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SOLID WASTE SERVICES AGREEMENT

BETWEEN

THE COUNTY OF EL DORADO

AND

TAHOE TRUCKEE SIERRA DISPOSAL

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Execution Date: September 29, 2015

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This Solid Waste Services Agreement (Agreement) is entered into, effective September 29, 2015, between the County of El Dorado (County), and Tahoe Truckee Disposal Co, Inc. (dba Tahoe Truckee Sierra Disposal) (Contractor) for the Collection, transportation, Processing, and Disposal of Solid Waste and Recyclable Materials.

## R E C I T A L S

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WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, the Board of Supervisors has determined and finds that the public health, safety, and well-being require an exclusive franchise be awarded to a qualified Solid Waste enterprise for the Collection and recovery of Solid Waste from certain residential, industrial, and commercial areas in the County; and

WHEREAS, the County and Contractor are mindful of the provisions of the laws governing the safe Collection, transport, Recycling, and Disposal of Solid Waste, including the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and

WHEREAS, the County has not and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection of Solid Waste; and

WHEREAS, Contractor has represented and warranted to the County that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional, and other entities in the Franchise Area for the Collection and safe transport to a Material Recovery Facility and/or Transfer Station and/or Disposal facilities of Municipal Solid Waste, and Recyclable Materials; and

WHEREAS, the Board of Supervisors determines and finds that the public health, safety, and well-being would be best served if Contractor were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the County is willing to grant Contractor a new Solid Waste Services Agreement in view of Contractor's prior satisfactory service in the Franchise Area and to enable the County to reach its State mandated Recycling goals; and

WHEREAS, the Board of Supervisors declares its intention of maintaining reasonable rates for Collection, transportation, Processing, and Disposal of Solid Waste within the area covered by this grant of franchise.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

## SECTION 1 - DEFINITIONS

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Whenever any term used in this Agreement has been defined by the El Dorado County Ordinance Code 8.42 ("Ordinance Code") or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Ordinance Code or Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

### A. AB 939

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"AB 939" means the California Integrated Waste Management Act of 1989, Public Resources Code, sections 40000, et seq., as it may be amended from time to time.

### B. AB 32

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"AB 32" means the California Global Warming Solutions Act of 2006, California Health & Safety Code, sections 38500, et seq., as it may be amended from time to time.

### C. AB 341

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"AB 341" means the Mandatory Commercial Recycling Regulation approved by the Office of Administrative Law in May 2012, Title 14, California Code of Regulations, chapter 9.1, commencing with section 18835. Includes SB 1018 signed by the Governor in June 2012.

### D. AFFILIATE

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"Affiliate" means Contractor, its officers, directors, shareholders, employees, and any corporation, partnership, joint venture or other entity directly or indirectly controlling Contractor, or directly or indirectly owned or controlled by Contractor or its principals.

### E. ALTERNATIVE DAILY COVER

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"Alternative Daily Cover" means cover material other than earthen material placed on the surface of the active face of a Municipal Solid Waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.

### F. ASSIGNMENT

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"Assignment" has the meaning set forth in Section 12B below.

### G. BIN

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"Bin" means a container, with a capacity of at least one (1) cubic yard designed or intended to be mechanically dumped into a loader packer type truck. Bins may also include Compactors that are owned by the customer wherein the Collection services occur.

### H. BIOMASS CONVERSION FACILITY

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"Biomass Conversion Facility" means any facility, including any intermediate staging area, processing biomass waste into energy, fuel, and other products.

### I. BOARD OF SUPERVISORS

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"Board of Supervisors" means the County of El Dorado Board of Supervisors. The County of El Dorado Board of Supervisors is the County of El Dorado's governing body, consisting of elected representatives from each of the County's five (5) districts.

J. BULKY WASTE / BULKY ITEMS

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"Bulky Waste" or "Bulky Items" means large items of Solid Waste, such as appliances, furniture, large auto parts, White Goods, and other oversize wastes.

K. CALRECYCLE

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"CalRecycle" means the California Department of Resources Recycling and Recovery.

L. CAN

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"Can" means a metal or plastic receptacle, with a lid and handles, capable of being Collected manually not to exceed thirty-two (32) gallons in capacity.

M. CART

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"Cart" means a heavy plastic receptacle with a rated capacity of at least twenty (20) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting lid, and two (2) wheels, that is approved by the County and is colored and labeled as designated by the County.

N. CHANGE IN CONTROL

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"Change in Control" has the meaning set forth in Section 12C below.

O. COLLECT / COLLECTION

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"Collect" or "Collection" means to pick-up, transport, and remove Solid Waste, Recyclables, Green Waste, Christmas trees, Bulky Items, E-Waste, Universal Waste, Used Oil, Used Oil Filters, and/or Construction and Demolition Debris.

P. COMMERCIAL SOLID WASTE

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"Commercial Solid Waste" means all types of Solid Wastes generated by commercial, industrial, governmental, and other non-residential sources within the Franchise Area. The term "Commercial Solid Waste" does not include Hazardous Wastes, Medical Wastes, and Special Wastes.

Q. COMMENCEMENT DATE

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"Commencement Date" means the date when this Agreement is approved by the Board of Supervisors.

R. COMPACTOR

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"Compactor" means any container which has compaction mechanisms whether stationary or mobile, used or unused, operable or inoperable, all inclusive.

S. COMPOSTABLE MATERIALS

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"Compostable Materials" means plant material (leaves, grass clippings, branches, brush, flowers, roots, pine needles, pine cones, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, and biodegradable waste otherwise approved for the Yard Waste program by Contractor and the County. It may also include pre- or post-consumer food waste, if Contractor begins a Food Waste Collection program within the County.

T. CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS

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“Conditionally Exempt Small Quantity Generators” (CESQG) means a Generator who generates one hundred (100) kilograms or less per month of Hazardous Waste or one (1) kilogram or less per month of acutely Hazardous Waste.

Requirements for CESQGs include: must identify all the Hazardous Waste generated, may not accumulate more than one thousand (1,000) kilograms of Hazardous Waste at any time, and must ensure that Hazardous Waste is delivered to a person or facility that is authorized to manage it (Reference: Title 40 Code of Federal Regulations, section 261.5).

#### U. CONSTRUCTION AND DEMOLITION DEBRIS

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“Construction and Demolition Debris” (C&D Debris) means Solid Wastes Generated by or resulting from Projects within the County of El Dorado that require a building permit (excluding grading) (Reference: Ordinance Code 8.43).

C&D Debris includes components of the building or structure that is the subject of the construction work including, but not limited to: untreated lumber and untreated wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, plastic pipe, concrete, fully cured asphalt, heating, ventilating, and air conditioning systems and their components, lighting fixtures, appliances, equipment, furnishings and other fixtures; tools and building material consumed or partially consumed in the course of the construction work including material generated at construction trailers, such as blueprints, plans, and other similar wastes; cardboard and other packaging material derived from materials installed in or applied to the building or structure or from tools and equipment used in the course of the construction work. Construction refers to Standard Industrial Classification (SIC) Code sections, 1500 through 1794, 1796, and 1799. Demolition refers to Standard Industrial Classification Code, section 1795. (Reference: Title 14, California Code of Regulations, section 18720(a)(14).) The term “C&D Debris” also includes Recyclables generated by construction and demolition activities.

#### V. CONTRACT ADMINISTRATOR

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The “Contract Administrator” for this Agreement means the County of El Dorado Community Development Agency Environmental Management Division Director or his/her designee.

#### W. CONTRACTOR

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“Contractor” means Tahoe Truckee Disposal Co., Inc. dba Tahoe Truckee Sierra Disposal and its current ownership. Contractor shall also mean any County-approved assignee, transferee, or successor in interest of Contractor.

#### X. COUNTY

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“County” means the County of El Dorado.

#### Y. COUNTY FACILITIES

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“County Facilities” means any building, structure, yard, park, or any other facility owned, leased, or operated, by the County, or any subsidiary public entity of the County within the Franchise Area.

#### Z. DISPOSAL

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"Disposal" and "Dispose" means the final Processing and disposition of materials Collected by Contractor under the terms of this Agreement.

**AA. DIVERT / DIVERSION**

"Divert" or "Diversion" means to make use of discarded materials for any purpose and; therefore, to avoid Disposal of such material at a Landfill.

**BB. EL DORADO COUNTY SOLID WASTE MANAGEMENT PLAN**

"El Dorado County Solid Waste Management Plan" means the document adopted by the Board of Supervisors on January 31, 2012. The document consists of four (4) sections: Action Plan, Executive Summary, Detailed Strategies and Support, and Response to Public Comments.

**CC. ELECTRONIC WASTE / E-WASTE**

"E-Waste" or "Electronic Waste" typically means discarded electronic equipment such as stereos, radios, speakers, televisions, computers, monitors, VCRs, printers, copiers, facsimile machines, DVD players, microwaves, telephones, and similar items (including cathode ray tubes and other Universal Waste which may require special handling).

The Department of Toxic Substances Control (DTSC) has adopted regulations designating E-Wastes as Universal Wastes. (Reference: Title 22, California Code of Regulations, chapter 23).

**DD. ERL**

"ERL" means Placer County Eastern Regional Sanitary Landfill, Inc. dba Eastern Regional Landfill.

**EE. FOOD WASTE**

"Food Waste" means all animal and vegetable Solid Wastes generated by food facilities, as defined in California Health & Safety Code, section 27521, or from residences, that result from the storage, preparation, cooking, or handling of food. (Reference: Title 14, California Code of Regulations, section 18720).

**FF. FOREST BIOMASS**

"Forest Biomass" means vegetation from trees, brush, and other plants grown in Forested Land.

**GG. FORESTED LAND**

"Forested Land" means areas in the County that require a Smoke Management Plan for agricultural and prescribed burning pursuant to the requirements of the California Air Resources Board and the County of El Dorado Air Quality Management District.

**HH. FRANCHISE AREA**

"Franchise Area" is defined in Exhibit A. The current boundaries of the Franchise Area are also shown by maps incorporated herein by reference, and which are on file in the office of the Clerk of the Board of Supervisors.

**II. FRANCHISE FEE**

"Franchise Fee" means the fee or assessment imposed by the County on Contractor solely because of its status as party to this Agreement, and which inter alia, is intended to compensate the County for its expenses in administering this Agreement, and to fund other waste management activities.

**JJ. GENERATOR**

"Generator" is an individual, commercial business, or any other entity that produces Solid Waste, Recyclables, Green Waste, Bulky Items, Christmas trees, Universal Waste, E-Waste, Used Oil, Used Oil Filters, and/or C&D Debris.

**KK. GROUP COLLECTION AREA**

"Group Collection Area" means a single location where multiple residential customers place Solid Waste, Recyclable Material, and Green Waste items for Collection. Solid Waste, Recyclable Material, and Green Waste item must be in containers to be Collected.

