation acceptable to the County.

1162 2. Carts shall remain durable, and at a minimum, shall meet the following durability
1163 requirements to satisfy its intended use and performance, for the Term of this Agreement:
1164 maintain its original shape and appearance; be resistant to kicks and blows; require no routine
1165 maintenance and essentially be maintenance free; not warp, crack, rust, discolor, or
1166 otherwise deteriorate over time in a manner that shall interfere with its intended use; resist
1167 degradation from ultraviolet radiation; be incapable of penetration by biting or clawing of
1168 household pets (i.e., dogs and cats); the bottoms of Cart bodies must remain impervious to
1169 any damage, that would interfere with the Cart's intended use after repeated contact with
1170 gravel, concrete, asphalt, or any other rough and abrasive surface; all wheel and axle
1171 assemblies are to provide continuous maneuverability and mobility as originally designed and
1172 intended.

- 1173 3. Carts shall be resistant to common household or Residential products and chemicals; human
1174 and animal urine and feces; and, airborne gases or particulate matter currently present in the
1175 ambient air of the Service Area.
- 1176 4. Except for Customers listed on Exhibit I, Contractor shall provide all Single-Family customers
1177 with an animal-resistant Cart for Solid Waste. The Solid Waste Cart shall be designed such
1178 that wild animals, especially bears, cannot open it when the lid is properly closed.
- 1179 5. All Containers with a capacity of one (1) cubic yard or more shall meet applicable Federal
1180 regulations for Bin safety and be covered with attached lids.
- 1181 6. Contractor shall obtain the County's written approval of Container material, design, colors,
1182 labeling, and other specifications before acquisition, painting, labeling, or distribution occurs.
- 1183 7. When purchasing plastic Collection Containers, Contractor shall use commercially reasonable
1184 efforts to purchase Containers that contain a minimum of thirty percent (30%) post-consumer
1185 recycled plastic content, unless such requirement is waived by the County Contract Manager.
- 1186 8. Container lids shall be designed such that the follow requirements are met:
- 1187 a. Prevents the intrusion of rainwater and vectors;
- 1188 b. Prevents the emissions on odors;
- 1189 c. Enables the free and complete flow of material from the Container during the dump
1190 cycle without interference with the material already deposited in the truck body or the
1191 truck body itself and its lifting mechanism;
- 1192 d. Permits users of the Cart to conveniently and easily open and shut the lid throughout
1193 the serviceable life of the Cart;
- 1194 e. Hinges to the Cart body in such a manner to enable the lid to be fully opened, free of
1195 tension, to a position whereby it may rest against the backside of the Cart body;
- 1196 f. Prevents damage to the Container body, the lid itself, or any component parts through
1197 repeated opening and closing of the lid by Generators or in the dumping process as
1198 intended;
- 1199 g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All lid
1200 hinges must remain fully functional and continually hold the lid in the original designed
1201 and intended positions when either opened or closed or any position between the two
1202 (2) extremes; and,
- 1203 h. Designed and constructed such that it prevents physical injury to the user while opening
1204 and closing the Cart.
- 1205 9. Containers shall be stable and self-balancing in the upright position, when either empty or
1206 loaded to its maximum design capacity with an evenly distributed load, and with the lid in
1207 either a closed or an open position. Containers shall be capable of maintaining upright

1208 position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from
1209 any direction.

1210 10. Containers shall be capable of being easily moved and maneuvered, if applicable, with an
1211 evenly distributed load equal in weight to its maximum design capacity on a level, sloped or
1212 stepped surface.

1213 11. All such Containers shall be one hundred percent (100%) recyclable at the end of their useful
1214 life.

1215 12. All Containers shall be designed and constructed to be watertight and prevent the leakage of
1216 liquids.

1217 **C. Container Colors.** Contractor shall provide all Customers with Collection Containers that comply
1218 with the Container color requirements specified in this Section 5.6, or as otherwise specified in
1219 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Colors
1220 shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation; as
1221 follows:

1222 1. Recyclable Materials Container lids shall be blue;

1223 2. Organic Materials Container lids shall be green; and,

1224 3. Solid Waste Container lids shall be black.

1225 Hardware such as hinges and wheels on the Containers may be a different color than specified
1226 above.

1227 **D. Container Labeling.** All markings on the Containers shall be approved by the County in advance
1228 of ordering such Containers. On the lid of each Cart, and the body of each Bin and Drop Box,
1229 Contractor shall label the ultimate destination of such materials as follows: "LANDFILL" for Solid
1230 Waste; "RECYCLE" for Recyclable Materials; and, "YARD WASTE" or "FOOD SCRAPS" for Organic
1231 Materials. On the body of each Cart, Bin, and Drop Box, Contractor shall label the Container
1232 capacity (in gallons for Carts, and cubic yards for Bins and Drop Boxes). Container body labeling
1233 shall be positioned on the side of each Container so it is visible to the Customer at all times.

1234 Carts shall have positional marking in the form of an arrow (at least three (3) inches by five (5)
1235 inches) hot stamped in white color on the Cart lid or side, indicating the direction of Cart
1236 placement; and the phrase: "PLACE CART WITH ARROW FACING STREET FOR COLLECTION."

1237 All Carts shall include a high-quality educational information label using in-mold technology, such
1238 that all labeling shall be integral to the lid, though the use of injection molding, and shall not be
1239 affixed to any part of the Cart or lid using adhesives unless absolutely necessary. Notwithstanding
1240 the provisions of this Section, or the requirements of SB 1383, the in-mold lid label shall, at a
1241 minimum, include for each Container: primary materials accepted; primary materials prohibited;
1242 a clear indication of Prohibited Container Contaminants for that Container type; a clear indication
1243 of acceptable materials; notification forbidding Hazardous Waste and describing proper Disposal
1244 thereof; notification forbidding scavenging (through words and international symbols) and
1245 describing the penalties therefore under California law or County Code; information about the

1246 Collection program; and, Contractor's name and logo. Upon expiration or early termination of this
1247 Agreement, Contractor shall transfer access and rights of such phone number and website to the
1248 County.

1249 **E. Repair and Replacement of Containers; Inventory.** Contractor shall be responsible for repairing
1250 or replacing Containers when Contractor determines the Container is no longer suitable for
1251 service; or when the County or Customer requests replacement of a Container that does not
1252 properly function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be
1253 responsible for acquiring and providing the replacement Containers. Weather conditions
1254 permitting, Contractor shall repair or replace all damaged or broken Containers within three (3)
1255 Working Days of Customer or County request. Minor cracks, holes, and other damages to hinges,
1256 wheels, axle, hardware, and other component parts shall be readily repairable by the Contractor
1257 personnel. All repairs must restore the Cart to its full functionality to meet the design and
1258 performance requirements as set for herein.

1259 Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer
1260 requests for service, requests for change in Service Levels (size, type, or number of Containers)
1261 from current subscribers, and requests for replacement due to damage.

1262 Contractor shall provide to Single-Family Customers at least one (1) free Cart replacement per any
1263 twelve (12) month period for damage to the Cart that renders it unusable as determined by
1264 Contractor, upon Customer request. If Customer requests more than one (1) Cart replacement
1265 per any twelve (12) month period, Contractor shall make Carts available at the County-approved
1266 Rate for such services. In addition, Single-Family Customers may also request one Cart size
1267 exchange per Rate Period at no charge. Weather conditions permitting, all such Containers shall
1268 be provided within three (3) Working Days of request. Contractor's failure to comply with the
1269 Container requirements may result in assessment of Liquidated Damages pursuant to Section 10.6
1270 and Exhibit F.

1271 **F. Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and
1272 functional condition, and present a clean appearance. Contractor shall repair or replace all
1273 Containers damaged by Collection operations in accordance with standards specified in Section
1274 5.6.D, unless damage is caused by Customer's gross negligence, in which case, the Customer will
1275 be billed for repair or replacement of Container at a County-approved Rate for such service. All
1276 Containers shall be maintained in a functional condition.

1277 Contractor shall steam clean and/or repaint all Containers as needed (other than Carts) to present
1278 a clean appearance. Contractor shall offer steam cleaning service (or clean Container exchange)
1279 to Customers requesting such service and shall charge Customers for such cleaning (or Container
1280 exchange) at the County-approved Rate for such service, up to two times per year.

1281 Weather conditions permitting, Contractor shall remove graffiti from Containers within forty-
1282 eight (48) hours of identification by Contractor or notice by County or Customer.

1283 Upon request from the County Contract Manager, Contractor shall provide the County with a list
1284 of Containers and the date each Container was painted and maintained.

1285 **G. County Ownership of Containers at End of Term.** Upon expiration or early termination of
1286 Agreement, all Containers purchased and put into service at Customer Premises during the Term

1287 of the Agreement shall become property of the County at no cost to the County if such Containers
1288 are fully depreciated. All Containers, and Compactors purchased and put into service at Customer
1289 Premises during the Term of the Agreement that have not been fully depreciated shall be available
1290 to the County, at the County's option, at a cost reflecting the net book value for ratemaking
1291 purposes.

1292 At its sole discretion, the County may elect not to exercise its rights with regards to this Section
1293 and, in such case, the Containers, and Compactors shall remain the property of the Contractor
1294 upon the date of this Agreement's expiration or earlier termination. In such case, Contractor shall
1295 be responsible for outstanding depreciation and for removing all Containers, and Compactors in
1296 service from the Premises within fourteen (14) Working Days of the expiration date or early
1297 termination date of this Agreement or within a different timeframe mutually agreed to by the
1298 Parties. Contractor shall arrange for reuse or Recycling of Containers, and Compactors removed
1299 from the County.

1300 **5.7 PERSONNEL**

1301 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
1302 services required by this Agreement in a safe and efficient manner.

1303 Contractor shall use its best efforts to assure that all employees present a neat appearance and
1304 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,
1305 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from Customers
1306 or members of the public.

1307 **B. Hiring of Displaced Employees.** Contractor is aware of and shall comply with the requirements of
1308 and duties imposed by Sections 1072 and 1075 of the California Labor Code regarding offers of
1309 employment to any displaced employees resulting from a change in service provider, if any,
1310 resulting from this Agreement or upon the expiration of this Agreement.

