

SERVICE AGREEMENT

BETWEEN

CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

AND

FOR

**RECYCLABLE MATERIALS, COMMINGLED ORGANICS AND
SOLID WASTE TRANSFER AND TRANSPORT, AND
COMMERCIAL FOOD SCRAPS PRE-PROCESSING,
TRANSFER AND TRANSPORT SERVICES**

PRELIMINARY REVIEW DRAFT

MARCH 2024

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**FOR
RECYCLABLE MATERIALS, COMMINGLED ORGANICS AND SOLID
WASTE TRANSFER AND TRANSPORT AND COMMERCIAL FOOD
SCRAPS PRE-PROCESSING, TRANSFER AND TRANSPORT
SERVICES**

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

This Agreement for Recyclable Materials, Commingled Organics, Mixed Materials (if Mixed Waste Processing is implemented), and Solid Waste Transfer and Transport, and Commercial Food Scraps Pre-Processing, Transfer and Transport Services ("Agreement") is entered into on the ____ day of _____, 2024, by and between the Central Contra Costa Solid Waste Authority, a Joint Powers Authority (hereinafter, "Authority"), and {Insert Contractor Legal Name and any DBAs} (hereinafter, "Contractor") (collectively, the "Parties").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a solid waste management process that requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices;

WHEREAS, the Authority has the authority to assume municipal solid waste and materials Diversion management responsibilities such as acquiring services, entering agreements, negotiating contracts, granting franchises, planning facilities, reviewing rates and Tipping Fees, and other related matters on behalf of the constituents of the Cities and Towns of Danville, Lafayette, Moraga, Orinda, and Walnut Creek, and the County of Contra Costa ("Member Agencies");

WHEREAS, only certain unincorporated areas of Contra Costa County are included in the jurisdictional boundaries of the Service Area as defined herein;

WHEREAS, the Authority has the authority to enter into exclusive service agreements for handling Recyclable Materials, Organic Materials, and Solid Waste, and to prescribe the terms and conditions of such agreements;

WHEREAS, the Authority Board of Directors has found that Collection, Transfer, Transport, Processing, Composting, Diversion, and Disposal programs can most cost-effectively be carried out on a multi-jurisdictional basis;

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(1), the Board of Directors of the Authority has determined that the public health, safety, and well-being of the Authority, its Member Agencies, and their constituents requires the highest quality Collection, Transfer, Transport, Processing, Diversion, and Disposal services from thorough, competent, and qualified companies;

WHEREAS, agencies like the Authority have generally been held liable under Federal superfund laws for the costs of cleaning up of Hazardous Waste sites that accepted solid waste generated within municipalities' jurisdictions; therefore, the Authority is prudent to provide for terms and conditions of solid waste Disposal in accordance with this Agreement;

WHEREAS, obtaining a long-term commitment for Recyclable Materials, Commingled Organics and Solid Waste Transfer and Transport, and Commercial Food Scraps Pre-Processing, Transfer and Transport Services for specified materials, generated in the Service Area in accordance with this Agreement is in the best interests of the public health, safety, and well-being of the Authority, its Member Agencies, and their constituents and is fiscally prudent;

WHEREAS, through enactment of AB 939, the State of California also recognizes the important health and safety consideration to long-term planning for local governments' adequate disposal needs. The State requires local governments to make adequate provision for at least fifteen (15) years of solid waste disposal capacity to preserve the health, safety, and well-being of the public;

WHEREAS, the Authority Board of Directors has found and determined, based on the Contractor's Proposal, qualifications, demonstrated experience, reputation, and reasonable cost to the Member Agencies, that the Contractor is best able to provide such services to protect the public health, safety, and well-being of the Member Agencies;

WHEREAS, the Contractor has represented and warranted to the Authority that it has the experience, responsibility, qualifications, and ability to implement safe, thorough, and competent Transfer, Transport, Pre-Processing, and Diversion services in compliance with Applicable Law and the provisions of this Agreement;

WHEREAS, pursuant to California Public Resources Code Section 40191, "solid waste" does not include hazardous waste as defined in California Public Resources Code Section 40141, radioactive waste, or untreated medical waste;