**LL. GREEN WASTE / YARD WASTE**

"Green Waste" or "Yard Waste" means any wastes generated from the maintenance or alteration of public, commercial, or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds (Reference: Title 14, California Code of Regulations, section 18720).

**MM. HAZARDOUS WASTE OR MATERIALS**

"Hazardous Waste or Materials" means any and all of the following:

- Wastes, materials, or substances defined or characterized as Hazardous Waste by the Federal Solid Waste Disposal Act, as amended, including the Resource Conservation and Recovery Act of 1976 (Title 42 U.S. Code, section 6901 et seq.) as amended from time to time, or regulations promulgated there under;
- Wastes, materials, or substances defined or characterized from time to time as Hazardous Waste by the principal agencies of the State of California (including, without limitation, the DTSC, CalRecycle, and EPA) having jurisdiction over Hazardous Waste generated by facilities within the State, and pursuant to any other applicable governmental regulations;
- Wastes, materials, or substances, the storage, treatment, transportation or Disposal of which is subject to regulation under the Toxic Substances Control Act; Title 15 U.S. Code, sections 2601-2654, as amended from time to time, or regulations promulgated there under;
- Radioactive wastes, materials, substances, or items, the storage, treatment, transportation, or Disposal of which is subject to governmental regulations.

The term "Hazardous Waste" will be construed to have the broader, more encompassing definition where a conflict exists in the definitions employed by two (2) or more governmental entities having concurrent or overlapping jurisdiction over Hazardous Waste.

**NN. HOUSEHOLD HAZARDOUS WASTE**

“Household Hazardous Waste” or “HHW” means Hazardous Waste generated at Single-Family Units or Multi-Family Units.

**OO. INDUSTRIAL SOLID WASTE**

“Industrial Solid Waste” means all Solid Waste and semi-Solid Waste which results from industrial processes and manufacturing operations, except for Hazardous Wastes or Special Wastes.

**PP. LANDFILL / SOLID WASTE LANDFILL**

“Landfill”, or “Solid Waste Landfill” means a Disposal facility that accepts Solid Waste for land Disposal, but does not include a facility which receives only wastes generated by the facility owner or operator in the extraction, beneficiation, or Processing of ores and minerals, or a cemetery which disposes onsite only the grass clippings, floral wastes, or soil resulting from activities on the grounds of that cemetery (Reference: Public Records Code, section 40195.1).

**QQ. LARGE VENUE COLLECTION SERVICE**

“Large Venue Collection Service” means Collection of Solid Waste, Recyclables, and other materials as appropriate at Large Venue Special Events.

**RR. MATERIAL RECOVERY FACILITY / MRF**

“Material Recovery Facility” or “MRF” means an intermediate Processing facility designed to remove Recyclables and other Reusable or Transformable materials from the Wastestream. A “dirty MRF” removes Reusable materials from unseparated trash. A “clean MRF” separates materials from commingled Recyclables, typically Collected from residential or commercial curbside programs.

**SS. MATERIAL RECOVERY SERVICES**

“Material Recovery Services” means the Processing of Solid Waste and Recyclable Materials at permitted Material Recovery Facilities, and the subsequent recovery, reuse, Recycling, Repurposing, or other Diversion of such materials from Land-Filling in such a manner that the County receives Diversion credit for such materials and activities by CalRecycle.

**TT. MEDICAL WASTE / INFECTIOUS WASTE**

“Medical Waste” or “Infectious Waste” means waste which may cause disease or reasonably be suspected of harboring pathogenic organisms, including source-separated Medical or Infectious Waste resulting from medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, hospitals, and similar facilities Processing wastes which may include human or animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves. (Reference: Health & Safety Code, sections 117690 and 118215 and et seq., especially 25117.5).

**UU. MULTI-FAMILY UNIT**

“Multi-Family Unit” shall mean each individual living unit within a multi-family complex composed of five or more individual residential units which receive communal refuse and/or Recycling services.

## VV. OPERATING YEAR

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“Operating Year” means the twelve (12) month period from July 1 to June 30 or any portion thereof, during the term of this Agreement. Contractor’s rates for services shall be adjusted annually for each new Operating Year as described in Section 22 of this Agreement and as determined by the Solid Waste Rate Setting Policies and Procedures Manual for Unincorporated Areas (Exhibit B).

## WW. PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

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“Permanent Household Hazardous Waste Collection Facility” or “PHHWCF” means a facility operated by a public agency or its contractor which: (a) is operated in accordance with section 67450.25; and (b) is permanently sited at a location. (Reference: Title 22, California Code of Regulation, section 66260, Definitions).

## XX. PRIOR AGREEMENTS

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“Prior Agreements” means: (a) the Agreement between Contractor and the County dated April 4, 1995, and (b) other agreements with Contractor; and all subsequent modifications or amendments to any such agreements.

## YY. PROCESS

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To “Process” means the separation, sorting, handling, and/or baling of Solid Waste and/or Recyclable Materials by automated or manual means at a Material Recovery Facility, for the purpose of Recycling a portion of these materials. Material that is received at a Material Recovery Facility and is directly loaded into a transfer vehicle for delivery to a Landfill for Disposal without Recyclable Materials being sorted, separated, handled, and/or baled; therefor, has not been “Processed” within the meaning of this definition.

## ZZ. PROCESSING RESIDUES

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“Processing Residues” means all materials remaining after the Processing of Recyclables, Green Waste, Bulky Items, and C&D Debris, which cannot be Diverted from the Landfill.

## AAA. RECOVERED MATERIALS

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“Recovered Materials” mean all Recyclable Materials that are removed for Recycling by Contractor from the total tonnage of all Solid Waste Collected by Contractor in the Franchise Area, whether these materials are source separated or commingled upon Collection, and Recyclable Materials recovered from Solid Waste generated within the Franchise Area as a result of Contractor’s Material Recovery Services. Recovered Materials shall also include Recyclable Materials received by Contractor at any buy-back center, or by means of any other Recycling program operated by Contractor. All such Recyclable Materials must be Recycled by Contractor to be considered “Recovered Materials.”

## BBB. RECYCLABLES / RECYCLABLE MATERIAL

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“Recyclables” or “Recyclable Material” means materials which are reused, Recovered, Repurposed, or Processed (or are in the future reused or Processed) into a form suitable for reuse through reprocessing or remanufacture, and/or which qualify as Diversion from Land-Filling consistent with the requirements of the California Integrated Waste Management Act and regulations thereunder. The terms “Recyclables” or “Recyclable Material” may also include materials which are Transformed to produce fuel, Compostable

Materials, Recyclable C&D Debris, Alternative Daily Cover, materials Processed for land application including sludge or as feed for livestock, provided all such uses and applications qualify as Diversion consistent with the requirements of the California Integrated Waste Management Act and regulations thereunder, and any other uses or applications that qualify as Diversion consistent with the requirements of the California Integrated Waste Management Act and regulations thereunder. The terms "Recyclables" or "Recyclable Material" may include but are not limited to paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, polyethylene terephthalate (PET), high-density polyethylene (HDPE), beverage containers, Compostable Materials, asphalt, concrete, brick, stone, Used Oil, Used Oil Filters, Electronic Waste, Universal Waste, and such other materials designated as Recyclables by CalRecycle, or any other agency with jurisdiction.

### CCC. RECYCLE

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"Recycle" means Recovery, Repurposing, reuse, Transformation, or other Diversion of Recyclable Materials from Land-filling in such a manner that the County receives Diversion credit for such materials and activities by CalRecycle.

### DDD. REPURPOSE

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"Repurpose" means the use of something for a purpose other than its original intended use. Repurposing an item can be done by modifying it to fit a new use, or by using the item as is in a new way with the intention of Diverting the item from a Landfill.

### EEE. RESIDUAL

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"Residual" means the Solid Waste destined for Disposal, further transfer/Processing as defined in Title 14, California Code of Regulations, section 17402(a)(30) or (31), or Transformation which remains after processing has taken place and is calculated in percent as the weight of residual divided by the total incoming weight of materials.

### FFF. RESIDENTIAL SOLID WASTE

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"Residential Solid Waste" means all types of Solid Waste that originates from Single-Family Units.

### GGG. ROLL-OFF CONTAINERS

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"Roll-Off Containers" means a container with a capacity of at least ten (10) cubic yards designed or intended to be mechanically hoisted onto a truck.

### HHH. SELF-HAUL CUSTOMER

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"Self-Haul Customer" means a generator of Solid Waste, Recyclables, Green Waste, Bulky Items, E-Waste, Universal Waste, Christmas trees, Used Oil, Used Oil Filters, and/or C&D Debris within the County's jurisdiction who delivers materials to a facility permitted to accept the material rather than by Collection by Contractor.

### III. SINGLE-FAMILY UNIT

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"Single-Family Unit" means a dwelling which receives individual refuse Collection service, but includes duplexes, or other complexes consisting of four (4) units or less, and all other living units that are not defined as Multi-Family Units or Commercial Solid Waste Generators.

### JJJ. SOLID WASTE / MUNICIPAL SOLID WASTE / MSW

"Solid Waste", also known as "Municipal Solid Waste", or "MSW", means all putrescible and non-putrescible solid, semi-solid, and liquid wastes, including residential, commercial, and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, C&D Debris, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded Solid Wastes and semi-Solid Wastes, but specifically excludes Hazardous Wastes, Special Wastes, and Medical Wastes.

### KKK. SOLID WASTE RATE SETTING POLICIES AND PROCEDURES MANUAL FOR UNINCORPORATED AREAS

"Solid Waste Rate Setting Policies and Procedures Manual for Unincorporated Areas" means the step-by-step guide for the County of El Dorado, and its franchise haulers serving unincorporated areas, to prepare and approve changes to Solid Waste Collection rates. This manual establishes rate change policies, provides application forms, specifies reporting formats, identifies required supporting documentation, and describes the procedure for requesting, reviewing, and adopting rate changes. See Exhibit B.

### LLL. SPECIAL WASTES

"Special Waste" means any Hazardous Waste listed in Title 22, California Code of Regulations, section 66740 or any waste which has been classified as a Special Waste pursuant to Title 22, California Code of Regulations, section 66744 or which has been granted a variance for the purpose of storage, transportation, treatment, or Disposal by the Department of Health Services pursuant to Title 22, California Code of Regulations, section 66310. Special Waste also includes any Solid Waste that, because of its source of generation, physical, chemical, or biological characteristics or unique Disposal practices, is specifically conditioned in a Solid Waste facilities permit for handling and/or Disposal (Reference: Title 14, California Code of Regulations, section 18720(a)(73)).

Some examples of Special Waste include, but are not limited to, ash, sewage sludge, industrial sludge, asbestos, auto shredder waste, auto bodies, and other Special Wastes like dead animals.