1311 **C. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued
1312 by the California Department of Motor Vehicles. Contractor shall use the Class II California
1313 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

1314 **D. Safety Training.** Contractor shall provide suitable operational and safety training for all employees
1315 who operate Collection vehicles or equipment. Contractor shall train its employees involved in
1316 Collection to identify, and not to Collect, Excluded Waste. Upon the County Contract Manager's
1317 request, Contractor shall provide a copy of its safety policy and safety training program, the name
1318 of its safety officer, and the frequency of its trainings.

1319 **E. Designated Staff.**

1320 1. Contractor's Contract Administrator. Contractor shall designate at least one (1) qualified
1321 employee as County's primary point of contact with Contractor who is principally
1322 responsible for Collection operations and resolution of service requests and Complaints.
1323 Such individual shall be empowered to negotiate on behalf of and bind Contractor with
1324 respect to any changes in scope, dispute resolution, compensation adjustments, and
1325 service-related matters which may arise during the Term of this Agreement. Such individual
1326 is defined as Contractor's General Manager.

1327 2. Field Supervisor. Contractor shall designate one (1) qualified full-time employee as
1328 supervisor of field operations. The designated Field Supervisor will devote at least fifty
1329 percent (50%) of his/her time in the County in the field checking on Collection operations,
1330 including responding to Customer requests, inquiries, and Complaints.

1331 3. Environmental Compliance Manager. Contractor shall provide one (1) full-time
1332 Environmental Compliance Manager. The duties of the Environmental Compliance Manager
1333 will be focused on all SB 1383 requirements, including public education and outreach,
1334 Commercial and Multi-Family site visits, and technical assistance, as set forth in Exhibit C,
1335 Public Education and Outreach Requirements. The Environmental Compliance Manager
1336 shall be a full-time, regular, professional position, compensated in accordance with the
1337 wages shown in Contractor's Proposal for such position. Contractor acknowledges that the
1338 Environmental Compliance Manager role is not intended to be an internship, or entry-level
1339 role. County may also employ corresponding staff members who will work in partnership
1340 with Contractor's Environmental Compliance Manager and Contractor's Environmental
1341 Compliance Manager shall cooperate and share information openly with such County
1342 employee.

1343 4. Contractor shall hire an additional full-time Customer Service Representative who is
1344 dedicated to all SB 1383 compliance monitoring and data collection.

1345 5. Contractor shall expend at least \$25,000.00 per year (as adjusted annually by the CPI All
1346 Other) for development and subsequent implementation of all SB 1383 requirements,
1347 which may include the annual subscription costs for a Waste Reporting System and
1348 consultants, but may not include direct personnel or benefits costs associated with
1349 Contractor's staff designated pursuant to this Section 5.7.

1350 F. **Key Personnel.** Contractor shall make every reasonable effort to maintain the stability and
1351 continuity of Contractor's staff assigned to perform the services required under this Agreement.
1352 Contractor shall notify the County of any changes in Contractor's designated staff pursuant to this
1353 Section 5.7 to be assigned to perform the services required under this Agreement and shall obtain
1354 the approval of the County Contract Manager of all proposed new designated staff members
1355 pursuant to this Section 5.7 who are to be assigned to perform services under this Agreement
1356 prior to any such performance.

1357 Notwithstanding County's approval of Contractor's personnel, Contractor shall not be relieved
1358 from any liability resulting from the work to be performed under this Agreement, nor shall
1359 Contractor be relieved from its obligation to ensure that its personnel maintain all requisite
1360 certifications, licenses, and the like, and Contractor shall ensure that its personnel at all times fully
1361 comply with Applicable Law.

1362

1363 **5.8 HAZARDOUS WASTE INSPECTION AND HANDLING**

1364 A. **Inspection Program and Training.** Contractor shall develop a load inspection program that
1365 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)
1366 management of wastes; and, (iv) record keeping and emergency procedures.

1367 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in:
1368 (i) the effects of Hazardous Substances on human health and the environment; (ii) identification
1369 of prohibited materials; and, (iii) emergency notification and response procedures. Collection
1370 vehicle drivers shall inspect Containers before Collection when practical.

1371 **B. Response to Excluded Waste Identified During Collection.** If Contractor determines that material
1372 placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's
1373 employees, the Contractor shall have the right to refuse to accept such material. The Generator
1374 shall be contacted by the Contractor and requested to arrange proper Disposal. If the Generator
1375 cannot be reached immediately, the Contractor shall, before leaving the Premises, leave Non-
1376 Collection Notice, which indicates the reason for refusing to Collect the material and lists the
1377 phone number of a facility that accepts the Excluded Waste or a phone number of an entity that
1378 can provide information on proper Disposal of the Excluded Waste. Under no circumstances shall
1379 Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly
1380 containerized Excluded Waste from a Collection Container.

1381 If Excluded Waste is found in a Collection Container or Collection area that could possibly result
1382 in imminent danger to people or property, the Contractor shall immediately notify the Fire
1383 Department.

1384 **C. Response to Excluded Waste Identified At Processing or Disposal Facility.** Materials Collected by
1385 Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal. In
1386 the event that load checkers and/or equipment operators at such facility identify Excluded Waste
1387 in the loads delivered by Contractor, such personnel shall remove these materials for storage in
1388 approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for removal of
1389 the Excluded Wastes at its cost by permitted haulers in accordance with Applicable Laws and
1390 regulatory requirements. The Contractor may at its sole expense attempt to identify and recover
1391 the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost
1392 of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

1393 **5.9 CONTRACT MANAGEMENT**

1394 Consistent with Section 12.10, the County Contract Manager shall monitor and administer of this
1395 Agreement. Contractor shall designate an employee to serve as Contractor's Contract Administrator(s),
1396 to be responsible for working closely with the County Contractor Manager in the monitoring and
1397 administration of this Agreement. Contractor shall be responsible for notifying the County Contract
1398 Manager of any change in assignments.

1399 The Contractor's Contract Administrator shall meet and confer with the County Contract Administrator to
1400 resolve differences of interpretation and implement and execute the requirements of this Agreement in
1401 an efficient, effective, manner that is consistent with the stated objectives of this Agreement.

1402 The County Contract Manager and the Contractor's Contract Administrator shall hold contract
1403 management meetings quarterly or at such other frequency as designated by the County Contract
1404 Manager. This meeting is intended to review the status of Contractor's implementation of programs and
1405 services required under this Agreement, coordinate shared efforts between the parties, and such other
1406 agenda items as are deemed appropriate by the Parties for such meetings.

1407 From time to time the County Contract Manager may designate other agents of County to work with

1408 Contractor on specific matters. In such cases, those individuals should be considered designates of the
1409 County Contract Manager for those matters to which they have been engaged. Such designates shall be
1410 afforded all of the rights and access granted thereto.

1411 In the event of dispute between the County Contract Manager and the Contractor regarding the
1412 interpretation of or the performance of services under this Agreement, the County Contract Manager's
1413 determination shall be conclusive except where such determination results in a material impact to the
1414 Contractor's revenue and/or cost of operations. In the event of a dispute between the County Contract
1415 Manager and the Contractor results in such material impact to the Contractor, the provisions of Section
1416 10.9 shall apply. For the purposes of this Section, "material impact" is an amount equal to or greater than
1417 one percent (1%) of Contractor's annual Gross Receipts under this Agreement.

1418 County Contract Manager or their designate shall have the right to observe and review Contractor
1419 operations and Processing Facilities and enter Premises for the purposes of such observation and review,
1420 including review of Contractor's records, during reasonable hours with reasonable notice. In no event
1421 shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after
1422 receiving such a request.

1423 **5.10 SUPPORT OF COUNTY'S ENVIRONMENTAL GOALS**

1424 Contractor shall perform services under this Agreement in a manner which supports the County's
1425 environmental goals and the El Dorado County Solid Waste Management Plan. This includes, but is not
1426 limited to, providing services, education, and outreach to Customers and in the community which
1427 promote source reduction, reuse, Recycling, Composting, and other methods to reduce landfill Disposal.

1428 **5.11 DIVERSION REQUIREMENTS**

1429 Contractor shall maintain at least fifty percent (50%) Diversion of all materials Collected by Contractor in
1430 the County (including only materials Collected by Contractor under this Agreement, and excluding
1431 Commercial Recyclable Materials, Organic Materials, and C&D Collected by other County-approved
1432 service providers in accordance with Section 1.2). The Diversion percentage shall be calculated as total
1433 Tons Diverted divided by total Tons Collected. Total Tons Diverted does not include Processing Residue
1434 that is Disposed.

1435 Contractor shall also use commercially reasonable efforts to Divert at least eighty-five percent (85%) of
1436 Recyclable Materials Collected in the County by Contractor and seventy percent (70%) of
1437 Commercial/MFD Organic Materials Collected in the County by Contractor (excluding Source Separated
1438 wood and Yard Trimmings Collected in Drop Boxes.) Disposed Processing Residue must not exceed fifteen
1439 percent (15%) for Recyclable Materials or thirty percent (30%) for Commercial/MFD Organic Materials,
1440 calculated on an annual average.

1441 **ARTICLE 6.**
1442 **RECORD KEEPING AND REPORTING**

1443 **6.1 RECORD KEEPING**

1444 Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational,
1445 programmatic, and other records, and associated documentation, related to its performance as shall be

1446 necessary to provide detailed and accurate reports under this Agreement, and to demonstrate compliance
1447 with this Agreement and Applicable Law. Unless otherwise required in this Article, Contractor shall retain
1448 all records and data required to be maintained by this Agreement for the Term of this Agreement plus five
1449 (5) years after its expiration or earlier termination. Records and data shall be in chronological and
1450 organized form that is readily and easily interpreted to facilitate the flexible use of data to structure
1451 reports. Contractor's records shall be stored in one central location, physical or electronic, that can be
1452 readily accessed by Contractor. Upon request, any such records shall be retrieved in a timely manner, not
1453 to exceed five (5) Working Days of a request by the County Contract Manager, and made available to the
1454 County Contract Manager; including any record or documentation that County, in their sole discretion,
1455 may deem necessary, for the County to fulfill obligations under Applicable Law including, but not limited
1456 to, AB 939, AB 341, AB 1826, AB 876, AB 901, SB 1383, and other current or future Federal, State, or local
1457 regulations, as amended.

1458 Contractor shall maintain adequate record security to preserve records from events that can be
1459 reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and records
1460 shall be protected and backed-up. The County reserves the right to require the Contractor to maintain the
1461 records required herein using a County-selected web-based software platform, at Contractor's expense.
1462 To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting
1463 requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated
1464 reports supporting those record keeping and reporting requirements in a static format in order to provide
1465 an audit trail for all data required by County, as requested, under this Agreement.