WHEREAS, this Agreement expressly limits the types and categories of Franchised Materials that Contractor is authorized to Transfer, Transport, and Pre-Process;

WHEREAS, the State of California has found and declared that the amount of refuse generated in California, coupled with diminishing disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, has created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), the California Green Building Standards Code (CALGreen), AB 1594, AB 1201, AB 343, and the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54), directed the responsible State agency, and all local agencies, to promote diversion and to maximize the use of feasible waste reduction, re-use, recycling, and composting options in order to reduce the amount of refuse that must be disposed;

WHEREAS, in response to the Governor of the State of California signing Executive Order N-79-20, the California Air Resources Board has established regulations, including, but not limited, the Advanced Clean Fleets Regulation, as part of a strategy to transition fleets to zero emissions vehicles (ZEVs), and provisions of such regulations apply to the Contractor's vehicle fleet under this Agreement;

WHEREAS, neither the Authority nor the Contractor can anticipate all of the possible needs, considerations, or eventualities that may arise during the Term of this Agreement, and the Parties agree that they will work together in a spirit of mutual cooperation to resolve any such issues as and when they arise; and,

WHEREAS, neither the Authority nor the Contractor can anticipate any changes in the industry as to the future means or methods of Transfer, Transport, Pre-Processing, Processing, Composting, Diversion, and/or Disposal services, and will work together in a spirit of mutual cooperation to address such opportunities and/or issues as and when they arise.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and for other good and valuable consideration, the Parties do hereby agree as follows:

ARTICLE 1 DEFINITIONS

Defined terms are incorporated in Exhibit A of this Agreement.

ARTICLE 2 GRANT AND ACCEPTANCE OF EXCLUSIVE SERVICE RIGHTS

2.1 Scope of Agreement

Through this Agreement, the Authority grants to the Contractor an exclusive right and privilege, and obligation to Transfer and Transport Recyclable Materials and Commingled Organics, to Pre-Process, Transfer, and Transport, and Pre-Process Commercial Food Scraps, and to Transfer and Transport Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented during the Term) generated within the Service Area. Subject to the limitations in Section 2.2 and 5.9, and except where otherwise prohibited by Federal, State, and local laws and regulations, the Contractor shall exclusively be responsible for each of the following {Note to Proposer: These will be updated based on scope.}:

- A. Accepting, Transferring, and Transporting Recyclable Materials to the Designated Recyclable Materials Processing Facility(ies).
- B. Accepting, Pre-Processing, Transferring, and Transporting Pre-Processed Commercial Food Scraps to the Designated Anaerobic Digestion Facility.
- C. Accepting, Transferring, and Transporting Commingled Organics to the Designated Composting Facility.
- D. Accepting, Transferring, and Transporting Solid Waste to the Designated Disposal Facility.
- E. Reserved.

- F. Accepting, Transferring, and Transporting **Mixed Materials** to the Designated Mixed Waste Processing Facility and Transporting (backhauling) the Authority's Mixed Waste Processing Residue to the Designated Disposal Facility.

Note to Proposer for Solid Waste Only: Contractor may be directed to backhaul Residue from Mixed Waste Processing (if implemented) to either 1) the Authority's designated disposal facility or 2) an alternate disposal facility selected by the Mixed Waste Contractor. The Agreement Draft is written to include Mixed Waste Processing Residue Transfer. Proposer should indicate if Mixed Waste Processing Residue Transfer is preferred and if it would have any impact of the proposed costs.}

- G. Reserved.
- H. Maintaining accurate records and providing timely reporting of all materials Accepted and transactions conducted under this Agreement.
- I. Billing and collecting payment from the Authority for Contractor's compensation under this Agreement.
- J. Furnishing all labor, supervision, vehicles and fueling/charging infrastructure, Containers, other equipment, materials, supplies, and all other items and services necessary to perform Contractor's obligations under this Agreement.
- K. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, and payments to Member Agencies or the Authority.
- L. Performing all services in substantial accordance with the Contractor's Proposal and in full accordance with this Agreement at all times using best industry practice for comparable operations. If the Contractor's Proposal and Agreement conflict, the terms and provision of the Agreement shall prevail.
- M. Complying with applicable law.
- N. Providing reports in a timely manner.
- O. Providing all services required by this Agreement in a thorough and professional manner at all times so that residents, businesses, and the Member Agencies are provided timely, reliable, courteous, and high-quality service.
- P. Performing or providing all other services necessary to fulfill the Contractor's obligations under this Agreement.