### MMM. TRANSFORMATION

"Transformation" refers to incineration, pyrolysis, distillation, or biological conversion other than composting. The statutory definition of Transformation does not include composting, gasification, or biomass conversion (Reference: California Public Resources Code, section 40201).

### NNN. TRANSFER STATION / PROCESSING STATION / STATION

"Transfer Station," "Processing Station," or "Station" includes those facilities utilized to receive Solid Wastes, temporarily store, separate, and consolidate the materials or to transfer the Solid Wastes directly from smaller to larger vehicles for transport.

### OOO. UNIVERSAL WASTE

"Universal Waste" mean Hazardous Wastes that are widely produced by households and many different types of businesses. Universal Wastes include Electronic Waste such as televisions, computers, and other electronic devices as well as batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others. The

Hazardous Waste regulations (Title 22, California Code of Regulations, section 66261.9) identify seven (7) categories of Hazardous Wastes that can be managed as Universal Wastes. Any unwanted item that falls within one (1) of these Wastestreams can be handled, transported, and Recycled following the simple requirements set forth in the Universal Waste regulations (UWR) (Title 22, California Code of Regulations, chapter 23).

**PPP. USED OIL**

“Used Oil” means any oil that has been refined from crude oil or has been synthetically produced, and is no longer useful to the customer because of extended storage, spillage, or contamination with non-hazardous impurities such as dirt or water, or has been used, and as a result of such use, has been contaminated with physical or chemical impurities.

**QQQ. USED OIL COLLECTION SERVICE (RESIDENTIAL ONLY)**

“Used Oil Collection Service” means the Collection of Used Oil and Used Oil Filters in Used Oil Containers and Used Oil Filter Containers respectively, by Contractor, from Residential Solid Waste customers in the Franchise Area who make an appointment and place the containers appropriately closed and labeled at the curbside.

**RRR. USED OIL CONTAINER (RESIDENTIAL ONLY)**

“Used Oil Container” means a plain plastic container for the accumulation of Used Oil that is at least one (1) gallon in capacity, leak-proof, has a screw-on lid, and has a label designating it for use as a Used Oil Container.

**SSS. USED OIL FILTER (RESIDENTIAL ONLY)**

“Used Oil Filter” means any oil filter that is no longer useful to the customer because of extended storage, spillage, or contamination with non-hazardous impurities such as dirt or water, or has been used and as a result of such use has been contaminated with physical or chemical impurities.

**TTT. USED OIL FILTER CONTAINER (RESIDENTIAL)**

“Used Oil Filter Container” means a container approved by Contractor and authorized by the County for the accumulation of Used Oil Filters that has a label designating it for use as a Used Oil Filter Container.

**UUU. WASTESTREAM**

“Wastestream” means all Solid Waste and Recyclable Materials Collected by Contractor pursuant to this Agreement or delivered by any person to the Material Recovery Facility.

**VVV. WHITE GOODS**

“White Goods” means discarded household appliances such as washers, dryers, refrigerators, stoves, water heaters, freezers, small air conditioning units, and other similar items.

**SECTION 2 - PRIOR AGREEMENTS**

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The Prior Agreements shall remain in effect, and Contractor shall continue to Collect, transfer, Process, Recycle, and Dispose of Solid Waste in the Franchise Area pursuant to the Prior Agreements, until the Commencement Date. Notwithstanding any other provision of this Agreement or of the Prior Agreements, upon the Commencement Date, the Prior Agreements shall expire and be of no further force or effect, except that:

- (1) Any provisions of the Prior Agreements which provide for either party to defend and/or indemnify the other party for acts, omissions or occurrences prior to the Commencement Date, or which provide for insurance or record-keeping duties, shall survive termination;
- (2) Any provisions of the Prior Agreements which expressly state that they shall survive expiration of the term or termination of the Prior Agreements shall survive; and
- (3) Any amounts owed by Contractor to the County pursuant to the Prior Agreements shall remain due and payable in accordance with the terms of the Prior Agreements. Notwithstanding the foregoing, the Prior Agreements shall not be terminated by this section if this Agreement is terminated as a result of litigation challenging the award of this Agreement.

## SECTION 3 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE

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### A. GRANT OF FRANCHISE

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The County grants to Contractor, for the term of and in accordance with this Agreement (including all extensions or renewals), the exclusive privilege and contractual duty to make and enter into independent arrangements with residents of Single-Family Units, residents and/or owners of Multi-Family Units and persons in charge of commercial, industrial, institutional and other entities in the Franchise Area for the Collection, transportation, and removal to Solid Waste Processing and/or Disposal facilities, of all Residential, Industrial and Commercial Solid Waste (including Recyclables and Recyclable Material), which has been generated within the Franchise Area covered by this Agreement and placed for Collection. This grant of franchise is subject to all limitations imposed by applicable laws and regulations, and is subject to all limitations set forth in this Agreement. In addition, Contractor shall have an exclusive franchise to Collect C&D Debris except as provided in Section 3(C)(4) below.

### B. ACCEPTANCE OF FRANCHISE

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Contractor agrees to be bound by and comply with all the requirements of this Agreement.

### C. EXCEPTIONS TO EXCLUSIVITY

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The exclusive franchise granted by this Agreement shall not apply where:

- (1) A person, including employees (excluding a person who hires a third party for a fee), handles, hauls, or transports Solid Waste or Recyclables generated by or from his/her own residence or business operation for purposes of disposing of same at an authorized Processing or Disposal facility or Transfer Station, notwithstanding

anything herein to the contrary, this provision shall not in any way modify any mandatory Solid Waste ordinance or requirements; or

- (2) A person or entity contracts for landscaping, gardening, or similar work and where Contractor engaged therefore removes and Recycles or otherwise Disposes of garden and other Compostable Materials resulting therefrom, provided that such removal and Recycling or Disposal is incidental to the landscaping or gardening work performed by Contractor performing those services and not as a hauler or Recycler; or
- (3) A person or entity has been given an exemption by the County from any mandatory Collection ordinance that the County may adopt in the future; or
- (4) A person or entity licensed to engage in construction and/or demolition work that is performing construction and/or demolition work on a premise pursuant to a valid construction permit that hauls away C&D Debris to a licensed Recycling or Disposal facility using its own employees and vehicles. The above exception to this exclusive Agreement does not permit or allow a person or entity to hire or contract with another person or entity, whether as an agent or independent contractor, to pick-up, remove, haul, Dispose of, or transport Solid Waste. Likewise, the rental of equipment wherein a driver/operator is furnished is not permitted and would be a violation of the exclusivity provision of this Agreement. The use of rented equipment with hired equipment operators to pick-up, remove, haul, Dispose of, or transport Solid Waste is not permitted; and
- (5) Nothing in this Agreement shall require that Collection services be accepted by the County or any entity governed by the Board of Supervisors, the State of California, or other state agency, any school district, or any other entity that is excluded by law from the obligation to subscribe to the Collection services set forth herein; and
- (6) A person or entity handles, hauls, transports, hires, or contracts with another person or entity to handle, haul, or transport, Forest Biomass generated in Forested Land for purposes of disposing same at an authorized Biomass Conversion Facility. This Agreement does not confer any exclusive rights to Contractor to handle, haul or transport Forest Biomass or operate a Biomass Conversion Facility and/or conduct biomass conversion operations.
- (7) A local property owner may engage with a local property management firm to arrange for the transport of regular household generated waste to a "Group Collection Area", in cases where direct servicing access of the property may be impractical due to weather or other property access issues. In such cases the individual property owners will still be charged the prevailing garbage collection rates for the equivalent number of thirty-two (32) gallon cans disposed.

#### D. SALE OR DONATION OF RECYCLABLES

This Agreement is not intended to and does not affect or limit the right of any person to sell any Recyclable Material to any person lawfully engaged in business in the Franchise Area or to donate Recyclable Material to any bona fide charity, provided that all such Recyclable Material is substantially separated from non-Recyclable Solid Waste by the generator. Recyclables shall not be considered to have been sold or donated where the generator of

such materials incurs any expense in connection with the removal of those materials from the Generator's premises.

**E. FRANCHISE AREA**

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The Franchise Area covered by this Agreement shall be all areas, including, but not limited to, residential, commercial, and industrial areas within the boundaries of the County as they exist on the effective date of this Agreement, as identified in Exhibit A (Franchise Area), to this Agreement, and as they may hereafter be changed by reason of annexation or de-annexation.

**F. RIGHTS RESERVED AS TO HAZARDOUS WASTES, MEDICAL WASTES, SPECIAL WASTES, AND FOREST BIOMASS**

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The County reserves the right to contract with other parties to have Hazardous, Medical Wastes, Special Wastes, and Forest Biomass, Collected, transported, Disposed of, Processed, and/or Diverted.

**G. ENFORCEMENT OF EXCLUSIVITY OF FRANCHISE**

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Contractor may independently enforce the exclusivity provision of this Agreement against third party violators, including, but not limited to, seeking injunctive relief, and the County shall use good faith efforts to cooperate in such enforcement actions brought by Contractor. The County shall not be liable to Contractor in any manner, including any costs or damages such as lost revenues or lost profits, should any person or entity refuse to use Contractor's Solid Waste Collection services and/or performs Collection services in competition with Contractor, and in doing so violates the exclusive grant of franchise given to Contractor in this Agreement. In such event, Contractor's sole and exclusive remedy shall be to seek an injunction, damages, or other available judicial relief against any such third person or entity that engages in any conduct or activity which violates Contractor's exclusive franchise rights under this Agreement.

**SECTION 4 - FRANCHISE FEES / OTHER COMPENSATION**

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**A. FRANCHISE FEES**

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Contractor shall pay to the County a Franchise Fee set by the Board of Supervisors by Resolution, which shall be a percentage of the gross revenues received and collected by Contractor from its operations pursuant to this Agreement that are protected by its exclusive franchise in Section 3 above, but excluding its non-exclusive operations and revenue from the sale of Recyclable Materials collected under this Agreement. The Franchise Fee is initially set at five percent (5%) of Contractor's gross revenues, and from time to time may be adjusted by Resolution of the Board of Supervisors. The Franchise Fee and supporting documents shall be due and payable quarterly within forty-five (45) days following the end of each quarter for gross revenues received during that quarter. If payment is not received within said forty-five (45) day period, interest shall accrue thereon at the rate of fifteen percent (15%) per annum or at the maximum interest rate permitted under California law, whichever is lesser. The County shall give Contractor a minimum of ninety (90) days' notice of any changes to the surcharge. Any increase in the surcharge shall result in a corresponding rate adjustment to Contractor's rates and/or be passed through to Contractor's customers.