1466 At a mutually agreed upon time during normal business hours, but within five (5) Work Days of a written
1467 request, Contractor shall provide to the County the Contractor's data and records with respect to the
1468 matters covered by this Agreement and Applicable Law. Contractor shall permit the County, or its
1469 designee, to audit, examine, and make excerpts or transcripts from such data and records, and make
1470 copies of all data relating to all matters covered by this Agreement and the Applicable Law. Contractor
1471 shall maintain such data and records in an accessible location and condition for a period of not less than
1472 five (5) years following the County's receipt of final payment under this Agreement unless the County
1473 agrees in writing to an earlier disposition. Contractor agrees that all data regarding business operations,
1474 Customer lists, routing, Tonnage, Service Levels, work orders issued from dispatch, Customer service logs
1475 and account notes, and work force and bargaining agreements, do not constitute Proprietary Information
1476 or Trade Secrets and shall be made available to the County Contract Manager or their designee upon
1477 request and within the timelines required by this Section 6.1. County is subject to the California Public
1478 Records Act (Government Code section 7920.000, *et. seq.*) and nothing in this Agreement is intended to
1479 impair County's requirements or obligations under that Act.

1480 County views its ability to defend itself against Comprehensive Environmental Response, Compensation
1481 and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, County
1482 regards its ability to prove where Collected Recyclable Materials, Organic Materials, and Solid Waste are
1483 taken for Transfer, Processing, or Disposal. Contractor shall maintain records which can establish where
1484 Recyclable Materials, Organic Materials, and Solid Waste Collected were Transferred, Processed, or
1485 Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor
1486 shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of
1487 the Agreement. Contractor shall provide these records to County (upon request or at the end of the record
1488 retention period) in an organized and indexed manner rather than destroying or disposing of them.

1489 **6.2 REPORT SUBMITTAL REQUIREMENTS**

1490 Contractor shall submit quarterly reports within fourteen (14) calendar days after the end of the quarter
1491 and annual reports no later than forty-five (45) calendar days after the end of each calendar year.
1492 Quarterly and annual reports shall include at a minimum, all data and information described in Exhibit D,
1493 unless otherwise specified under this Agreement.

1494 Contractor may propose report formats that are responsive to the objectives and audiences for each
1495 report. The format of each report shall be approved by the County Contract Manager, in their sole
1496 discretion. County Contract Manager may, from time to time during the Term, review, and request
1497 changes to Contractor's report formats and content and Contractor shall not unreasonably deny such
1498 requests.

1499 Contractor shall submit all reports to the County Contract Manager electronically via e-mail using software
1500 acceptable to the County. The County reserves the right to require the Contractor to maintain records and
1501 submit the reports required herein through use of a County-selected web-based software platform, at the
1502 Contractor's expense.

1503 County reserves the right to require Contractor to provide additional reports or documents as County
1504 Contract Manager reasonably determines to be required for the administration of this Agreement or
1505 compliance with Applicable Law.

1506 **6.3 PERFORMANCE REVIEW AND AUDIT**

1507 The County may conduct, and Contractor shall cooperate with, performance reviews and detailed financial
1508 audits, at any point during the Term of this Agreement in the County Contract Manager's sole discretion,
1509 to verify Contractor has fulfilled its financial and operational obligations under this Agreement. The
1510 purpose of such review and audit shall be, without limitation, to review Complaints, billings, and fee
1511 payments to County, and to determine if Contractor has met the performance standards described in this
1512 Agreement (including, without limitation, direct services provided to Customers as described in Exhibit B,
1513 public education and outreach required in Exhibit C, recordkeeping and reporting as required in Exhibit D,
1514 and performance standards established in Exhibit F). County may choose to enlist professional service
1515 providers to perform such review and audit, at its own cost. Contractor may not influence or control the
1516 County's selection of professional service providers nor the specific review items covered by the review.
1517 Contractor shall cooperate with the County and its agents during the review and audit process. If any
1518 noncompliance with the Agreement is found, the County may direct the Contractor to correct the
1519 inadequacies in accordance with Article 10 of this Agreement.

1520 At the County's sole option, with at least thirty (30) calendar days written notification to the Contractor,
1521 it may conduct a public hearing at which the Contractor shall be present and shall participate, to review
1522 the Contractor's performance, quality of service, and evaluation of technological and regulatory changes.
1523 The reports required by Exhibit D to this Agreement regarding Customer Complaints may be utilized as a
1524 basis for review as well as any findings from performance review and/or audits. Performance and service
1525 quality review hearings may be scheduled by the County at its discretion throughout the Term of the
1526 Agreement.

1527 In addition to the other requirements of this Agreement, the Parties shall be subject to the examination
1528 and audit of the State Auditor for a period of three (3) years after final payment under the Agreement,
1529 per Government Code section 8546.7.

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ARTICLE 7. COUNTY REIMBURSEMENT

1532 7.1 FRANCHISE FEE

1533 Contractor shall pay to County a Franchise Fee set by the Board of Supervisors by Resolution,
1534 which shall be a percentage of the Gross Revenues derived by Contractor from operations
1535 pursuant to this Agreement. The Franchise Fee is initially set at five percent (5%) of Contractor's
1536 Gross Revenues, and from time to time may be adjusted by Resolution of the Board of Supervisors.
1537 The Franchise Fee shall be due and payable quarterly within forty-five (45) days following the end
1538 of each quarter for Gross Revenues received during that quarter. If payment is not received within
1539 said forty-five (45) day period, interest shall accrue thereon at the rate of fifteen percent (15%)
1540 per annum or at the maximum interest rate permitted under California law, whichever is lesser.
1541 County shall give Contractor a minimum of ninety (90) days' notice of any changes in the Franchise
1542 Fee. Any increase in the Franchise Fee shall result in a corresponding rate adjustment to
1543 Contractor's rates and/or be passed through to Contractor's customers.

1544 Contractor shall also collect from its customers and pay to the County any surcharge set by the County
1545 to fund County solid waste management activities, AB 939 implementation programs and landfill
1546 closure, post-closure and remediation costs. This surcharge shall be treated for rate- setting
1547 purposes as a Pass-Through Cost in the same manner as the Franchise Fee. Any change in such
1548 surcharge shall be reflected in a corresponding adjustment to Contractor's rates.

1549

1550 7.2 PAYMENT SCHEDULE AND LATE FEES

1551 Within forty-five (45) calendar days of the end of each calendar quarter, during the Term of this
1552 Agreement, Contractor shall remit to County all fees as described in this Article. Such fees shall be
1553 remitted to County and sent or delivered to the County Finance Department. If such remittance is not
1554 paid to County on or before the forty-fifth (45th) calendar day following the end of a calendar quarter, all
1555 fees due shall be subject to a delinquency penalty of ten percent (10%) per annum.

1556 Each quarterly remittance to County shall be accompanied by a statement listing the amount of each fee
1557 paid; calculation of each fee; and statement of Gross Receipts which separately identifies SB 1383 Fee
1558 eligible revenues, by Customer Type for the period collected from all operations conducted or permitted
1559 by this Agreement. County Contract Manager may, at any time during the Term, request a detailed
1560 calculation of Gross Receipts which may include, but is not necessarily limited to, the number of
1561 Customers charged at each Service Level and Rate for each billing period. Contractor shall maintain all
1562 supporting documents and calculations for each payment made to County as required by Section 6.1.

1563 County Contract Manager may, at any time during the Term, perform an audit of Contractor's billings and
1564 payment of fees. Contractor shall cooperate with the County Contract Manager in any such audit. Should
1565 County or its agent perform this review and identify billing errors or other errors in payment of fees valued
1566 at one percent (1%) or more of Gross Receipts for the period reviewed, Contractor shall, in addition to
1567 compensating County for lost fees, reimburse the County's actual cost of the review.

1568 **ARTICLE 8.**
1569 **CONTRACTOR'S COMPENSATION AND RATE**
1570 **SETTING**

1571 **8.1 GENERAL**

1572 The Contractor's Compensation for performance of all its obligations under this Agreement shall be Gross
1573 Receipts. Contractor's Compensation provided for in this Article shall be the full, entire and complete
1574 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and
1575 supplies, Transfer, Processing and Disposal fees, County Fees, taxes, insurance, bonds, overhead,
1576 operations, profit, and all other things necessary to perform all the services required by this Agreement
1577 in the manner and at the times prescribed. Nothing herein shall obligate County to provide any
1578 compensation to Contractor beyond Gross Receipts.

1579 If Contractor's actual costs, including fees due to County, are more than Gross Receipts, Contractor shall
1580 not be compensated for the difference in actual costs and actual Gross Receipts. If Contractor's actual
1581 costs are less than the actual Gross Receipts, Contractor shall retain the difference provided that
1582 Contractor has paid County Fees pursuant to Article 7.

1583 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
1584 Customers, Rates in Exhibit G2 that are approved by the County for provision of services to Customers.
1585 The initial Rates will be set prior to Commencement of this Agreement. Contractor's proposed costs and
1586 operating assumptions are presented in Exhibit G1. This Agreement includes references to Contractor's
1587 ability to charge Customers for various services provided and described in this Agreement. Contractor
1588 may not charge Customer any Rate which is not approved in Exhibit G2, as may be amended from time to
1589 time. Exhibit G2 includes descriptions of the basis for and occasions upon which Contractor may charge
1590 those Rates. Contractor may not charge a Rate for a service other than that which is described in Exhibit
1591 G2. In the event of a conflict between Exhibit G2 and any other provision of this Agreement, the
1592 description in Exhibit G2 shall control.

1593 The Approved Recyclable Materials Processing Facility shall retain a portion of revenues received for the
1594 sale of Recyclable Materials including California Redemption Value revenues as set forth in Table 1-3 of
1595 Exhibit E. Such revenues will be considered in the establishment of Rates for services provided under this
1596 Agreement under Exhibit E. Neither Contractor nor the Approved Resource Recovery Facility are entitled
1597 to funds available through the Department of Resources Recycling and Recovery (CalRecycle) through its
1598 "County/County Payment Program" pursuant to Section 14581(a)(5)(A) of the California Beverage
1599 Container Recycling and Litter Reduction Act.

1600 **8.2 RATES AND ANNUAL ADJUSTMENTS**

1601 **A. General.** Rates shall be set by the County Board of Supervisors following a recommendation from
1602 the South Lake Tahoe Basin Waste Management Authority in accordance with the procedures set
1603 forth in Exhibit E, as may be modified by the County from time to time as required to comply with
1604 state law.