2.2 Scope Limitations and Exclusions

- A. **Non-Exclusive Materials.** Except as otherwise provided, and in accordance with Section 2.8, this Agreement shall not preclude the materials listed below from being collected or otherwise lawfully handled or managed by others prior to being placed in a Collection Container intended for Collection by the Franchised Collector or otherwise placed out in accordance with programmatic set-out guidelines established by the Franchised Collector, wherein such materials, by not having been placed in Franchised Collector's Containers, will not have entered the exclusive franchise system; provided however, that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the Authority that is otherwise required by law:
1. Recyclable and Organic Materials Hauled by Other Persons. Recyclable and organic materials may be collected and otherwise legally handled, managed, and diverted by other Persons but only if such Persons: (a) do not, directly or indirectly, charge the Generator a monetary sum or other consideration for provision of such service if the

Authority/{Insert Contractor Name}

material being collected for Diversion is otherwise Accepted by the Franchised Collector and being Diverted by the Recyclables Contractor; (b) pay the Generator a net payment for the receipt of such recyclable or organic materials or accept such materials as a donation; and/or (c) accept reusable or salvageable materials that are donated or sold by other Persons for the purpose of reuse. Such Persons shall also be required to provide written documentation to the Authority, upon the Authority's request, that such Persons meet the foregoing requirements.

2. Construction and Demolition Debris. C&D may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons providing construction and demolition services to the Premises and/or in accordance with the Authority's C&D transporter registration program.
3. Dirt. Loose soil or earth from the ground may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons.
4. Self-Hauled Materials. For the purposes of delivery to a Transfer Facility, Processing Facility, or Disposal Site, Generators may transport materials generated solely in or on their own Premises, using their own equipment and employees, and such Self-Hauled material is not required to be Delivered by such Self-Haulers to Contractor or any of the Approved or Designated Facilities.
5. Donated Materials. Any items that are donated by a Generator to youth, civic, or other charitable organizations, may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons, provided that the Generator is not charged, directly or indirectly, a monetary sum or other consideration for such services.
6. Beverage Containers. Beverage containers with redemption value delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, California Public Resources Code Sections 14500 et seq. may be collected and otherwise legally handled, managed, and diverted by other Persons.
7. Materials Removed as Incidental Part of Services. Solid waste, recyclable materials, and/or organic materials may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons (e.g., gardener, landscaper, tree-trimming service, construction contractor, on-property clean-out service) as an incidental part of the service being performed.
8. Specialty Recyclable Materials and Extended Producer Responsibility Programs. Specialty Recyclable Materials and/or materials covered by Extended Producer Responsibility Programs may be collected and otherwise legally handled, managed, diverted, and/or disposed of by other Persons.
9. Materials Collected during Reuse and Cleanup Days Program Events. {Solid Waste, Reusable Items, Recyclable Materials, Organic Materials, E-Materials Items, Abandoned Waste, and other materials} {Note to Proposer: Material list may be updated pending negotiations with the Reuse Contractor.} that are set out for Curbside Collection by Generators consistent with the Authority's contract with the Reuse Contractor and associated requirements for the Reuse and Cleanup Days Program, may be Collected, Accepted, Transported, Transferred, Processed, Diverted, and/or Disposed by the Reuse Contractor.