## **B. OTHER COMPENSATION**

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Contractor shall also collect from its customers and pay to the County any surcharge set by the County to fund the County Solid Waste management activities, El Dorado County Solid Waste Management Plan implementation, AB 939 implementation programs, new regulatory requirements, and Landfill closure, post-closure, and remediation costs. This surcharge shall be treated for rate-setting purposes as a pass-through cost in the same manner as the Franchise Fee. Any change in such surcharge shall be reflected in a corresponding adjustment to Contractor's rates. Such surcharge shall be due and payable quarterly within forty-five (45) days following the end of each quarter for gross revenues received during that quarter. If payment is not received within said forty-five (45) day period, interest shall accrue thereon at the rate of fifteen percent (15%) per annum or at the maximum interest rate permitted under California law, whichever is lesser. The County shall give Contractor a minimum of ninety (90) days' notice of any changes in the surcharge. Any increase in the surcharge shall result in a corresponding rate adjustment to Contractor's rates and/or be passed through to Contractor's customers.

## **SECTION 5 - COMPLIANCE WITH LAWS AND REGULATIONS**

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### **A. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

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Contractor warrants that it will comply with all applicable federal and state laws legally binding on Contractor in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Title 42 U.S. Code, section 9601, et seq., AB 939, and all other applicable laws of the State of California. Moreover, Contractor shall comply with all local laws and regulations applicable to Contractor to the extent they are not inconsistent with the terms of this Agreement. Contractor shall comply with all final and binding judgments entered against Contractor regarding its services performed under this Agreement.

### **B. NONDISCRIMINATION**

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Contractor hereby agrees to abide by all local, state, and federal laws and regulations pertaining to discrimination in employment including that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, political affiliations, or any other non-merit based factors, be subject to discrimination under this Agreement.

## **SECTION 6 - SOLID WASTE AND RECYCLABLE COLLECTION SERVICES PROVIDED BY CONTRACTOR**

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### **A. THE COUNTY TO APPROVE ALL SERVICES**

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- (1) The nature of the services Contractor offers and provides to customers residing or doing business in the Franchise Area shall be determined by the Board of Supervisors. The Board of Supervisors may require Contractor to change the level of such services from time to time on reasonable notice to Contractor. The Board of Supervisors may also require Contractor to change the level of service to implement the El Dorado County Solid Waste Management Plan. The Board of Supervisors shall

adjust Contractor's rates to reflect Contractor's documented increased and reasonable costs caused by the change in service levels. The services that Contractor offers and provides to its customers affected by this Agreement shall be subject to the prior approval of the Board of Supervisors or its designee. Nothing in this Agreement; however, shall be construed or interpreted as authorizing the County to reduce or adversely affect Contractor's exclusive franchise rights as specified in Section 3 of this Agreement.

- (2) Before initiating new Recycling or Biomass Conversion programs or activities ("programs") within the Franchise Area, Contractor shall seek and obtain the express approval of the County. In seeking the County's approval for such new programs, Contractor shall provide the County with a detailed description of the proposed program, as well as a projection of costs, if any, and revenues associated with the program, and the anticipated level of Diversion to be achieved by such program.
- (3) New services will be implemented in accordance with the Solid Waste Rate Setting Policies and Procedures Manual for Unincorporated Areas (Exhibit B).

#### B. INITIAL SERVICE LEVELS / EXPANDED SERVICES

Contractor shall perform all education, outreach, monitoring, and reporting for all Commercial Solid Waste and Multi-Family Unit properties as required by AB 939 and AB 341 and under the direction of the County. These activities shall include educating Commercial Solid Waste and Multi-Family Unit customers regarding the mandatory recycling requirements of AB 341, and notifying non-compliant Commercial Solid Waste and Multi-Family Unit customers at least annually.

Contractor shall identify, educate, and monitor all Commercial Solid Waste and Multi-Family Unit customers required to be in compliance with AB341, and shall implement a recycling program(s) that supports and educates the public about state requirements and the El Dorado County Solid Waste Management Plan. Contractor shall ensure that on-line and print materials related to Commercial Solid Waste and Multi-Family Unit customers contain up-to-date information pertaining to AB341 or other mandatory requirements.

#### C. ONCE A WEEK SERVICE

In order to protect the public health and safety, and in accordance with the County Ordinance Chapter 8.42 arrangements made by Contractor with its customers in the Franchise Area for the Collection of Solid Waste not defined in the Agreement as Recyclable Materials, shall provide for the Collection of such waste generated or accumulated in residential, commercial, and industrial premises within the Franchise Area at least once per week, or more frequently, as Contractor and its customers may agree.

- (1) Single-Family Units: Contractor shall Collect from Single-Family Units MSW (except Bulky Wastes and Special Wastes) which have been properly placed, kept or accumulated in authorized Solid Waste containers, at curbside or other authorized Collection station(s) prior to Contractor's normal weekly Collection time. Recyclables and Green Waste, if applicable, will be Collected in a manner and frequency on a schedule approved by the County.

- (2) Multi-Family Units: Contractor shall empty all Multi-Family Units authorized Solid Waste containers not less than once per week, and more frequently if required to handle the Multi-Family Unit Wastestream of the premises where the containers are located, in a manner consistent with public health and safety. Multi-Family Units will maintain adequate Solid Waste container capacity for pick-up services. Recyclables and Yard Waste, if applicable, will be Collected in a manner and frequency on a schedule approved by the County.

Contractor shall visit each Multi-Family Unit Bin customer at least once every two (2) years during the term of this Agreement to perform a site waste assessment. As part of the assessment, Contractor shall meet with the customer to review level of service and to discuss Diversion opportunities. The results of each visit shall be documented and reported in the annual report to the County.

- (3) Commercial Solid Waste Customers: Contractor provides Can and Bin Commercial Solid Waste service. Not less than once per week, Contractor shall Collect from Commercial Solid Waste Customers, MSW (except Bulky Wastes and Special Wastes) which have been properly placed, kept or accumulated in authorized Solid Waste containers, at the authorized Collection point(s) prior to Contractor's normal weekly Collection time. Recyclables and Green Waste, if applicable, will be Collected in a manner and frequency on a schedule approved by the County. Collection of Commercial Cans is limited to no more frequently than once per week, and is limited to no more than six containers left for collection at a time. Bin service is available to Customers requesting service and requiring capacity above six cans per week.

Contractor shall visit each Bin customer upon request, during the term of this Agreement. Contractor shall meet with the property manager or business owner to review level of service, discuss Diversion opportunities, and offer to perform a site waste assessment. The results of each visit shall be documented and reported in the annual report to the County.

#### D. BIWEEKLY SERVICE

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- (1) Recyclable Material: Contractor shall Collect residential Recyclable Materials which have been properly placed, kept or accumulated in an authorized container at curbside or other authorized Collection station, no less than biweekly.
- (2) Green Waste: Upon such time that Green Waste Collection may be implemented, Contractor shall Collect residential Green Waste which has been properly placed, kept or accumulated in an authorized container at curbside or other authorized Collection station, no less than biweekly.

#### E. HOURS OF COLLECTION

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Residential Collection services shall be provided commencing no earlier than 5:00 am and terminating no later than 6:00 pm Monday through Friday with no service on Saturday or Sunday. The hours, days, or both of Collection may be temporarily extended due to extraordinary circumstances or conditions with the prior consent of the Contract Administrator.

Commercial Solid Waste Collection services shall be provided commencing no earlier than 5:00 am and terminating no later than 7:00 pm Monday through Friday. The hours, days, or both of Collection may be temporarily extended due to extraordinary circumstances or conditions with the prior consent of the Contract Administrator.

Contractor agrees to reasonably adjust the hours of commencement of Collection operations in selected areas at the request of the County where early Collection activities have generated numerous complaints from nearby residents.

#### F. MANNER OF COLLECTION

Contractor shall provide Collection services with as little disturbance as possible and shall leave any Can, Cart or Bin in an upright position at the same point it was Collected, without obstructing alleys, roadways, driveways, sidewalks, or mail boxes.

#### G. SERVICE ON COUNTY AND NON-COUNTY ROADS

Contractor shall be required to provide Collection service to all customers on county maintained roads. Contractor shall further provide service on all non-county maintained roads, except as provided herein. Contractor shall provide smaller Collection trucks to provide Collection services on non-county maintained roads in instances where such roads are not reasonably usable by Contractor's regular Collection vehicles. The use of these smaller vehicles is intended to avoid the occurrence of "Group Collection Areas" – that is, a single location where several Solid Waste and/or Recyclable Materials containers are placed for Collection by multiple residential Generators.

In the event any non-county maintained road is, in Contractor's reasonable judgment, unsafe or in such a state of disrepair that the road will be either hazardous or potentially cause damage to even the smaller sized vehicles of Contractor, Contractor shall meet and confer in good faith with the customers located in such non-county maintained road to have the condition of such road resolved so that Contractor may be able to provide Collection to the customers on such road. If the parties are unable to come to a mutually agreeable resolution regarding the condition of such road, after meeting and conferring with each other, Contractor shall work with such customers to create a Group Collection Area to meet such customers' Collection service needs. If the parties cannot agree on a Group Collection Area, Contractor shall not be required to provide Collection service to customers on said road, and in such case, such customers shall be allowed to self-haul their own MSW, Recyclables and Green Waste to an appropriate disposal or processing facility.

Contractor may request that customers on non-county maintained roads sign a waiver and indemnification agreement prior to receiving service from Contractor, and Contractor may refuse to provide service to any such customers that fail to sign such waiver and indemnification, but Contractor shall provide service to those customers that do sign such a waiver and indemnification.

#### H. EXTREME SNOW EVENTS

During extreme snow events, Contractor may utilize delayed starts to provide Collection service as feasible, given snow removal operations and weather and road conditions throughout the area. Contractor will make every effort to complete Collection routes as scheduled. Contractor shall attempt to service missed routes the next service day. If MSW

cannot be picked up on the next day due to unsafe conditions, missed routes will then be serviced on the next scheduled service day with no charge for extra material. Contractor will utilize its website or other technology when available, to notify customers of delays in service and service options.

Contractor shall allow for a customer to Self-Haul their allotted weekly curbside Solid Waste to the ERL, at no additional charge in the event weekly collection service is canceled due to extreme weather and with prior approval from the contractor.

#### I. ON-CALL

In addition to all other regularly scheduled Collection services provided by Contractor herein, Contractor shall provide on-call Collection services to residential, commercial, and Multi-Family Unit customers, at the current rate structure. This on-call service is designed to cover temporary Roll-Off Containers or Bulky Waste pick up as needed by residential, Commercial Solid Waste and Multi-Family Unit customers. Such customers shall request on-call service from Contractor and Contractor shall provide such additional Roll-Off Containers, and /or additional Collections as requested by the customer within a time-frame as set by Contractor.

#### J. COLLECTION ON HOLIDAYS

If the day of Collection on any given route falls on a legal holiday, (i.e., New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, or Christmas Day), Contractor may provide Collection service for each route on the holiday day, or on the day before or after the holiday with advanced notification to the customer.

#### K. CHRISTMAS TREE COLLECTION

Contractor agrees to Collect bare Christmas trees at no additional charge to customers receiving Residential Solid Waste service providing trees are cut to no more than three (3) feet in length and bundled.