1605 **B. Initial Rates.** Rates applicable upon the Commencement Date of this Agreement will be
1606 determined through the 2024 Base Year rate-setting process in accordance with Exhibit E.

1607 C. **Rates for Subsequent Rate Periods.** Rates for subsequent Rate Periods shall be adjusted annually
1608 in accordance with this Section 8.2 and Exhibit E.

1609 The interim year index-based adjustment, which is described in Exhibit E, involves use of various
1610 cost adjustment factors (such as the percentage change in the consumer price index and changes
1611 in disposal fees) to calculate adjusted Rates. Such Rate adjustment calculations shall be performed
1612 in strict conformance to the procedures described in Exhibit E.

1613 Base year Rates shall be adjusted using the cost-based methodology described in Exhibit E that
1614 involves a review of Contractor's actual costs and revenues and projection of costs and revenues
1615 for the coming Rate Period. This cost-based Rate adjustment will be performed instead of the
1616 index-based Rate adjustment for that Rate Period. The cost-based adjustment process is intended
1617 to provide the County an opportunity to adjust Rates to more accurately reflect actual revenues
1618 and costs of operations. Such Rate adjustment calculations shall be performed in strict
1619 conformance to the procedures described in Exhibit E.

1620 **8.3 EXTRAORDINARY RATE ADJUSTMENTS**

1621 In the event of any Change in Scope (as defined below) or any Change in Law (as defined in Exhibit A)
1622 either of which results in an increase or decrease in Contractor's costs or revenues, in the event of an
1623 Extraordinary Cost Increase (as defined below), or in the event of any Change in Fees (as defined below),
1624 an appropriate adjustment will be made in the Rates in order to compensate, to the maximum extent
1625 possible, for such increase or decrease in costs, revenues or Fees, commencing from the date(s) such
1626 increase or decrease first occurs using the rate-setting process described in Exhibit E as amended by
1627 Section 8.4 of this Agreement. Any Rate adjustment due to a Change in Scope, a Change in Law or an
1628 Extraordinary Cost Increase shall be in the reasonable discretion of County.
1629

1630 "Change in Fees" shall mean any change in Franchise Fees and/or other fees charged to Contractor by any
1631 governmental agency (including, without limitation, County) in connection with the Services provided by
1632 Contractor under this Agreement, including, without limitation, the cancellation of any existing fees and
1633 the adoption of any new fees.

1634 "Change in Scope" shall mean any change directed by County in the scope of services provided by
1635 Contractor under this Agreement, including, without limitation, Contractor's use of any different
1636 Approved Facilities at County's direction, as described in Section 3.5.

1637 "Extraordinary Cost Increase" shall mean a substantial increase in Contractor's operating or capital costs
1638 or expenses that is outside of Contractor's control but not due to a Change in Scope or a Change in Law,
1639 including, without limitation, additional wage and/or benefit costs for employees that become subject to
1640 a collective bargaining agreement.

1641 In the case of a Change in Scope, a Change in Law or an Extraordinary Cost Increase, Contractor shall
1642 provide County with projected operational, cost and revenue data reflecting the entire financial effect of
1643 such Change or Increase, including any projected change in Contractor's profit. County reserves the right
1644 to require that Contractor supply any additional operational, cost and revenue data, or any other
1645 information it may reasonably need, to ascertain the appropriate financial impact of the Change in Scope,
1646 Change in Law or Extraordinary Cost Increase and any necessary adjustment to rates resulting from such
1647 Change in Scope, Change in Law or Extraordinary Cost Increase.

1648 Rate adjustments for a qualifying Change in Scope or Change in Law, for a Change in Fees, or for an
1649 Extraordinary Cost Increase shall take effect as of the beginning of the next calendar year (with the rule
1650 against retroactive Rate increases in Exhibit E being waived solely to such extent). The underlying service,
1651 cost, revenue or Fee changes supporting any rate adjustment under this Section 8.3 will be added to the
1652 appropriate category in Exhibit E for purposes of future Rate adjustments.

1653

1654 **8.4 REGARDING EXHIBIT E**

1655

1656 In the event of any conflict between the terms of this Agreement and the terms of Exhibit E, the terms of
1657 this Agreement shall prevail.

1658

1659 For the avoidance of doubt, in connection with the establishment of the initial Rates for the year
1660 commencing January 1, 2024, the Parties hereby agree that the terms of Exhibit E shall be modified in the
1661 following respects from and after December 31, 2023:

1662

1663 A. For purposes of calculating depreciation on new vehicles, the useful life will be changed from
1664 eight (8) years to ten (10) years.

1665

1666 B. For purposes of calculating depreciation on new Carts, the useful life will be changed from five (5)
1667 years to ten (10) years, subject to C below.

1668

1669 C. For purposes of calculating depreciation on new Animal-Resistant Carts, the useful life will be
1670 changed from five (5) years to six (6) years.

1671

1672 D. The unpaid principal balance as of December 31, 2023 of Contractor's debt financing for the
1673 Resource Recovery Facility (i.e., \$2,377,619) will be amortized ratably over the initial Term of this
1674 Agreement, starting January 1, 2024 and ending December 31, 2043.

1675

1676 E. 10.16% of the cost increases set forth in Exhibit G2 that are not reflected in the initial Rates
1677 effective January 1, 2024 will be reflected, in equal parts, in a 5.08% increase in Rates for each of
1678 the year beginning January 1, 2025 and the year beginning January 1, 2026, in addition, in each
1679 case, to the rate increase for such year under the interim process pursuant to Exhibit E.

1680

1681

1682

1683 **ARTICLE 9.** 1684 **INDEMNITY, INSURANCE, AND PERFORMANCE BOND**

1684

1685 **9.1 INDEMNIFICATION**

1686 A. **General.** Contractor shall indemnify, defend with counsel acceptable to County, and hold
1687 harmless (to the full extent permitted by law) County and its officers, officials, employees,
1688 volunteers, and agents from and against any and all claims, liability, loss, injuries, damage,
1689 expense, and costs (including without limitation costs and fees of litigation, including reasonable
1690 attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in
1691 connection with Contractor's performance, and the performance of any Subcontractor, or agent

1692 of Contractor, under this Agreement, or its failure to comply with any of its obligations contained
1693 in the Agreement, except to the extent such loss or damage was caused by the negligence or
1694 willful misconduct of County. This Section 9.1 shall survive the expiration or termination of this
1695 Agreement and shall not be construed as a waiver of County's legal and/or equitable rights as
1696 defined herein and permitted under Applicable Law.

1697 The duty to indemnify and hold harmless County specifically includes the duties to defend set
1698 forth in Civil Code section 2778. The insurance obligations of Contractor are separate,
1699 independent obligations under the Contract Documents, and the provisions of this defense and
1700 indemnity are not intended to modify nor should they be construed as modifying or in any way
1701 limiting the insurance obligations set forth in the Contract Documents.

1702
1703 Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code
1704 section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that
1705 this Article shall survive and be interpreted consistent with the provisions of Civil Code section
1706 2782, et seq.
1707

1708 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire
1709 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or
1710 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

1711 If Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its
1712 activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory
1713 and/or remedial action reasonably required for the remediation of such environmental
1714 contamination. Prior to undertaking any investigatory or remedial action, however, Contractor
1715 shall first obtain County's approval of any proposed investigatory or remedial action. Should
1716 Contractor fail at any time to promptly take such action, County may undertake such action at
1717 Contractor's sole cost and expense, and Contractor shall reimburse County for all such expenses
1718 within thirty (30) calendar days of being billed for those expenses, and any amount not paid within
1719 that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the
1720 delinquent fee payment provision of Section 7.4. These obligations are in addition to any defense
1721 and indemnity obligations that Contractor may have under this Agreement.

1722 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any
1723 claims arising from the Disposal of Solid Waste at the Approved Disposal Facility, including, but
1724 not limited to, claims arising under Comprehensive Environmental Response, Compensation and
1725 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful
1726 misconduct.

1727 **C. Environmental Indemnity.** Contractor shall defend with counsel acceptable to County, indemnify,
1728 and hold County harmless against and from any and all claims, suits, losses, penalties, damages,
1729 and liability for damages of every name, kind and description, including attorneys' fees and costs
1730 incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded
1731 Waste.

1732 **D. Electronic and Web based Information Indemnity.** Contractor shall defend with counsel
1733 acceptable to County, indemnify, and hold County harmless against and from any and all related

1734 claims, including but not limited to, suits, losses, penalties, damages, responsibility for costs,
1735 regulatory fines, penalties, credit monitoring expenses, and liability for damages of every name,
1736 kind and description, including reasonable attorneys' fees and costs incurred, attributable to the
1737 negligence or willful misconduct of Contractor and any Subcontractors used in performance of
1738 this Agreement in handling or protecting Customer information over which Contractor has
1739 control, including but not limited to billing details, electronic payment(s), and Customer account
1740 information that is not readily available to the general public. Contractor shall maintain electronic
1741 files and Contractor's website in accordance with the industry best practices for maintaining such
1742 information as safely and securely as possible. Nothing in this Section 9.1(D) shall prevent or
1743 restrict Contractor's obligation and responsibility to provide County with information required
1744 under this Agreement.

1745 **E. Related to AB 939, AB 341, AB 1826, and SB 1383.** Contractor's duty to defend and indemnify
1746 herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939,
1747 AB 341, AB 1826, and/or SB 1383 are not met by the Contractor with respect to the Contractor's
1748 obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet
1749 its obligations under this Agreement; or, (ii) due to Contractor delays in providing information
1750 that prevents Contractor or County from submitting reports to regulators in a timely manner. This
1751 indemnity is subject to the provisions of Public Resources Code § 40059.1.

1752 **F. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
1753 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
1754 (Commonly Proposition 218), which impacts the Rates for the Collection services established in
1755 accordance with this Agreement, Contractor agrees to meet and confer with County to discuss
1756 the impact of such Change in Law on either Party's ability to perform under this Agreement.