10. Manure, Grease Waste, and Used Cooking Oil. Manure and remains from slaughterhouse or butcher shops, grease, or used cooking oil may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons.
11. Sewage Treatment By-Product. By-products of sewage treatment, including biosolids, ash, grit, and screenings may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons.
12. Hazardous Waste, Untreated Medical Materials, and Designated Waste. Hazardous Waste, untreated Medical Materials, and Designated Waste (as defined in California Water Code Section 13173 as may be amended or renumbered from time to time), regardless of its source, may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons.
13. Source Separated E-Materials and Source Separated U-Materials. Source Separated E-Materials and Source Separated U-Materials regardless of its source, may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons.
14. Discarded Materials Generated by Public Schools, State, County, and Federal Facilities. Discarded Materials generated by public schools, State, county, and Federal facilities located in the Service Area may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons, or by the Contractor through a separate agreement. Such public facilities located within the Authority's Service Area may participate in the services provided by the Authority under this Agreement but are under no obligation to do so.
15. Edible Food. Edible Food that is collected from a Generator, Occupant, Owner, or manager of a Premises by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or that is Self-Hauled by the Generator, Occupant, Owner, or manager of the Premises to another Person(s), such as a Person from a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food.
16. Food Scraps for Animal Feed. Food Scraps that are separated by the Generator, Owner, Occupant, or manager of a Premises, and used by the Generator, Owner, Occupant, or manager of the Premises or distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled by another party.
17. On-site or Community Composting. Organic materials composted or otherwise legally managed at the Premises where it was generated (e.g., backyard Composting, or on-site anaerobic digestion) or at a community composting site.

The Contractor acknowledges and agrees that the Authority may permit other Persons, in addition to the Contractor, to collect and lawfully handle, manage, divert, and/or dispose of any and all types of materials excluded from the scope of this Agreement, as set forth above, without seeking or obtaining approval of the Contractor. If the Contractor can produce evidence that other Persons are performing any services within the scope of this Agreement (as identified in Section 2.1) that are not limited or otherwise excluded from such scope (as identified in Section 2.2), the Contractor shall report the location, name, and phone number of the Person or company to the Authority along with the Contractor's evidence of the violation of the exclusive nature of this Agreement. Notwithstanding the foregoing, the Contractor may not enforce or seek to have the Authority enforce any of its exclusive rights

under this Agreement in a manner that would prevent the diversion of source separated material that Contractor is unable or unwilling to Divert.

B. **Excluded Services.** Except as otherwise provided in this Agreement, the Contractor acknowledges that the services described below are being managed under separate agreements between the Authority and other service providers. The Contractor is expressly prohibited from providing services, performing any activities, or operating in any capacity that could be construed as violating the exclusivity provisions provided by the Authority to other service providers related to the Authority's Franchised Materials (except to the extent that Contractor enters into a separate agreement with the Authority as the exclusive provider of one of the services below, and only for the duration of that agreement and any extensions thereto) as follows:

1. Collecting Franchised Materials. The Contractor shall not engage in the Collection of any Franchised Materials from any Generator in the Service Area. The Contractor acknowledges that this service is managed under a separate agreement between the Authority and the Franchised Collector.
2. Collecting and Processing Reuse and Clean-up Day Program Materials. The Contractor shall not engage in the Collection of any {Solid Waste, Reusable Items, Recyclable Materials, Organic Materials, E-Materials Items, Abandoned Waste, and other materials} {Note to Proposer: Material list may be updated pending negotiations with the Reuse Contractor.} The Contractor acknowledges that this service is managed under a separate agreement between the Authority and the Reuse Contractor.
3. Reserved.
4. Composting Commingled Organics, Yard Trimmings, and Composting and/or Anaerobically Digesting Commercial Food Scraps. The Contractor shall not engage in the Composting of Commingled Organics, Yard Trimmings, or Commercial Food Scraps. The Contractor acknowledges that these services are managed under a separate agreement(s) between the Authority and the Organics Contractor and/or the operator of the Designated Anaerobic Digestion Facility.
5. Processing Recyclable Materials. The Contractor shall not engage in the Processing of Recyclable Materials. The Contractor acknowledges that this service is managed under a separate agreement between the Authority and the Recyclables Contractor.
6. Composting Commercial Food Scraps. The Contractor shall not engage in the Composting of Commercial Food Scraps (beyond the Commercial Food Scraps Pre-Processing activities at the Approved Pre-Processing Facility) except as otherwise provided in Section 5.5.B.
7. Anaerobic Digestion. The Contractor shall not engage in Anaerobic Digestion of Organic Materials. The Contractor acknowledges that this service is managed under a separate agreement between the Authority and the operator of the Designated Anaerobic Digestion Facility.
8. Pre-Processing Commercial Food Scraps. The Contractor shall not engage in the Pre-Processing of Commercial Food Scraps. The Contractor acknowledges that this service is managed under a separate agreement between the Authority and the Transfer Contractor. {Note to Proposer: This may be removed upon receipt of proposals and negotiations. See note in Section 6.1.}