#### L. BULKY WASTE PICK-UP

Contractor shall provide Bulky Waste pick-up for all customers within the Franchise Area, on an "on-call" basis, by appointment set between the customer and Contractor. Bulky Items need not be placed in special containers for Collection. Contractor shall pick up all Bulky Items left for Collection at curbside by the customer for an additional per item charge, subject to size and weight limitations, and reasonable guidelines as set by Contractor and approved by the County.

Residential customers on subscription service may be eligible to apply credit for any unused regularly scheduled pick-ups falling within the billing cycle to offset applicable extra can charges for bulky items left curbside for pick-up during the billing cycle. Can credits have no cash value and expire each quarter, credits cannot be transferred and terminate upon service cancellation. (Customer must call to schedule collection of Bulky Waste items).

#### M. GREEN WASTE

On an annual basis, all residential customers who receive a billing statement on April 1<sup>st</sup> and/or July 1<sup>st</sup> of each year will receive a coupon for free self-haul drop off of up to three (3)

cubic yards of green waste at ERL (totaling up to six (6) cubic yards of green waste per year for those customers on service during both billing periods).

Contractor will also make available to residential customers seasonal green waste-only dumpsters at a rate reflecting the green waste yardage tipping fee. Green waste-only dumpsters will be made available for a period of at least 90 days per calendar year. The targeted offering period for Green waste-only dumpsters will be May, June and July annually, coinciding with the planned availability period in adjacent Placer County (service Area 3); the exact availability may be adjusted for winter weather conditions. If in the future, Placer County adjusts the annual availability period for Green Waste-only dumpsters in Placer Franchise Area 3, the availability period for the portion of El Dorado County covered under this Agreement will be adjusted to match. Home delivery/pickup of the dumpsters will be scheduled based on route availability, and there will be a limit of two (2) green waste-only dumpsters per household, per calendar year. If Green Waste is contaminated with MSW contractor shall be allowed to assess the full rate.

#### N. COMMERCIAL FOOD WASTE COLLECTION

Contractor will operate this program in compliance with state law and in conjunction with other Food Waste Recycling programs as required by law. Contractor will work with the County to develop a rate structure and program as applicable. Food Waste will be collected in a leak resistant cart or bin on a weekly basis and transported to a permitted processing facility.

#### O. COMMUNITY CLEAN-UP EVENTS

*This section is not applicable at the time of Agreement execution; however, in the event the County and Contractor agree to offer such services within the Franchise Area the Agreement will be amended to reflect the new service level.*

#### P. LARGE VENUE COLLECTION SERVICES

*This section is not applicable at the time of Agreement execution; however, in the event the County and Contractor agree to offer such services within the Franchise Area the Agreement will be amended to reflect the new service level.*

#### Q. USED OIL COLLECTION / USED OIL FILTER COLLECTION

The Contractor will work with the County to make residents aware of any regional, grant sponsored oil collection events or oil recycling opportunities as they arise. In addition, oil and oil filters may be dropped off by appointment at any Household Hazardous Waste Collection event held at ERL for as long as El Dorado County remains a Participating Agency for the Area served under TTSD and ERL's separate contract with Placer County. The scheduled dates for HHW events at ERL are posted to the Contractor's website.

#### R. BATTERIES

Curbside Collection of batteries is included in this agreement for Residential Solid Waste customers only. Batteries (excluding automotive batteries) will be required to be placed in clear, plastic, zip lock bags and placed or taped on the top cover of the waste can, to be eligible for pickup.

#### S. FLUORESCENT TUBES / BULBS / E-WASTE

Contractor will provide residential customers access to drop-off fluorescent tubes/bulbs/E-waste at ERL at no cost, for as long as El Dorado County remains a Participating Agency for the Area served under TTSD and ERL's separate contract with Placer County. Commercial customers may drop off these items for a fee as determined by ERL.

#### T. MEDICAL, HAZARDOUS, SPECIAL, AND UNIVERSAL WASTES

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Contractor shall have the non-exclusive right under this Agreement, but is not obligated to, Collect, transport, and Dispose of material defined as Hazardous Waste, Special Waste, and Universal Waste herein. Contractor shall negotiate separate contracts and rates for Hazardous, Special, and Universal Waste Collection with each individual customer, which rates shall not require advance the County approval, but may be reviewed by the County in its discretion at the request of any customer. Contractor shall not engage in the Collection of Medical Waste and radioactive waste; however, Contractor's principals may form a separate and independent company to engage in the Collection and Disposal of Medical Waste. The County reserves the right to franchise other parties to perform Medical, Hazardous, Special, and Universal Waste handling services.

#### U. UNSECURED LOAD FEE

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*This section is not applicable at the time of Agreement execution; however, in the event the County and Contractor agree to offer such services within the Franchise Area the Agreement will be amended to reflect the new service level.*

#### V. SPILLAGE AND LITTER

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Contractor shall not litter premises in the process of providing Collection services or while its vehicles are on the road. Contractor shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from vehicles. Contractor shall exercise all reasonable care and diligence in providing Collection services so as to prevent spilling or dropping of Solid Waste, Recyclables, Green Waste, Bulky Items, Universal Waste, E-Waste, Used Oil, Used Oil Filters, and C&D Debris and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

#### W. PICK-UP OF ILLEGALLY DISPOSED WASTE

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Contractor shall, at the written request of the County, pick-up, Dispose of, or Recycle, as appropriate, illegally disposed waste within the Franchise Area, limited to two (2) twenty (20) yard Bins or smaller per year. Anything greater the County will negotiate the disposal fee. Contractor may schedule such pick-ups concurrent with Contractor's Bulky Waste pick-ups, but no less often than once per week when requested by the County. If the County desires the Contractor to provide litter abatement services on County maintained roads with Contractor-provided labor, then the County and Contractor shall negotiate mutually agreeable pricing terms for such services and shall adjust the rates set forth in this Agreement accordingly.

Contractor strives to pick-up illegally disposed waste in the Franchise Area without, or prior to, any notification from the County. The Contractor will continue this practice of proactive diligence towards illegal dumping clean-up.

## X. CONTAINERS

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- (1) Residential customers shall provide and maintain their own containers that are no more than thirty-two (32)-gallons and/or trash bags (including recycling bags) for residential collection.
- (2) Standard-sized commercial bins will be provided by the Contractor to commercial customers as ordered, with the cost included within the approved commercial rate structure. These commercial bins remain property of the Contractor.
- (3) The Contractor will be responsible for initial delivery, as well as the on-going proper repair and maintenance of the commercial bins for the duration of commercial service subscription, assuming proper customer use.
- (4) The customer is responsible for all damage not occurring from normal use, while the bin is located at the customer's service site. The Contractor will be responsible for the final collection and removal of the commercial bins upon customer's termination of service. The above is subject to the following:
  - a. Additional delivery charges not included in the base commercial rates may apply for changes to commercial customers' requested bin size occurring more than once every six months. Additional charges not included in the base commercial rates to clean bins more frequently than once per six months may apply. Additional pull-out and/or bin access charges to accommodate property access/configuration issues not included in the base commercial rates may apply.
  - b. A list of additional service charges not included in the base commercial service rates is shown in Exhibit C, and will be submitted to the County during the annual rate review process.
  - c. The cost of specialty bins and compactors are not included within the base commercial service rates, and are the responsibility of the commercial customer to procure and maintain. In some cases these containers may be procured directly from the Contractor at additional cost, falling outside of the scope of the base Franchise agreement.
- (5) Commercial customers have the option of providing and maintaining their own containers that are no more than 32-gallons.
- (6) Organic Waste Containers: In the event the County and Contractor agree to offer residential compostable food waste Collection service, the Collection container must be approved by Contractor and the County.
- (7) Compostable Material Containers: In the event the County and Contractor agree to offer Commercial Compostable Materials Collection services, and if requested by the commercial customer, Contractor shall provide commercial customers receiving commercial Compostable Materials Collection services with a watertight container for storage of Compostable Materials prior to placing the waste in the Compostable Materials Cart or Bin. The size of the container shall be determined by the customer and Contractor. Contractor shall be responsible for the repair and maintenance of the containers. Commercial customers may use compostable bags for the containment of food waste.

## Y. INSPECTIONS

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The County shall have the right to inspect Contractor's facilities or Collection vehicles used in the provision of Collection services under this Agreement and their contents at any time while operating inside or outside the Franchise Area.

## Z. WASTE GENERATION AND CHARACTERIZATION STUDIES

Contractor agrees to participate and cooperate with the County and its agents in all Solid Waste generation and characterization studies conducted no more frequently than once each rate-setting Base Year, , including modification of routes, separate Collection of an individual customer's Solid Waste, and delivering targeted loads of Solid Waste to a location or locations designated by the County.

### AA. SITE WASTE ASSESSMENT

Within six (6) months of commencement of service to a new Multi-Family Unit or Commercial Solid Waste customer in the Franchise Area, Contractor will conduct a waste generation and characterization assessment of such Multi-Family Unit or Commercial Solid Waste customer to identify customer's potential to Recycle and Divert Solid Waste. The assessments shall be performed in accordance with the protocol developed by Contractor and approved by the County which protocol shall be developed and provided to the County as part of the implementation plan.

### BB. SUSTAINABILITY COORDINATION

Contractor shall coordinate sustainability activities to meet the reasonable needs of the residents and businesses throughout the Franchise Area covered under this Agreement during the term of the Agreement, and will provide services related to meeting the Diversion requirements of the Agreement and the Solid Waste Management Plan.

### CC. PARTICIPATION IN ADVISORY COMMITTEES

Contractor will participate in a limited capacity in activities of the El Dorado Solid Waste Advisory Committee (EDSWAC).

### DD. SOLID WASTE MANAGEMENT PLAN GOAL IMPLEMENTATION

On an annual basis Contractor will provide the County with a strategic plan with specific program goals and objectives to increase Diversion rates consistent with the El Dorado County Solid Waste Management Plan. The plan should be based on the results of the prior year's activities and include a discussion of that year's programs, including strengths and weaknesses.

### EE. PROCUREMENT POLICY

- (1) Supplies: Contractor will use reasonable business efforts to purchase office supplies and all paper products with post-consumer Recycled content.
- (2) Paper: Contractor will use paper having not less than thirty percent (30%) Recycled paper content for all correspondence with customers (including customer subscriptions, billing, newsletters, and notices) and the County.
- (3) Recycled Content Policies: Contractor will use reasonable business efforts to comply with any Recycled content procurement policy that the County may adopt.

### FF. EMERGENCY SERVICES

In the event of a "Declared Emergency", the Contract Administrator may grant Contractor a variance from regular routes and schedules. As soon as practicable after such event, Contractor shall advise the Contract Administrator when it is anticipated that normal routes

and schedules can be resumed. In addition, Contractor shall make every effort to notify customers when regular services will resume via website, phone message or other means as determined most effective. . The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed.