1757 If, at any time, a Rate adjustment determined to be appropriate by both County and Contractor
1758 to compensate Contractor for increases in costs as described in this Agreement cannot be
1759 implemented for any reason, Contractor shall be granted the option to negotiate with County, in
1760 good faith, a reduction of services equal to the value of the Rate adjustment that cannot be
1761 implemented. If County and Contractor are unable to reach agreement about such a reduction in
1762 services, then Contractor may terminate this Agreement upon one (1) year's prior written notice
1763 to County, in which case the Contractor and County shall each be entitled to payment of amounts
1764 due for contract performance through the date of termination but otherwise will have no further
1765 obligation to one another unless this Agreement specifically states otherwise, after the date of
1766 such termination. Should a court of competent jurisdiction determine that the Contractor cannot
1767 charge and/or increase its Rates for charges related to Franchise Fees and governmental fees and
1768 charges, Contractor shall reduce the Rates it charges Customers a corresponding amount, and
1769 Contractor shall be relieved from paying any such fees that are payable to the County, providing
1770 said fees, reimbursements, Rates and/or charges disallowed by the court are not related to the
1771 cost of providing service hereunder and had been incorporated in the Rates charged by Contractor
1772 to its Customers.

1773 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the
1774 Rates established for services provided under this Agreement; rather this Section is provided
1775 merely to allocate risk of an adverse judicial interpretation between the Parties.

1776 **G. CalPERS Eligibility Indemnification.** Contractor's employees, agents, or Subcontractors providing

1777 service under this Agreement shall not: (i) qualify for any compensation and benefit under
1778 CalPERS; (ii) be entitled to any benefits under CalPERS; (iii) enroll in CalPERS as an employee of
1779 County; (iv) receive any employer contributions paid by County for CalPERS benefits; or (v) be
1780 be entitled to any other CalPERS-related benefit that would accrue to a County employee.
1781 Contractor's employees, agents, or Subcontractors hereby waive any claims to benefits or
1782 compensation described in this Section 9.1. This Section 9.1 applies to Contractor notwithstanding
1783 any other agency, State or Federal policy, rule, regulation, law, or ordinance to the contrary.

1784 If Contractor's employees, agents, or Subcontractors providing services under this Agreement
1785 claim, or are determined by a court of competent jurisdiction or the California Public Employees
1786 Retirement System ("CalPERS") to be eligible for enrollment in CalPERS of the County, Contractor
1787 shall indemnify, defend, and hold harmless County for the payment of any employer and
1788 employee contributions for CalPERS benefits on behalf of the employee as well as for payment of
1789 any penalties and interest on such contributions which would otherwise be the responsibility of
1790 the County.

1791 Contractor's Compensation under this Agreement shall be the full and complete compensation to
1792 which Contractor and Contractor's officers, employees, agents, and Subcontractors are entitled
1793 for performance of any work under this Agreement. Neither Contractor nor Contractor's officers,
1794 employees, agents, and Subcontractors are entitled to any salary or wages, or retirement, health,
1795 leave or other fringe benefits applicable to County employees. The County will not make any
1796 Federal or State tax withholdings on behalf of Contractor. The County shall not be required to pay
1797 any workers' compensation insurance on behalf of Contractor.

1798 Contractor agrees to defend and indemnify the County for any obligation, claim, suit, or demand
1799 for tax, retirement contribution including any contribution to CalPERS, social security, salary or
1800 wages, overtime payment, or workers' compensation payment which the County may be required
1801 to make on behalf of (1) Contractor, (2) any employee of Contractor, or (3) any employee of
1802 Contractor construed to be an employee of the County, for work performed under this
1803 Agreement.

1804 **9.2 INSURANCE**

1805 **A. General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times
1806 during the Term of this Agreement not less than the following coverage and limits of insurance:

1807 **B. Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
1808 maintain, at its expense, the following coverages and requirements. Failure to maintain the
1809 identified insurance requirements during the entire Term of this Agreement shall constitute an
1810 event of default subject to Section 10.1(C). The comprehensive general liability insurance shall
1811 include broad form property damage insurance.

1812 1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

1813 **Comprehensive General Liability** – On an ISO policy form CG 00 01, or the equivalent,
1814 Contractor shall provide coverage with limits of not less than \$6,000,000 combined single
1815 limit per occurrence for bodily injury, personal injury, and property damage, including,
1816 without limitation, blanket contractual liability. If a general aggregate limit applies, either
1817 the general aggregate limit shall apply separately to this Agreement or the general

1818 aggregate limit shall be twice the required occurrence limit.

1819 **Automobile Liability** – \$6,000,000 combined single limit per accident for bodily injury and
1820 property damage (include coverage for Owned, Hired, and Non-owned vehicles).

1821 **Workers’ Compensation – Statutory Limits/Employers’ Liability** - \$1,000,000/accident
1822 for bodily injury or disease.

1823 **Employee Blanket Fidelity Bond** – \$500,000 per employee loss covering dishonesty,
1824 forgery, alteration, theft, disappearance, and destruction (inside or outside).

1825 **Pollution Liability** – \$5,000,000 per loss and annual aggregate applicable to bodily injury;
1826 property damage, including loss of use of damaged property or of property that has not
1827 been physically damaged or destroyed; clean-up costs, including first party cleanup of the
1828 County’s property and third-party cleanup, and bodily injury costs if pollutants impact
1829 other properties; and defense, including costs, fees and expenses incurred in the
1830 investigation, defense, or resolution of claims. Coverage shall include completed
1831 operations and shall apply to liability arising out of sudden, accidental, and gradual
1832 pollution conditions and remediation. Coverage shall apply to acts, errors or omissions
1833 arising out of, or in connection with, Contractor’s scope of work under this Agreement.
1834 Coverage shall also apply to the hauling of waste to the Approved Facilities, including non-
1835 owned disposal sites (“NODS”) that shall protect against, for example, claims regarding
1836 bodily injury, property damage, and/or cleanup costs involving NODS. All activities
1837 contemplated in this Agreement shall be specifically scheduled on the policy as “covered
1838 operations.” Coverage is preferred by the County to be occurrence based. However, if
1839 provided on a claims-made basis, Contractor warrants that any retroactive date
1840 applicable to coverage under the policy precedes the Effective Date of this Agreement,
1841 and that continuous coverage shall be maintained, or an extended discovery period will
1842 be exercised through completion or termination of this Agreement for a minimum of five
1843 (5) years. This provision does not limit or alter any rights or remedies to County allowable
1844 under this Agreement and/or Applicable Law in perpetuity.

1845 **Technology Professional Liability Errors and Omissions Insurance (Cyber Liability)**
1846 appropriate to the Contractor’s profession and industry practice, with limits not less than
1847 \$1,000,000 per occurrence. Coverage for cyber risks shall be sufficiently broad to respond
1848 to the duties and obligations as are undertaken by Contractor under this Agreement and
1849 shall include, but not be limited to claims involving infringement of intellectual property,
1850 including but not limited to infringement of copyright, trademark, trade dress, invasion
1851 of privacy violations, information theft, damage to or destruction of electronic
1852 information, release of private information, alteration of electronic information,
1853 extortion, and network security. The policy shall provide coverage for breach response
1854 notification and remediation costs, regulatory fines and penalties, credit monitoring
1855 expenses, electronic funds transfer losses, electronic data restoration expenses, and
1856 business interruption costs with limits sufficient to respond to these obligations, in the
1857 sole discretion of the County’s Risk Manager.

1858 If Contractor maintains broader coverage and/or higher limits than the minimums shown
1859 above, the County requires and shall be entitled to the broader coverage and/or higher

- 1860 limits maintained by the Contractor. Any available insurance proceeds in excess of the
1861 specified minimum limits of insurance and coverage shall be available to the County.
- 1862 2. Additional Insured. County, its officers, agents, employees, and volunteers shall be named
1863 as additional insured on all but the workers' compensation and professional liability
1864 coverages.
- 1865 3. Said policies shall remain in force through the life of this Agreement and, with the
1866 exception of professional liability coverage, shall be payable on a "per occurrence" basis
1867 unless County's Risk Manager specifically consents in writing to a "claims made" basis.
1868 For all "claims made" coverage, if the Contractor changes insurance carriers Contractor
1869 shall purchase "tail" coverage or otherwise provide for continuous coverage covering the
1870 Term of this Agreement and not less than three (3) years thereafter, except for the five
1871 (5) year tail of Pollution Liability Coverage as described above. Proof of such "tail" or other
1872 continuous coverage shall be required at any time that the Contractor changes to a new
1873 carrier prior to receipt of any payments due.
- 1874 4. The Contractor shall declare all aggregate limits on the coverage before commencing
1875 performance of this Agreement, and County's Risk Manager reserves the right to require
1876 higher aggregate limits to ensure that the coverage limits required for this Agreement as
1877 set forth above are available throughout the performance of this Agreement.
- 1878 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
1879 the sole responsibility of the Contractor.
- 1880 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
1881 suspended, voided, canceled by either Party, reduced in coverage or in limits except after
1882 thirty (30) calendar days prior written notice by certified mail, return receipt requested,
1883 has been given to County Contract Manager ten (10) Business Days for delinquent
1884 insurance premium payments).
- 1885 7. Insurance must be placed with insurers with a current A.M. Best's rating of no less than
1886 A-VII, or with a surplus line carrier appearing on the List of Approved Surplus Line Insurers,
1887 ("LASLI") with a Best's Key Rating Guide of at least A: X.
- 1888 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
1889 volunteers arising out of or in connection with this Agreement.
- 1890 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
1891 primary, including as respects County, its officers, agents, employees, and volunteers. Any
1892 insurance maintained by County shall apply in excess of, and not contribute with,
1893 insurance provided by Contractor's liability insurance policy.
- 1894 10. The Contractor shall waive all rights of subrogation against County, its officers,
1895 employees, agents, and volunteers.
- 1896 **C. Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish
1897 County Contract Manager with certificates, additional insured endorsements, primary and non-
1898 contributory endorsements, and waivers of subrogation evidencing the insurance coverage

1899 required by this Agreement. The certificates or endorsements are to be signed by a Person
1900 authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to
1901 be received by, and are subject to the approval of, County Risk Manager before work commences.

1902 **D. Renewals.** During the Term of this Agreement, Contractor shall furnish County Contract Manager
1903 with certificates and original endorsements reflecting renewals, changes in insurance companies,
1904 and any other documents reflecting the maintenance of the required coverage throughout the
1905 entire Term of this Agreement. The certificates and endorsements are to be signed by a Person
1906 authorized by that insurer to bind coverage on its behalf.

1907 **E. No Cap on Indemnity.** The minimum amounts of coverage described in this Section 9.2 will not
1908 constitute any limitations or cap on Contractor's indemnification obligations under this
1909 Agreement.