9. Processing of Mixed Materials. The Contractor shall not engage in the Processing of Mixed Materials. The Contractor acknowledges that this service may be managed under a separate agreement between the Authority and the Mixed Waste Contractor if Mixed Waste Processing is implemented during the Term.
10. Disposal of Solid Waste. The Contractor shall not engage in the Disposal of Solid Waste, or Mixed Waste Processing Residue if Mixed Waste Processing is implemented during the Term. The Contractor acknowledges that this service is managed under a separate agreement between the Authority and the Disposal Contractor.
11. C&D Collection. The Contractor shall not engage in the Collection of C&D in the Service Area unless otherwise permitted in accordance with the Authority's C&D transporter registration program.

2.3 Change in Marketability of Materials

Should any materials, by-products, or components of such materials listed in Section 2.1 or Exhibit C, or any other materials not currently designated as Franchised Materials, develop economic value over time, the Authority reserves the right to add such materials to this exclusive Agreement and may have Contractor Transfer, Transport, Process, Divert, or Dispose of such materials under this Agreement.

2.4 Change in Scope

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

- A. For example, and without limitation, the Authority may request the following changes in scope:
 1. Change in marketability of materials, as provided above in Section 2.3.
 2. Inclusion of new Diversion programs and/or Mixed Waste Processing.
 3. Research, development, and implementation of innovative services, which may entail different Collection and/or Processing methods, targeted routing, different kinds of services, different types of Collection vehicles or Containers, and/or new requirements for Generators.
 4. Expansion of public education and outreach activities.
 5. Elimination of programs.
 6. Research, development, and performance of pilot programs.
 7. Modification of the manner in which Contractor performs existing services.
 8. Implementation of other program or service adjustments as may be determined.
 9. Any change in services mandated by the Authority pursuant to the disaster waiver provision in Section 7.4.F.
 10. Existing and new Extended Producer Responsibility programs, as provided in Section 7.5.

- B. Within sixty (60) Days after the Authority's written request under this Section, the Contractor shall present a written proposal to perform the additional or modified services. The proposal shall include all operational, financial, equipment, personnel, promotional, or other information requested by the Executive Director and reasonably necessary to evaluate the cost-effectiveness of Contractor's proposal.
- C. The Authority shall review the Contractor's proposal for the change in scope of services. The Authority may accept the proposal, negotiate the terms of the proposal with the Contractor, or reject the proposal. The Parties will cooperate in good faith to amend the Agreement, as needed, to reflect the outcome of the Authority's review of the proposal.
- D. The Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope. However, if the Authority approves the change in scope, the Contractor may seek a Special Tipping Fee Review as provided in Section 10.4 and 10.5.
- E. If the Authority and the Contractor cannot agree on the terms and conditions of the change in scope, including compensation and/or Tipping Fee adjustments, within one hundred twenty (120) Days (or otherwise mutually extended in writing by the Parties) from the date when the Authority receives a proposal from the Contractor to perform such services, the Contractor acknowledges and agrees that the Authority may permit other Persons besides the Contractor to provide such services. Nothing herein shall prevent the Authority from soliciting cost and operating information from other Persons in order to inform the evaluation of the Contractor's proposal.