- (1) Emergency Service Compensation: Contractor shall provide emergency services (i.e., special Collections, transport, Processing, and Disposal) at the County's request in the event of major accidents, disruptions, or natural calamities. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the County or as soon thereafter as is reasonably practical in light of the circumstances.

Emergency services requested in writing by an authorized County official which exceed the scope of work under this Agreement and which are not compensated as special services in accordance with current rate schedule or through reimbursement by the Federal Emergency Management Agency (FEMA) shall be compensated through extraordinary rate review procedures as set forth in this Agreement.

- (2) Reporting: Contractor will cooperate with the County, the State of California and federal agencies in filing information related to a regional, state or federal declared state of emergency or disaster as to which Contractor has provided Collection services under this Section.

#### GG. NON-COLLECTION DUE TO NON-PAYMENT

Service may, at Contractor's option, be withheld during any period in which payment for prior service remains delinquent, such payment becoming delinquent forty-five (45) days after the end of each full month for which services have been rendered. Contractor shall notify the customer in writing fifteen (15) days before stopping service and the notice will include the amount and time covered by all unpaid services by Contractor. In the event that mandatory service Collection areas are established within the Franchise Area, Contractor shall provide mandatory Collection service in accordance with the County's mandatory Collection ordinance (Ordinance Code Chapter 8.42).

#### HH. CHARGES / NON-COLLECTION FOR EXCESS SOLID WASTE

Any excess Solid Waste that does not fit within the closed lid of the authorized Solid Waste container shall be deemed excess material and shall be subject to the excess charges. Notwithstanding the foregoing, Contractor shall not be required to Collect Solid Waste from an authorized Solid Waste container where the total weight of the container and contents exceed the limit posted on the container.

### SECTION 7 - MATERIALS RECOVERY SERVICES TO BE PROVIDED BY CONTRACTOR

*This section is not applicable at the time of Agreement execution; however, in the event that Contractor offers new services or programs within the Franchise Area, the Agreement will be amended to reflect such new services or programs and the required reports or date associated with the new service level.*

## SECTION 8 – PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

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*This section is not applicable at the time of Agreement execution; however, in the event that Contractor offers new services or programs within the Franchise Area, the Agreement will be amended to reflect such new services or programs and the required reports or date associated with the new service level.*

## SECTION 9 – FACILITIES FOR SOLID WASTE PROCESSING AND DISPOSAL

### A. CONTRACTOR TO PROVIDE FULLY PERMITTED DISPOSAL FACILITY

Contractor shall be responsible for choosing the facility for Disposal of Solid Waste under this Agreement, provided: however, that any Landfill utilized by Contractor must be designed and constructed in accordance with applicable state and federal regulations. The Landfill must have all required permits from federal, state, regional, County, and city agencies necessary for it to operate as a Class II or III Sanitary Landfill and be in full regulatory compliance with all such permits. Contractor shall provide copies to the County of all notices of violations that could affect Contractor's ability to perform under this Agreement, or amendments to permits, including any extensions. The Landfill shall not maintain the Co-Disposal of MSW and Hazardous Waste (other than HHW) in the same lined cell.

Any Landfill must be authorized to accept, under its existing permits, and have sufficient uncommitted capacity to accept, all Solid Waste delivered to it from the Franchise Area for the duration of this Agreement. See Public Resources Code, section 41701. Contractor shall immediately notify the County of any notice of breach or default received from the Landfill. Contractor shall ensure that the Landfill is in full compliance with all closure and post-closure planning requirements applicable to the Landfill, and the Landfill has posted with the applicable governmental authorities all required financial assurances for closure and post-closure.

### B. CONTRACTOR TO PROVIDE FULLY PERMITTED MATERIALS RECOVERY AND TRANSFER STATION

Any Materials Recovery or Transfer Station utilized by Contractor must be designed and constructed in accordance with all applicable laws and regulations. The facilities must have all required permits from federal, state, regional, County, and city agencies necessary for them to operate and be in full regulatory compliance with all such permits. To the extent Contractor owns and/or operates a facility, or otherwise has actual knowledge of such violations, Contractor shall provide copies to the County of all notices of violations respecting any such facility used by Contractor that could affect Contractor's ability to perform under this Agreement, or amendments to permits, including any extensions. Any such facility must be authorized to accept, under its existing permits, and have sufficient uncommitted capacity to accept, all Solid Waste delivered to it from the Franchise Area for the duration of this Agreement. The County may request copies of all disposal agreements.

C. DISPOSAL IN COMPLIANCE WITH LAWS AND REGULATIONS

Throughout the term of this Agreement, it shall be Contractor's sole responsibility and duty to dispose of the Solid Waste Collected by virtue of this Agreement, and to do so in a safe manner and in compliance with all federal, state, and to the extent not inconsistent with this Agreement, local laws and regulations.

D. FUTURE FACILITIES FOR SOLID WASTE PROCESSING AND DISPOSAL ADVANCED TECHNOLOGIES

Contractor has the responsibility and discretion to utilize a permitted processing facility or Landfill. However, the County reserves the future right to redirect the Wastestream to another facility approved by the County to comply with long-term waste management needs and divert any waste from Landfill(s). Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use such facility or other location approved by the County for the purpose of transferring, hauling, transporting, Diverting, or Disposing Solid Waste and Recyclable Materials Collected in the Franchise Area. Contractor agrees that the County's right to redirect the Wastestream in no way constitutes a restraint of trade or an impairment of contracts.

E. MRF MODERNIZATION

*This section is not applicable at the time of Agreement execution; however, in the event that Contractor offers new services or programs within the Franchise Area, the Agreement will be amended to reflect such new services or programs and the required reports or date associated with the new service level.*

SECTION 10 - CASH BOND AND INSURANCE

A. CASH BOND

In the event Contractor fails to make timely payment of any Franchise Fees owed to the County, after ten (10) days written notice from the County demanding such payment, the County may require Contractor, in addition to paying the late Franchise Fee payment plus default interest thereon, to deposit with the County a cash bond, a performance bond or a letter of credit for the benefit of the County in the sum of seventy-five thousand dollars (\$75,000.00). The County shall deposit the cash deposit in an interest-bearing account. The cash bond, performance bond, or letter of credit shall be on terms acceptable to the County's counsel. The cash bond, performance bond, or letter of credit shall serve as security for the faithful performance by Contractor of all the provisions and obligations of this Agreement. All interest shall be paid to Contractor.

- (1) After thirty (30) days following Contractor's failure to pay the County an amount owing under this Agreement plus interest at the rate of fifteen percent (15%) per annum, or, if less, the maximum interest rate allowed by law, the cash bond or letter of credit may be assessed by the County upon five (5) days' prior written notice to Contractor for purposes including, but not limited to:

- (a) Failure of Contractor to pay the County sums due under the terms of the Agreement;

- (b) Reimbursement of costs borne by the County to correct Agreement violations not corrected by Contractor, after due notice; and
  - (c) Monetary remedies or liquidated damages assessed against Contractor due to breach of Agreement.
- (2) Contractor shall deposit a sum of money sufficient to restore the cash bond or provide a renewed letter of credit to the original amount within thirty (30) days bond or letter of credit.

## B. INSURANCE

Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager (Risk Manager) and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- (1) Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
  - (a) The Workers' Compensation policy shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by Contractor;
- (2) Commercial General Liability Insurance (CGL) of not less than six million (\$6,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability and a \$2,000,000 aggregate limit.
  - (a) The CGL requirements may be met by combining one million (\$1,000,000) per occurrence primary CGL and five million (\$5,000,000) Excess or Umbrella Liability Insurance subject to Contractor producing the Excess or Umbrella's policy and endorsements to the Risk Manager for final approval;
- (3) Automobile Liability Insurance (AL) of not less than six million (\$6,000,000) per occurrence for bodily injury and property damage.
  - (a) The AL requirements may be met by combining one million (\$1,000,000) per occurrence primary AL and five million (\$5,000,000) Excess or Umbrella Liability Insurance subject to Contractor producing the Excess or Umbrella's policy and endorsements to the Risk Manager for final approval;
- (4) Environmental Impairment/Pollution Liability Insurance (PL) in an amount not less than six million (\$6,000,000). Coverage to include environmental impact due to auto liability exposure.

- (a) The PL requirements may be met by combining one million (\$1,000,000) per occurrence primary under the AL or PL and five million (\$5,000,000) Excess or Umbrella Liability Insurance subject to Contractor producing the Excess or Umbrella's complete policy and endorsements to the Risk Manager for final approval;
- (5) Explosion, Collapse, and Underground (XCU) coverage is required when the scope of work includes XCU exposures;
- (6) The County of El Dorado, its officers, officials, employees, and volunteers are included as Additional Insureds on the CGL, AL, PL and Excess or Umbrella policies for at least as broad coverage as the ISO CG 20 38 04 13. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured. Proof that the County is named an Additional Insured shall be made by providing the Risk Manager with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policies naming the County of El Dorado, its officers, officials, employees and volunteers as Additional Insureds;
- (7) Contractor's GL, AL, PL and Excess or Umbrella policies shall be primary and noncontributory insurance as respects to the County of El Dorado, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County of El Dorado, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it;
- (8) Contractor shall furnish proof of coverage satisfactory to the Risk Manager as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to the Risk Manager and with an AM Best rating of A or higher. All Self Insured Retentions (SIRs) or total self-insurance must be acceptable to and approved by Risk Manager;
- (9) In the event Contractor cannot provide an occurrence policy, Contractor shall continue to maintain and provide evidence of insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement;
- (10) Any deductibles or self-insured retentions must be declared to and approved by the County. The County has the option to request that the Contractor reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses;
- (11) The insurance required herein shall provide that should any of the policies be cancelled prior to the expiration date thereof, notice will be delivered to the

County at the office of the Community Development Agency, Environmental Management Division, in accordance with the policy provisions;

- (12) Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement or for a period of not less than one (1) year (for an occurrence policy) or three (3) years (for a claims made policy). New certificates of insurance are subject to the approval of the Risk Manager;
- (13) Certificate shall meet such additional standards as may be reasonably determined by the County's Community Development Agency, Environmental Management Division either independently or in consultation with the Risk Manager, as essential for protection of the County;
- (14) Contractor shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved;
- (15) Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement;
- (16) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers;
- (17) The insurance companies shall have no recourse against the County, its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by any insurance company;
- (18) Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of the Agreement; and
- (19) To the extent that this Section 10, "Contractor's Insurance," is inconsistent with 7-1.12, "Responsibility for Damage," of the State of California, Department of Transportation, Caltrans, Standard Specifications, July 1992, this Article shall govern; otherwise each and every provision of such Section 7-1.12 shall be applicable to this Agreement.