1910 **F. Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
1911 by State law and shall comply with Section 3700 of the State Labor Code.

1912 **G. Special Risks or Circumstances.** The County reserves the right at any time during the Term of this
1913 Agreement to modify these insurance requirements, including limits, based on the nature of the
1914 risk, prior experience, insurer, coverage, or other special circumstances, provided that any such
1915 modifications shall be deemed a Change in Scope subject to Section 8.3 above.

1916 **9.3 PERFORMANCE BOND**

1917 Within seven (7) calendar days of the County's notification to Contractor that the County has executed
1918 this Agreement, Contractor shall file with the County a bond, payable to the County, securing the
1919 Contractor's performance of its obligations under this Agreement and such bond shall be renewed
1920 annually if necessary, so that the performance bond is maintained at all times during the Term. The
1921 principal sum of the bond shall be eight-hundred forty six thousand, and five-hundred fifty three dollars
1922 (\$846,553) and shall be adjusted every three (3) years, commencing in 2027, to equal three (3) months
1923 of annual Gross Receipts for the prior calendar year. The bond shall be executed as surety by a
1924 corporation authorized to issue surety bonds in the State of California that has a rating of A or better in
1925 the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition
1926 satisfactory to the County. The bond shall be in the form approved by the County Attorney.

1927 **ARTICLE 10.**

1928 **DEFAULT AND REMEDIES**

1929 **10.1 EVENTS OF DEFAULT**

1930 All provisions of the Agreement are considered material. Each of the following shall constitute an event
1931 of default.

1932 **A. Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the
1933 County.

1934 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or
1935 upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

- 1936 C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force the workers' compensation, insurance coverage required by Section 9.2, or indemnification coverage as required by this Agreement.
- 1937
- 1938
- 1939 D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, which violation the County reasonably determines is material. If Contractor contests any such orders or filings by appropriate proceedings conducted in good faith, no breach or default of this Agreement shall be deemed to have occurred until the conclusion of such proceedings finding that a violation occurred.
- 1940
- 1941
- 1942
- 1943
- 1944 E. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement, which violation the County reasonably determines is material. If Contractor contests any alleged violation by appropriate proceedings conducted in good faith, no breach or default of this Agreement shall be deemed to have occurred until the conclusion of such proceedings finding that a violation occurred.
- 1945
- 1946
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- 1948
- 1949 F. **Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or Processing services as required under this Agreement for a period of two (2) consecutive calendar days or more, for any reason within the control of Contractor.
- 1950
- 1951
- 1952 G. **Failure to Pay or Report.** Contractor fails to make any payments to County required under this Agreement including payment of County Fees or Liquidated Damages and/or refuses to provide County with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- 1953
- 1954
- 1955
- 1956 H. **Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions, or requirements of this Agreement, or Applicable Law and which is not corrected or remedied within the time set in the written notice of the violation. Additionally, an event of default occurs if Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice of violation, or if Contractor fails to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
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- 1962 I. **False, Misleading, or Inaccurate 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. Additionally, a default occurs if any Contractor-provided report contains a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.
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- 1970 J. **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility(ies), or any part thereof.
- 1971
- 1972
- 1973 K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Contractor related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar days.
- 1974
- 1975
- 1976

- 1977 L. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of Criminal
1978 Activity related directly or indirectly to performance of this Agreement or any other agreement
1979 held with the County.

- 1980 M. **Assignment without Approval.** Contractor transfers or assigns this Agreement without the
1981 expressed written approval of the County unless the assignment is permitted without County
1982 approval pursuant to Section 12.6.

- 1983 N. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
1984 proposal for new services or changes to services or fails to implement a change in service as
1985 requested by the County as specified in Section 3.5.

- 1986 O. **Failure to Complete Transition.** Contractor fails to complete the tasks identified in Contractor's
1987 Implementation Plan as specified in Exhibit B.

- 1988 P. **Failure to Implement Collection Program.** Contractor fails to implement a Collection program
1989 that complies with the requirements of Article 4 and Exhibit B, which is essential for the County
1990 to achieve compliance with SB 1383.

- 1991 Q. **Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity
1992 in accordance with Articles 4 and 5, which is essential for the County to achieve compliance with
1993 SB 1383.

- 1994 R. **Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards
1995 specified in Articles 4 and 5 including achievement of minimum Organic Waste recovery rates,
1996 which are essential for the County to achieve SB 1383 compliance.

- 1997 S. **Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other
1998 requirements of Contractor under this Agreement including, but not limited to, public education,
1999 reporting, Contamination monitoring, recordkeeping and reporting, or other obligations of this
2000 Agreement that delegate the County's responsibility and/or authority under SB 1383 to the
2001 Contractor.

- 2002 T. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation of Contractor
2003 established under this Agreement, which the County reasonably determines is material.

2004 County shall provide Contractor written notice of default within seven (7) calendar days of the County's
2005 first knowledge of the Contractor's default.

2006 **10.2 CONTRACTOR'S RIGHT TO CURE; RIGHT TO TERMINATE UPON EVENT OF**
2007 **DEFAULT**

2008 Contractor shall be given ten (10) Business Days from written notification by the County Contract Manager
2009 to cure any default which, in the County Contract Manager's sole opinion, creates a potential public health
2010 and safety threat.

2011 Contractor shall be given ten (10) Business Days from written notification by the County Contract Manager
2012 to cure any default arising under subsections C, E, F, I, J, and K in Section 10.1. However, the County shall
2013 not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed

2014 the same or similar breach/default within a twenty-four (24) month period.

2015 Contractor shall be given thirty (30) calendar days from written notification by the County Contract
2016 Manager to cure any other default (which is not required to be cured within ten (10) Business Days).
2017 Furthermore, if Contractor cannot reasonably cure a default within the applicable period described in this
2018 section, except for defaults that create a potential health and safety threat, and Contractor promptly
2019 commences the cure or remedy within the initial cure period and thereafter diligently pursues the cure or
2020 remedy to completion, Contractor shall not be in default of this Agreement. However, the County shall
2021 not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed
2022 the same or similar default within a twenty-four (24) month period.

2023 **10.3 COUNTY'S REMEDIES IN THE EVENT OF DEFAULT**

2024 Upon Contractor's default, County has the following remedies in the event of Contractor default:

2025 **A. Waiver of Default.** County may waive any event of default or may waive Contractor's requirement
2026 to cure a default event if County determines that such waiver would be in the best interest of the
2027 County. County's waiver of an event of default is not a waiver of future events of default that may
2028 have the same or similar conditions.

2029 **B. Suspension of Contractor's Obligation.** County may suspend Contractor's performance of its
2030 obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such
2031 time the Contractor can provide assurance of performance in accordance with Section 10.8.

2032 **C. Liquidated Damages.** County may assess Liquidated Damages for Contractor's failure to meet
2033 specific performance standards pursuant to Section 10.6 and Exhibit F.

2034 **D. Termination.** The County Contract Manager may, in their sole discretion, set a public hearing for
2035 the County Council to determine whether to terminate this Agreement. Subject to Contractor's
2036 right to cure as described in Section 10.2, such termination hearing must be set if a default
2037 remains uncured thirty (30) calendar days after receipt of written notice of default from the
2038 County. Such termination hearing must also be set if a Contractor's default is not cured within ten
2039 (10) calendar days and the default:

- 2040 1. Creates a potential public health and safety threat; or
- 2041 2. Arises under Section 10.1.C, E, F, I, J, or K.

2042 If the County terminates this Agreement based on the adopted findings of the termination
2043 hearing, the County Contract Manager shall first provide written notice to the Contractor twenty
2044 (20) calendar days before the date of termination. The Contractor shall thereafter be relieved on
2045 a going-forward basis of all liabilities and obligations required by this Agreement, except for
2046 Section 9.1 and any other provisions specifically identified to survive termination of this
2047 Agreement. Upon expiration of the twenty (20) day notice, the County may, in its sole discretion:

- 2048 1. Directly undertake performance of the services; or
- 2049 2. Arrange with other Persons to perform the services with or without a written
2050 agreement; or

2051 3. Permit Contractor to continue operating under this Agreement including
2052 Contractor's Compensation until such time that County is able to find substitute
2053 services.

2054 This right of termination is in addition to any other rights upon a failure of Contractor to perform
2055 its obligations under this Agreement.

2056 Contractor shall not be entitled to any further revenues from Collection operations authorized
2057 hereunder from and after the date of termination.

2058 E. **Other Available Remedies.** County's election of one (1) or more remedies described herein shall
2059 not limit the County from any and all other remedies at law and in equity including injunctive
2060 relief, etc.

2061 **10.4 POSSESSION OF RECORDS UPON TERMINATION**

2062 In the event of termination for an event of default, the Contractor shall furnish County Contract Manager
2063 with immediate access to all of its business records, including without limitation, Proprietary Information
2064 and Contractor computer systems, related to its Customers, Collection routes, and billing of accounts for
2065 Collection services.

2066 **10.5 COUNTY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

2067 County's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's
2068 records under Section 10.4 are not exclusive, and County's termination of the Agreement and/or the
2069 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall
2070 be in addition to any and all other legal and equitable rights and remedies which County may have.

2071 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service; the
2072 lead time required to effect alternative service; and, the rights granted by County to the Contractor, the
2073 remedy of damages for a breach hereof by Contractor is inadequate and County shall be entitled to
2074 injunctive relief (including but not limited to specific performance).

2075 **10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

2076 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical,
2077 if not impossible, to reasonably ascertain the extent of damages which shall be incurred by County
2078 as a result of a breach by Contractor of its obligations under this Agreement. The factors relating
2079 to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
2080 substantial damage results to members of the public who are denied services or denied quality or
2081 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of
2082 the benefits of the Agreement to individual members of the general public for whose benefit this
2083 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of
2084 measurement in precise monetary terms; (iii) that exclusive services might be available at
2085 substantially lower costs than alternative services and the monetary loss resulting from denial of
2086 services or denial of quality or reliable services is impossible to calculate in precise monetary
2087 terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at
2088 best, a means of future correction and not remedies which make the public whole for past
2089 breaches.

2090 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties
2091 further acknowledge that consistent, reliable Collection services are of utmost importance to
2092 County and that County has considered and relied on Contractor's representations regarding its
2093 quality-of-service commitment in awarding the Agreement to it. The Parties recognize that some
2094 quantified standards of performance are necessary and appropriate to ensure consistent and
2095 reliable service and performance. The Parties further recognize that if Contractor fails to achieve
2096 the performance standards or fails to submit required documents in a timely manner, County and
2097 its residents and businesses will suffer damages, and that it is, and will be, impractical and
2098 extremely difficult to ascertain and determine the exact amount of damages which County will
2099 suffer. Therefore, without prejudice to County's right to treat such non-performance as an event
2100 of default under this Section, the Parties agree that the Liquidated Damages amounts established
2101 in Exhibit F of this Agreement and the Liquidated Damage amounts therein represent a reasonable
2102 estimate of the amount of such damages considering all of the circumstances existing on the
2103 Effective Date of this Agreement, including the relationship of the sums to the range of harm to
2104 County that reasonably could be anticipated and the anticipation that proof of actual damages
2105 would be costly or impractical.

2106 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
2107 the Performance Standards and Liquidated Damages, Exhibit F.

2108 Before assessing Liquidated Damages, County Contract Manager shall give Contractor notice of
2109 County's intention to do so. The notice will include a brief description of the incident(s) and non-
2110 performance. County Contract Manager may review (and make copies at County's own expense)
2111 all information in the possession of Contractor relating to incident(s) and/or non-performance.
2112 Contractor may, within ten (10) Business Days after receiving the notice, request a meeting with
2113 County Contract Manager. County Contract Manager may present evidence of non-performance
2114 in writing and through testimony of County's employees and others relevant to the incident(s)
2115 and non-performance. County Contract Manager will provide Contractor with a written
2116 explanation of their determination on each incident(s) and non-performance prior to authorizing
2117 the assessment of Liquidated Damages under this Section 10.6. The decision of County Contract
2118 Manager to assess Liquidated Damages that exceed \$30,000 in total may be appealed by
2119 Contractor to the County Council by filing an appeal with the County Clerk within ten (10) Business
2120 Days of the County Contract Manager's decision. If Contractor has made such an appeal within
2121 the required timeframe, the intended assessment of Liquidated Damages will not be imposed on
2122 Contractor until the County Council issues a decision. In such case, the decision of the County
2123 Council shall be final and Contractor shall not be subject to, or required to exhaust, any further
2124 administrative remedies. Should Contractor not exercise its right to appeal as described in this
2125 paragraph, and in all other cases, the decision of the County Contract Manager shall be final and
2126 Contractor shall not be subject to, or required to exhaust, any further administrative remedies.
2127 The County Contract Manager shall provide Contractor with a written explanation of their
2128 determination on each incident prior to assessing the Liquidated Damages.

2129 **C. Amount.** County Contract Manager may assess Liquidated Damages for each calendar day or
2130 event, as appropriate, that Contractor is determined to be liable in accordance with this
2131 Agreement in the amounts specified in Exhibit F subject to annual adjustment described below.

2132 **D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by County Contract
2133 Manager within ten (10) Business Days of the date the Liquidated Damages are assessed. If they

2134 are not paid within the ten (10) Business Day period, County Contract Manager may proceed
2135 against the performance bond required by the Agreement, order the termination (subject to the
2136 provisions of Section 10.2) of the rights granted by this Agreement, or all of the above, except
2137 that no payment of Liquidated Damages shall be due to the County until any appeal by Contractor
2138 to the County Council has been decided.

2139 **10.7 EXCUSE FROM PERFORMANCE**

2140 Notwithstanding any other provision in this Agreement, each Party shall be excused from performing its
2141 respective obligations hereunder and from any obligation to pay Liquidated Damages if that Party is
2142 prevented from so performing by reason of floods, earthquakes, other acts of nature, governmental
2143 actions (including judicial action) or inactions, laws or regulations, including, without limitation,
2144 restrictions, directives or orders, epidemics or pandemics that actually negatively impact such Party's
2145 ability to perform, war, civil insurrection, riots, and other similar catastrophic events which are beyond
2146 the control of and not the fault of the Party claiming excuse from performance hereunder (each a "Force
2147 Majeure Event").

2148 In the case of labor unrest or job action directed at a third party over whom Contractor has no control,
2149 the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness
2150 or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees
2151 while providing such services; or, (ii) make reasonable accommodations with respect to Container
2152 placement and point of Delivery, time of Collection, or other operating circumstances to minimize any
2153 confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited
2154 extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in
2155 performing Collection services at different times and in different locations. Further, in the event of labor
2156 unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other
2157 concerted job action conducted by the Contractor's employees or directed at the Contractor, or a
2158 subsidiary, the Contractor shall not be excused from performance. In such case, Contractor shall continue
2159 to provide a reasonably satisfactory level of performance during the pendency thereof, but the Contractor
2160 shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes,
2161 Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar
2162 days elapse between pickups for Residential and Commercial Customers. Any labor action initiated by
2163 Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance
2164 and Contractor shall perform all obligations under this Agreement during the pendency of such
2165 Contractor-initiated labor action.

2166 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice
2167 of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to
2168 excuse under this Section.

2169 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against
2170 each other for any damages sustained thereby.

2171 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more
2172 of the Force Majeure Events shall not constitute a default by Contractor under this Agreement.
2173 Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations
2174 hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more,
2175 County shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten

2176 (10) Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall apply.

2177 **10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

2178 The Parties acknowledge that it is of the utmost importance to County and the health and safety of all
2179 those members of the public residing or doing business within County who will be adversely affected by
2180 interrupted waste management service, that there be no material interruption in services provided under
2181 this Agreement.

2182 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
2183 picketing or other concerted job action; (ii) appears in the reasonable judgment of County to be unable
2184 to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order
2185 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and County believes
2186 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in
2187 substantial jeopardy, County may, at its sole option and in addition to all other remedies it may have,
2188 demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in
2189 such form and substance as County believes in good faith is reasonably necessary in the circumstances to
2190 evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide
2191 satisfactory assurances of timely and proper performance in the form and by the date required by County,
2192 such failure or refusal shall be an event of default for purposes of Section 10.1.

2193 **10.9 DISPUTE RESOLUTION**

2194 In the event of dispute between the County Contract Manager and the Contractor regarding the
2195 interpretation of or the performance of services under this Agreement which results in a material impact
2196 to the Contractor's revenue and/or cost of operations, as defined in Section 5.9, the provisions of Section
2197 10.9 shall apply.

2198 **A. Meet and Confer.** In the event of disputes regarding the performance of any obligation under this
2199 Agreement which results in a material impact to the Contractor's revenue and/or cost of
2200 operations, the County and Contractor agree that they promptly will meet and confer to attempt
2201 to resolve the matter between themselves.

2202 **B. Mediation.** If disputes which arise under this Agreement cannot be resolved satisfactorily
2203 between the Parties in accordance with Section 10.9.A, the County and Contractor agree that such
2204 disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon
2205 independent third party.

2206 **C. Period of Time.** Insofar as allowed by Applicable Law, the period otherwise applicable for filing
2207 claims against the County under Applicable Law shall be tolled during the period of time for which
2208 meet and confer or mediation procedures are pending, in accordance with Sections 10.9.A and
2209 10.9.B.

2210 **D. Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the dispute(s)
2211 pursuant to Sections 10.9.A, 10.9.B, and 10.9.C have failed and any necessary claim(s) have been
2212 denied.

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**ARTICLE 11.
REPRESENTATIONS AND WARRANTIES OF
THE PARTIES**

2216 The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this
2217 Article.

2218 **11.1 CONTRACTOR'S CORPORATE STATUS**

2219 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the
2220 State. It is qualified to transact business in the State and has the power to own its properties and to carry
2221 on its business as now owned and operated and as required by this Agreement.

2222 **11.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

2223 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
2224 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by
2225 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
2226 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
2227 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2228 **11.3 AGREEMENT WILL NOT CAUSE BREACH**

2229 To the best of Contractor's and County's knowledge after reasonable investigation, the execution or
2230 delivery of this Agreement or the performance by either Party of their obligations hereunder does not
2231 conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any
2232 judgment, order, or decree of any court, administrative agency or other governmental authority, or any
2233 agreement or instrument to which Contractor or County is a party or by which Contractor or any of its
2234 properties or assets are bound, or constitutes a default hereunder.

2235 **11.4 NO LITIGATION**

2236 To the best of Contractor's and County's knowledge after reasonable investigation, there is no action, suit,
2237 proceeding or investigation, at law or in equity, before or by any court or governmental authority,
2238 commission, board, agency or instrumentality decided, pending or threatened against either Party
2239 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- 2240 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 2241 B. Adversely affect the validity or enforceability of this Agreement; or,
- 2242 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity
2243 guaranteeing Contractor's performance under this Agreement.

2244 **11.5 NO ADVERSE JUDICIAL DECISIONS**

2245 To the best of Contractor's and County's knowledge after reasonable investigation, there is no judicial
2246 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

2247 **11.6 NO LEGAL PROHIBITION**

2248 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in effect
2249 on the date that Party signed this Agreement that would prohibit the performance of either their
2250 obligations under this Agreement and the transactions contemplated hereby.

2251 **11.7 CONTRACTOR'S ABILITY TO PERFORM**

2252 Contractor possesses the business, professional, and technical expertise to perform all services,
2253 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
2254 Contractor possesses the ability to secure equipment, facility, and employee resources required to
2255 perform its obligations under this Agreement.

2256 **ARTICLE 12.**
2257 **OTHER AGREEMENTS OF THE PARTIES**

2258 **12.1 RELATIONSHIP OF PARTIES**

2259 The Parties intend that Contractor shall perform the services required by this Agreement as an
2260 independent Contractor engaged by County and neither as an officer nor employee of County, nor as a
2261 partner or agent of, or joint venture with, County. No employee or agent of Contractor shall be, or shall
2262 be deemed to be, an employee or agent of County. Contractor shall have the exclusive control over the
2263 manner and means of performing services under this Agreement, except as expressly provided herein.
2264 Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors
2265 and agents. Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any
2266 rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to
2267 County employees by virtue of their employment with County.

2268 **12.2 COMPLIANCE WITH LAW**

2269 Contractor shall at all times, at its sole cost, comply with all Applicable Laws.

2270 **12.3 GOVERNING LAW**

2271 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
2272 State.