## SECTION 11 - TERM

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### A. INITIAL TERM

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The initial term of this Agreement shall be effective when fully executed by all parties and shall expire seven (7) years following the effective date of the Agreement.

### B. RENEWAL OPTIONS

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This Agreement may be renewed for two (2) terms of three (3) years each, commencing respectively upon the seventh anniversary of the effective date of the Agreement and upon the tenth anniversary of the effective date of this Agreement. Contractor shall provide the County with ninety (90) days prior written notice before the termination of the initial term, or the first extended term, of this Agreement of its desire to extend the term of this Agreement. Said renewal option may be exercised only if Contractor is in material compliance with the terms and conditions of the Agreement, and at the sole discretion of the County.

## SECTION 12 - FRANCHISE TRANSFERABLE / CONSENT REQUIRED

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### A. NO ASSIGNMENT WITHOUT CONSENT

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The franchise granted by this Agreement shall not be assigned without the prior written consent of the County expressed by Resolution of the Board of Supervisors, which consent may be denied or approved by the County in its sole and absolute discretion. Any attempt by Contractor to assign this franchise without the consent of the County shall be void. Notwithstanding the foregoing, Contractor may assign or subcontract this Agreement or a portion thereof to a corporate, partnership or limited liability company Affiliate of Contractor upon advance written notice to the County, provided that the assignor and guarantor, if any, each shall remain liable for performance of this Agreement.

In the event of any assignment for which the County consent is required pursuant to this Section, Contractor's assignee shall not be allowed to recover in its rates set pursuant to this Agreement any of the assignee's costs of acquisition of Contractor or to recoup any interest or financing charges incurred by such assignee relating to the costs of such acquisition.

### B. ASSIGNMENT DEFINED

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The term "assignment" or "assigned" shall mean any transfer, sale, hypothecation or sublet of the franchise granted by this Agreement, or any rights or privileges therein, either in whole or in part, or any transfer of title thereto, either legal or equitable, by act of Contractor, and shall include (a) any dissolution, merger, consolidation, or other reorganization of Contractor which results in a change in control, or (b) the sale or other transfer of more than twenty percent (20%) of Contractor's voting stock to a person that is not a shareholder, immediate family member (including adopted or stepchildren) or any direct lineal descendant of a shareholder, management employee or principal of Contractor or an Affiliate on the date of the execution of this Agreement.

### C. "CHANGE IN CONTROL" DEFINED

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The County consent is required for any change in control of Contractor. "Change in control" shall mean any change in the ownership of more than twenty percent (20%) of Contractor's voting stock other than to an Affiliate or, directly or indirectly, to an existing shareholder or immediate family member (including adopted or stepchildren) or any direct lineal descendant of an existing shareholder, or an existing management employee or principal of Contractor or an Affiliate. In the event of any such excepted transfer, the transferee shall be subject to the provisions of this Agreement including the restrictions on any subsequent transfers.

#### D. TRANSITION

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In the event Contractor is not awarded an agreement to continue to provide Collection services following the expiration or early termination of this Agreement, Contractor shall reasonably cooperate with the County and any subsequent contractors to assure a smooth transition of Collection services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes, providing routing information, route maps, vehicle fleet information (if such subsequent contractor is acquiring such fleet from Contractor, as determined in Contractor's sole and absolute discretion), and list of Single-Family Units, Multi-Family Units, and Commercial Solid Waste customers; providing a complete inventory of all Carts, Bins, Compactors, and Roll-Off Containers; providing adequate labor and equipment to complete performance of all Collection services required under this Agreement; taking all actions necessary to remove or, to the extent required under the terms of this Agreement, transfer ownership of Carts, Bins, Compactors, and Roll-Off Containers as appropriate to the County; including transporting such containers to a location designated by the Contract Administrator; and providing other reports and data required by this Agreement.

#### E. BREACH

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Any assignment or change in control of Contractor occurring without prior the County approval shall constitute a material breach of this Agreement.

#### F. THE COUNTY'S OPTION TO TERMINATE / CONDITIONS TO ASSIGNMENT

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In the event Contractor attempts to assign or subcontract this Agreement or any part hereof or any obligation hereunder in contravention of this Section 12, the County shall have the right to elect to terminate this Agreement forthwith, without suit or other proceeding. The County may, in its reasonable discretion, condition its consent to any assignment of this Agreement on the assignee's written agreement to incorporate additional reasonable terms and conditions in this Agreement, including provisions for liquidated damages, enhanced performance standards, and additional financial assurances and guarantees, in order to ensure that any such assignee continues to deliver the highest quality of services to its customers at reasonable rates.

#### G. CONDITIONS FOR OBTAINING THE COUNTY'S CONSENT

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The County's consent to an assignment or change in control may be withheld in the County's sole and unfettered discretion and may also be withheld if, inter alia, the following conditions are not satisfied:

- (1) Contractor shall give the County at least ninety (90) days' advance written notice of Contractor's intent to sell, transfer or assign this Agreement. As part of that notice, Contractor shall provide to the County the following written information:
  - (a) The name, address, telephone number, and e-mail of the proposed assignee;
  - (b) The character of the legal entity owning or controlling the assignee, and the names, addresses, e-mails, and telephone numbers of all principals, partners and/or shareholders thereof, as the case may be;

- (c) Financial statements of the proposed assignee for the immediately preceding five (5) Operating Years, indicating that the proposed assignee's financial status is sufficient to perform all Contractor's obligations;
  - (d) Satisfactory proof that the proposed assignee or the management thereof has at least seven (7) years of MSW experience on a scale equal to or exceeding the scale of operations conducted by Contractor and has operated in a manner consistent with its contractual obligations to other municipalities which it serves in respect of AB 939;
  - (e) Satisfactory proof that in the last seven (7) years, the proposed assignee has maintained its waste management operations in a manner satisfactory to other municipalities in which it operates and in compliance with applicable law and regulations;
  - (f) A copy of any and all purchase and assignment agreements containing, at a minimum, the terms and conditions of the sale, transfer, or assignment of this Agreement, and of Contractor's Solid Waste and Recycling business; provided; however, that the dollar amount of any financial consideration may be deleted from said copies unless and until said information becomes relevant to the review of Contractor's transferee rates under this Agreement; provided, however, that nothing in this Agreement shall obligate the County to treat any of said acquisition costs as an allowable expense of said transferee for rate setting purposes; and
  - (g) Any other information required by the County to ensure the proposed transferee can fully assume and satisfactorily perform all of Contractor's obligations hereunder in a timely, safe, and effective manner.
- (2) The proposed transferee must be shown, by credible and sufficient evidence, to be qualified, by financial condition, background and experience to be able to fully assume and satisfactorily perform all of Contractor's obligations hereunder, and particularly, to be able to perform under this Agreement in a fashion that will assure the County of complying with AB 939.
- (3) The transferee must be willing to, in writing, assume all of the obligations hereunder.

## SECTION 13 - FRANCHISE TRANSFER FEES

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### A. TRANSFER FEES

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Any application for a franchise transfer shall be made in a manner prescribed by the County. The application shall include a transfer fee in an amount to be set by the County by Resolution of the Board of Supervisors, to cover the anticipated cost of all direct administrative expenses of the County, including consultants and attorneys, necessary to adequately analyze the application and to reimburse the County for all direct and indirect expenses. Such transfer fee shall not exceed thirty-five thousand dollars (\$35,000.00). The

County's request for reimbursement shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

**B. NON-RECOVERABLE COSTS**

These franchise transfer fees are over and above any franchise fees specified in this Agreement, and shall not be recoverable costs for rate setting purposes.

**SECTION 14 - PERFORMANCE STANDARDS**

**A. INTENT**

Contractor acknowledges and agrees that one of the County's primary goals in entering into this Agreement is to ensure that the services rendered by Contractor are of the highest caliber, customer satisfaction is at the highest level, Recycling goals are achieved, and that performance standards are met.

**B. ADMINISTRATIVE CHARGES**

It shall be the duty of Contractor to perform all services under this Agreement in such a manner as to implement the goals and specifications set forth in this Section and this Agreement. In the event Contractor fails to satisfactorily perform the services set forth in this Agreement, the County may assess an administrative charge against Contractor in the following amounts:

a.	For each occurrence over four (4) during any calendar year, failure or neglect to respond to and take corrective action to address each customer complaint by the close of business of the second regularly scheduled waste Collection day.	\$300.00 per incident per customer
b.	Failure to respond to and take corrective action to address spillage or litter caused by Contractor within seventy-two (72) hours of notification.	\$300.00 per incident per location
c.	Failure to maintain or timely submit to the County all documents and reports required under the provisions of this Agreement, and Contractor fails to cure said failure within ten (10) days of written notification from the County.	\$300.00 per incident
d.	For each occurrence over six (6) during any calendar year, failure to properly cover materials in Collection vehicles to prevent littering of highways or streets within the Franchise Area.	\$500.00 per incident
e.	Failure to comply with the hours of operation of the MRF as required by this Agreement. <i>This section is not applicable at the time of Agreement execution; however, in the event that Contractor offers new services or programs within the Franchise Area, the Agreement will be amended to reflect such new services or programs and the required reports or date associated with the new service level.</i>	\$300.00 per incident per day
f.	Failure or neglect to complete at least ninety percent (90%)	\$1,000.00 for each route

	of each route on the regular scheduled Collection Service work day, except for Holidays, extreme weather conditions and unexpected vehicle mechanical problems.	not completed
g.	Contractor's missed pickup rate shall not exceed 0.005, which means Contractor is allowed to miss no more than five (5) pick-ups per one-thousand (1,000) scheduled pick-ups, on average during any given Collection day. A "missed pickup" is defined as a customer calling to complain that their trash/Recycling container was not serviced on the scheduled day. If a customer's container is not accessible and it is noted as such in Contractor's system via driver communication (Haul or Call process) or is due to inclement weather, or the customer has not set out the container(s), or it is noted as a "Not Out" by the driver, a missed pickup will not be assigned. Also, if the service is perceived as late but is still completed by Contractor on the scheduled service day, this does not count as a missed pickup.	\$300.00 per day
h.	For each occurrence over five (5) during any calendar year, of confirmed complaint reported to the County of El Dorado regarding failure to answer customer phone calls within one minute. The contractor and the County agree that there will be times when calls are at a high volume and this performance measure may not be attainable. Should complaints exceed five (5) during any calendar year, the County and the Contractor will confer to determine if the waiver of one or more complaints is appropriate due to extenuating circumstances as determined by the County.	\$100.00 per complaint notification
i.	For each occurrence over five (5) during any calendar year, of confirmed complaints reported to the County of El Dorado regarding Contractor's abandon (dropped calls).	\$100.00 per complaint notification
j.	For each occurrence in a calendar year, failure to timely service customers at the MRF, such that the waiting time to enter the facility is no longer than fifteen (15) minutes per vehicle due to Contractor's failure to commit adequate resources at the scale house to efficiently process vehicles in a timely manner. The number of tipping stalls occupied and overall vehicle traffic and safety must be considered when assessing compliance with this performance metric.  <i>This section is not applicable at the time of Agreement execution; however, in the event that Contractor offers new services or programs within the Franchise Area, the Agreement will be amended to reflect such new services or programs and the required reports or date associated with the new service level.</i>	\$150.00 per incident
k.	For each occurrence over five (5) in a calendar year, failure to timely service customers at the MRF, such that the waiting time before unloading of a vehicle is longer than fifteen (15)	\$150.00 per incident

<p>minutes per vehicle from time of entry through the scale house onto Contractor's site to time of unloading.</p> <p><i>This section is not applicable at the time of Agreement execution; however, in the event that Contractor offers new services or programs within the Franchise Area, the Agreement will be amended to reflect such new services or programs and the required reports or date associated with the new service level.</i></p>	
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The parties recognize that if Contractor fails to achieve the performance standards set forth above, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that the County will suffer. Therefore, the parties agree that the foregoing administrative charges represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Commencement Date, including the relationship of the sum to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient.