2273 **12.4 JURISDICTION**

2274 Any lawsuits, at law or in equity, between the Parties arising out of this Agreement shall be filed in a court
2275 of competent jurisdiction in the County. With respect to venue, the Parties agree that this Agreement is
2276 made in and will be performed in the County. The Parties waive all provisions of law providing for a change
2277 of venue in these proceedings to any other county.

2278 **12.5 BINDING ON SUCCESSORS**

2279 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
2280 permitted assigns of the Parties.

2281 **12.6 ASSIGNMENT**

2282 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement
2283 to any other Person without the prior written consent of the other Party. Any such assignment made
2284 without the consent of the other Party shall be void and the attempted assignment shall constitute a
2285 material breach of this Agreement.

2286 For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other
2287 transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to service
2288 under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more
2289 of the local, regional, and/or corporate assets, stock, or ownership of Contractor to a Person (other than
2290 a transfer of shares in Contractor by the owner of such shares to Contractor, to adult members of his or
2291 her family who are competent to do business, to a trust for the benefit of members of his or her family,
2292 or to another owner of shares in Contractor) except that no cumulative sale, exchange, or transfer of
2293 shares may exceed twenty percent (20%) during the Term of the Agreement (other than a transfer of
2294 shares in Contractor by the owner of such shares to Contractor, to adult members of his or her family who
2295 are competent to do business, to a trust for the benefit of members of his or her family, or to another
2296 owner of shares in Contractor); (iii) any reorganization, consolidation, merger, recapitalization, stock
2297 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other
2298 transaction to which Contractor or any of its shareholders is a party which results in a change of ownership
2299 or control of ten percent (10%) or more of the value or voting rights in the local, regional, and/or corporate
2300 stock of Contractor (excluding as the result of changes in ownership or control between an owner of
2301 shares in Contractor and adult members of his or her family who are competent to do business or a trust
2302 for the benefit of members his or her family); (iv) divestiture of an Affiliate (e.g., trucking company,
2303 materials recovery facility, transfer station, etc.) used by Contractor to fulfill its obligations under this
2304 Agreement; and, (v) any combination of the foregoing (whether or not in related or contemporaneous
2305 transactions) which has the effect of any such transfer or change of local, regional, and/or corporate
2306 ownership and/or control of Contractor. For purposes of this Section, the term "proposed assignee" shall
2307 refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. For
2308 purposes of this Section, the term "owner" shall mean the Person with legal title to shares of Contractor
2309 and "family" shall mean the parents, children, spouses, and siblings, excluding brothers-in-law and sisters-
2310 in-law of any owner that is a natural person.

2311 Contractor acknowledges that this Agreement involves rendering a vital service to County's residents and
2312 businesses, and that County has selected Contractor to perform the services specified herein based on: (i)
2313 Contractor's experience, skill, and reputation for conducting its Recyclable Materials, Organic Materials,
2314 and Solid Waste management operations in a safe, effective, and responsible fashion, at all times in
2315 keeping with applicable waste management laws, regulations, and good waste management practices;
2316 and, (ii) Contractor's financial resources on a local, regional, and/or corporate level to maintain the
2317 required equipment and to support its indemnity obligations to County under this Agreement. County has
2318 relied on each of these factors, among others, in choosing Contractor to perform the services to be
2319 rendered by Contractor under this Agreement.

2320 If Contractor requests County's consideration of and consent to an assignment, County may deny or
2321 approve such request in its sole discretion at a regularly scheduled meeting of the County Council. No
2322 request by Contractor for consent to an assignment need be considered by County unless and until
2323 Contractor has met requirements A – E below. The County may, in its sole discretion, waive one (1) or
2324 more of the following requirements:

- 2325 A. On the date the County approves Contractor's written request for the County's written consent
 2326 of an assignment and the assignment closes, Contractor shall pay the County a Transfer fee in the
 2327 amount of one percent (1%) of the Gross Receipts for the most-recently completed Rate Period.
- 2328 B. Contractor shall pay County its actual expenses for attorneys', consultants', accountants' fees,
 2329 staff time, and investigation costs necessary to investigate the suitability of any proposed
 2330 assignee, and to review and finalize any document required as a condition for approving any such
 2331 assignment. Such payment shall be required regardless of the ultimate determination of the
 2332 County regarding the approval or denial of the assignment. Upon submittal of Contractor's
 2333 request for assignment to County, Contractor shall submit an initial deposit of thirty thousand
 2334 dollars (\$30,000) for this purpose.
- 2335 C. Contractor shall furnish County with reviewed financial statements of the proposed assignee's
 2336 operations for the immediately preceding three (3) operating years.
- 2337 D. Contractor shall furnish County with satisfactory proof: (i) that the proposed assignee has at least
 2338 ten (10) years of Recyclable Materials, Organic Materials, and Solid Waste management
 2339 experience on a scale equal to or exceeding the scale of operations conducted by Contractor
 2340 under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered
 2341 any citations or other censure from any Federal, State or local contractor having jurisdiction over
 2342 its waste management operations due to any significant failure to comply with State, Federal or
 2343 local waste management laws and that the assignee has provided the County with a complete list
 2344 of such citations and censures; (iii) that the proposed assignee has at all times conducted its
 2345 operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee
 2346 conducts its operations and management practices in accordance with sound waste management
 2347 practices in full compliance with all Federal, State, and local laws regulating the Collection,
 2348 Transportation, Processing and Disposal of Recyclable Materials, Organic Materials, and Solid
 2349 Waste including Hazardous Waste; and, (v) that any other information required by County
 2350 demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely, safe
 2351 and effective manner.
- 2352 E. Contractor shall provide the County with any and all additional records or documentation which,
 2353 in the County Contract Manager's sole determination, would facilitate the County's review of the
 2354 proposed assignment.

2355 Under no circumstances shall any proposed assignment be considered by County if Contractor is in default
 2356 at any time during the period of consideration. If, in the County Contract Manager's sole determination,
 2357 there is any doubt regarding the compliance of the Contractor with the Agreement, County Contract
 2358 Manager may require an audit of the Contractor's compliance and the costs of such audit shall be paid by
 2359 Contractor in advance of the performance of said audit.

2360 **12.7 NO THIRD-PARTY BENEFICIARIES**

2361 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
 2362 party to bring an action to enforce any of its terms.

2363 **12.8 WAIVER**

2364 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be

2365 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of
2366 violation of the same or any other provision. The subsequent acceptance by either Party of any monies
2367 which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach
2368 or violation by the other Party of any provision of this Agreement.

2369 **12.9 NOTICE PROCEDURES**

2370 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
2371 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally
2372 delivered to a representative of the Parties at the address below or deposited in the United States mail,
2373 first class postage prepaid, addressed as follows:

2374 If to County:

2375 Jeffrey Warren, Environmental Management Department Director
2376 County of El Dorado, Community Development Agency
2377 2850 Fairlane Court Placerville, CA 95667

2378 If to Contractor:

2379 South Tahoe Refuse Co.
2380 Attn: Jeffery R. Tillman, CEO
2381 2140 Ruth Avenue
2382 South Lake Tahoe, CA 96150

2383 With a copy to:

2384 David Cohen, Esq.
2385 Cohen & Ostler, APC
2386 455 N. Whisman Road, Suite 100
2387 Mountain View, CA 94043

2388
2389

2390 The address to which communications may be delivered may be changed from time to time by a notice
2391 given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered
2392 or, if mailed, three (3) calendar days from the date it is deposited in the mail. Either Party may choose to
2393 provide email notification to the other Party that notice has been deposited in the mail, however such
2394 email notification shall not constitute official notice.

2395 **12.10 REPRESENTATIVES OF THE PARTIES**

2396 References in this Agreement to the "County" shall mean the County's elected body and all actions to be
2397 taken by County except as otherwise provided in this Section 12.10. Each reference to an act performed
2398 by, or obligation of the County Contract Manager in this Agreement is itself a delegation of authority from
2399 the County. The County may delegate, in writing, further authority to the County Contract Manager
2400 and/or to other County officials and may permit such officials, in turn, to delegate in writing some or all
2401 of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates
2402 if they are within the scope of the authority properly delegated to them.

2403 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
2404 the representative of the Contractor in all matters related to the Agreement and shall inform County in

2405 writing of such designation and of any limitations upon his or her authority to bind the Contractor. County
2406 may rely upon action taken by such designated representative as actions of the Contractor unless they
2407 are outside the scope of the authority delegated to him/her by the Contractor as communicated to
2408 County.

2409 **ARTICLE 13.**
2410 **MISCELLANEOUS AGREEMENTS**

2411 **13.1 ENTIRE AGREEMENT**

2412 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
2413 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party
2414 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
2415 construed against any Party on the basis of drafting. This Agreement may be amended only by an
2416 agreement in writing, signed by each of the Parties hereto.

2417 **13.2 SECTION HEADINGS**

2418 The article headings and section headings in this Agreement are for convenience of reference only and
2419 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
2420 provisions.

2421 **13.3 REFERENCES TO LAWS**

2422 All references in this Agreement to laws and regulations shall be understood to include such laws as they
2423 may be subsequently amended or recodified, unless otherwise specifically provided herein.

2424 **13.4 AMENDMENTS**

2425 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

2426 **13.5 SEVERABILITY**

2427 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,
2428 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this
2429 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained
2430 herein.

2431 **13.6 COUNTERPARTS**

2432 This Agreement may be executed in counterparts, each of which shall be considered an original.

2433 **13.7 EXHIBITS**

2434 Each of the Exhibits identified as Exhibit "A" through "I" is attached hereto and incorporated herein and
2435 made a part hereof by this reference. Except as described in Section 8.1 related to Exhibit G2, in the event
2436 of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement
2437 shall control.

2438 IN WITNESS WHEREOF, this Agreement is entered by the Parties hereto in El Dorado County, California on
2439 the day and year first above written.

County of El Dorado, a political subdivision of
the State of California

Wendy Thomas
Chair
Board of Supervisors
County of El Dorado

"CONTRACTOR"

[Signature] 11/22/23
Signature Date

Jeffrey R. Tillman
Print Name of Signatory

President
Title of Signatory

[Signature] 11.22.23
Signature Date

John D. Wazowski
Print Name of Signatory

SECRETARY
Title of Signatory

APPROVED AS TO FORM:

[Signature] 3-4-2024
David Livingston Date
County Attorney

ATTEST:

[Signature] 3-4-2024
Kim Dawson Date
Clerk of the Board of Supervisors

County Business License #

Resolution Number

Approved by County Board of Supervisors

2440