**C. NOTICE OF INTENT TO ASSESS ADMINISTRATIVE CHARGES**

Before the County may assess administrative charges pursuant to this Section, for each category of violation (that is, for each of the categories (a) through (k) in the above chart), the County shall give Contractor written notice of Contractor's violation of the performance standard and of the County's intent to assess administrative charges for any future violation of the same performance standard. Such notice shall not be required if the County has previously assessed administrative charges against Contractor for a prior violation of the same performance standard within the prior twelve (12) months. The purpose of this provision is to give Contractor notice that the County considers Contractor to have violated a performance standard, and that the County will assess administrative charges if such violations are repeated.

**D. PROCEDURE FOR REVIEW OF ADMINISTRATIVE CHARGES**

The County may assess administrative charges pursuant to this Section on a quarterly basis. At the end of each quarter during the term of this Agreement, the County shall issue a written notice to Contractor (Notice of Assessment) of the administrative charges assessed and the basis for each assessment. The assessment shall become final unless, within ten (10) calendar days of the date of the Notice of Assessment, Contractor provides a written request for a meeting with the Contract Administrator to present evidence that the assessment should not be made. The Contract Administrator shall schedule a meeting with Contractor as soon as reasonably possible after timely receipt of Contractor's request. The Contract Administrator shall review Contractor's evidence and render a decision sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Contractor. The Contract Administrator's decision will be final and binding. In the event Contractor does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the County determination shall be final and the County may assess the administrative charges, unless the County waives this requirement. Contractor's failure to pay administrative charges within thirty (30) days of the County's final assessment of such charges shall be a

material breach of this Agreement. The County's assessment or Collection of administrative charges shall not prevent the County from exercising any other right or remedy, including the right to terminate this Agreement, for Contractor's failure to perform the work and services in the manner set forth in this Agreement. Nothing herein shall preclude Contractor from seeking judicial review of any decision by the County to assess administrative charges; the imposition of such charges shall be stayed if Contractor seeks such review.

## SECTION 15 - TERMINATION

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### A. MATERIAL BREACH OF CONTRACTOR'S OBLIGATIONS

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In the event of Contractor's material failure or refusal to comply with the obligations and duties imposed on Contractor pursuant to this Agreement, the County and Contractor shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach, the County shall have the right to terminate this Agreement if:

- (1) The County had given prior written notice to Contractor specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach on the part of Contractor of this Agreement; and
- (2) Contractor has not corrected such default within ninety (90) days from the date of the notice given pursuant to clause (A)(1) of this section, or, if said default is not reasonably correctable within said time, Contractor has not taken reasonable steps to commence to correct the same within said ninety (90) days, or thereafter does not diligently continue to take reasonable steps to correct such default.

### B. CONTRACTOR'S DEFAULT

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In addition, each of the following shall constitute an event of default:

- (1) If Contractor practices, or attempts to practice, any fraud or deceit upon the County;
- (2) Should Contractor or any of its officers, directors, managers, or employees be or have been found guilty of criminal activity related directly or indirectly to performance of this Agreement or bribery of public officials, the County reserves the unilateral right to terminate this Agreement or to impose such sanctions (which may include financial sanctions, or temporary suspensions) as the County shall deem proper. The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nolo contendere", "no contest", or "guilty to a lesser charge" entered as part of a plea bargain;
- (3) If Contractor fails to provide or maintain in full force and effect the workers' compensation or any other insurance coverage or performance bond required by this Agreement;
- (4) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor, provided Contractor may reasonably

contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until final resolution of such proceedings;

- (5) If Contractor fails to make any payments or to pay any penalties required to be made or paid pursuant to this Agreement;
- (6) Except as provided under Section 28(A), if Contractor for any reason ceases to provide Collection services as required under this Agreement over all or a substantial portion of the Franchise Area for a period of seven (7) consecutive days; and
- (7) If Contractor refuses to provide the County with the required information, reports or test results in a timely manner as required by this Agreement.

### C. EVENTS OF INSOLVENCY

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Contractor shall be in material breach of this Agreement if Contractor:

- (1) Becomes insolvent or bankrupt, or ceasing to pay its debts as they mature, or making an arrangement with or for the benefit of its creditors, or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property; or
- (2) Becomes a party to a voluntary or involuntary bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against Contractor under the laws of any jurisdiction, which proceeding, if involuntary in nature, has not been dismissed within sixty (60) days; or
- (3) Takes any action approving of, consenting to, or acquiescing in any such proceeding; or
- (4) Becomes a party to the levy of any distress, execution or attachment upon the property of Contractor which shall substantially interfere with Contractor's performance hereunder.

In the event of the occurrence of any of the foregoing, Contractor shall:

- (1) Assume or reject this Agreement within sixty (60) days after the order for relief;
- (2) Promptly cure any failure to perform its obligations or any event of default arising under this Agreement for reasons other than the event set forth in this paragraph; and
- (3) Provide adequate assurance of future performance under this Agreement under Title 11, U.S. Code, section 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code. The foregoing provisions shall not prevent

the County from requesting such other conditions to assumption of this Agreement, as it deems reasonable and necessary.

#### D. NO WAIVERS

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Any waiver of a breach shall not be deemed to be a waiver of any subsequent breach or to be construed as approval of a course of conduct.

#### E. TERMINATION

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Upon the occurrence of a material breach and the declaration of termination of this Agreement by the Board of Supervisors, this Agreement and the franchise granted thereunder shall be of no further force and effect, excepting those provisions concerning the County's right to indemnity. The County then shall be free to enter into whatever other arrangements are deemed justified and necessary for the Collection, removal and Disposal of Solid Waste within the Franchise Area.

Should Contractor at any time contend that the County has breached any material provision of this Agreement, Contractor shall immediately notify the County in writing of Contractor's contention. The parties shall, at either party's request, promptly meet and confer to discuss the informal resolution of the dispute. The County shall have a reasonable time to cure any such alleged breach, which in all events shall not be less than ninety (90) days or any such longer period as reasonably needed to cure said breach. If the County fails to cure the breach within such time, Contractor may terminate this Agreement, and the franchise granted thereunder shall be of no further force and effect, excepting those provisions concerning Contractor's right to indemnity. Nothing herein shall preclude Contractor from seeking judicial review of any the County decision, nor shall it preclude either party from seeking any available legal and equitable remedies for a breach of contract by the other party.

In addition, in the case of the termination of this Agreement prior to the expiration of the initial term or optional extension term(s) due to the default of Contractor as set forth in this Agreement, the County shall have the right to take possession of the Carts (should the Cart program be implemented) at the fair market value price or direct Contractor to Collect all carts in the Franchise Area.

#### F. RIGHT TO SUSPEND

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The County may suspend this Agreement, in whole or in part, if Contractor fails to cure within the time frame specified in Section 15.A. until Contractor can provide assurance of performance. Contractor shall have at a minimum, a right to quantum meruit for the services it continues to perform during any suspension. For the purposes of this section, "suspend" means to temporarily freeze, set aside, and make inoperative one or more provisions of this Agreement.

#### G. RIGHT TO POSSESS PROPERTY AND PERFORM SERVICES

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If the County suspends or terminates Contractor's services, the County shall have the right to use Contractor's equipment and property and/or perform or cause to be performed such services itself with its own or other personnel or equipment pursuant to Section 16.D.

#### H. NONEXCLUSIVE REMEDIES

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The County's right to suspend or terminate this Agreement, to obtain specific performance, and to perform hereunder are not exclusive, and the County's exercise of one such right shall not constitute an election of remedies. The County's remedy shall be in addition to any and all other legal and equitable rights and remedies, including the right to contract with another service provider, that the County may have under this Agreement or as provided by law.

## SECTION 16 - RIGHTS OF THE COUNTY TO PERFORM DURING EMERGENCY

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### A. EMERGENCY COLLECTION

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Should Contractor, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 28(A) below ("Force Majeure"), refuse or be unable to Collect, transport, and Dispose of any or all the Solid Waste which it is obligated under this Agreement to Collect, transport, and Dispose of for a period of more than seventy-two (72) hours and if, as a result thereof, Solid Waste should accumulate in the Franchise Area to such an extent, in such a manner, or for such a time that the County in the exercise of its sole discretion, should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event, the County shall have the right, upon twenty-four (24) hour prior written notice to Contractor, during the period of such emergency, to contract on a temporary basis with third parties to Collect and transport any and all Solid Waste which Contractor would otherwise be obligated to Collect and transport pursuant to this Agreement until the events or conditions for Contractor's failure to perform the services under this Agreement have ended.

### B. CONTRACTOR TO COOPERATE

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Contractor agrees that in such event it will fully cooperate with the County and its third party contractor to affect such a transfer of operations in as smooth and efficient a fashion as is practicable.

### C. CONTRACTOR TO PAY COUNTY COSTS

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During such time as the County is performing or causing to perform the Collection services itself with its own or other third party personnel and equipment, Contractor shall bill and collect payment from all users of the Collection services. Contractor shall reimburse the County for any and all reasonable costs and expenses incurred by the County during such period within sixty (60) days of Contractor's receipt of written notice to pay. Further, all reasonable costs, fees, rates, and other expenses incurred by the County and/or its third-party contractor that exceed those in effect or being incurred or which would have been incurred had no such emergency arisen shall be the responsibility of Contractor and shall be paid to the County within sixty (60) days of Contractor's receipt of written notice to so pay.

### D. RIGHT TO PERFORM

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In the event Contractor, for any reason whatsoever, fails, refuses, or is unable to Collect, transport, or Dispose of any or all Solid Waste, Recyclables, Green Waste, Bulky Items, Universal Waste, E-Waste, Used Oil, Used Oil Filters, HHW, and/or C&D Debris which is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, any or all of these