2.5 Payment of Procurement Expenses

In exchange for the grant of this Agreement, Contractor agrees to pay seventy-five thousand dollars (\$75,000) to the Authority to reimburse the Authority for its procurement costs and expenses. The Contractor shall make payment to Authority by check within fifteen (15) Days after the Effective Date of this Agreement. This payment shall not be recovered by Contractor through Tipping Fees charged under this Agreement.

2.6 Obligation to Provide Service

The Authority and the Contractor agree, as more fully set forth in the Recitals to this Agreement, that proper Transfer and Transport of Recyclable Materials, Commingled Organics, Pre-Processing, Transfer and Transport of Commercial Food Scraps, and Transfer and Transport of Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented during the Term) is fundamental to the protection of the public health, safety and the well-being of the Authority, its Member Agencies, and their constituents. The Authority's responsibility for ensuring the adequacy of these services in part provides the justification for the granting of an exclusive Agreement to the Contractor. Except as otherwise provided in Section 14.10, this exclusive Agreement creates an obligation that such services continue to be provided even under difficult or adverse circumstances, such as but not limited to, natural disaster, pandemic, labor unrest, and any period where legal actions, future judicial interpretations of current law, or new laws or regulations impact the effectiveness of portions of this Agreement. In such an event, it shall be the responsibility of the Contractor to mitigate any potential damages to other services being provided as much as possible. For example:

- A. Should a court of competent jurisdiction or other regulatory agency set aside, invalidate, or stay all or a portion of the Tipping Fees approved by the Authority under this Agreement or the Maximum Rates charged by the Franchised Collector, the Contractor agrees to continue

to perform its obligations as otherwise set forth herein, and the Authority and/or the Contractor shall take such urgency actions necessary to facilitate the Contractor's continuation of service.

- B. Should there be a Change in Law, the Contractor agrees to meet and confer with the Authority to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.
- C. If, as a result of a legal action, the Franchised Collector is unable to include any portion of the Contractor's per-Ton Tipping Fee payment(s) (provided for in Section 9.1 of this Agreement) in the Maximum Rates the Franchised Collector charges for its services, then the Contractor agrees, upon direction from the Authority, to reduce its per-Ton Tipping Fee in an amount corresponding to the disallowed portion of the Maximum Rates, or any components thereof, and Franchised Collector shall thereafter not be required to remit the amount of the disallowed portion of Contractor's per-Ton Tipping Fee payment(s) to the Authority and the Authority shall not thereafter be required to remit the same to Contractor.
 - 1. Nothing herein is intended to imply that California Constitution Articles XIII(C) or (D) apply to the Maximum Rates charged by the Franchised Collector. The foregoing paragraphs are merely intended as a contractual allocation of risks between the Parties.
 - 2. This Section shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by the Authority to contribution or indemnity from third parties.
 - 3. This provision is intended to be consistent with and limited by California Public Resources Code Section 40059.2.
- D. **Allocation of Risk.** Neither the Authority nor the Contractor shall have the right to obtain payment from the other Party for losses either may sustain due to a court of competent jurisdiction or other regulatory agency invalidating, setting aside, or staying the collection of all or a portion of the Tipping Fees approved by the Authority under this Agreement or the Maximum Rates charged by the Franchised Collector. The Contractor shall bear the risk of any lost profits or losses associated with the cost of providing continued service as a result of such a legal action or ruling, and similarly the Authority shall bear the loss of payments to the Authority or its Member Agencies during any period where the Contractor cannot lawfully collect those payment amounts from Subscribers.
- E. **Labor Unrest.** In the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or an Affiliate, contractor, or supplier of Contractor, the Contractor shall not be excused from performance. In such case, the Contractor shall continue to provide service in accordance with this Agreement, including use of Alternate Facilities as necessary, in accordance with Section 8.4. Any labor action initiated by the Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance and the Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action. The Authority retains the right to demand assurances of performance related to labor unrest, in accordance with Section 14.11. Failure to perform as a result of labor unrest shall be considered an Event of Breach in accordance with Section 14.1.
- F. **Capacity Restriction(s) and/or Facility Closure.** In the event of a temporary, sustained, or permanent capacity restriction or closure of an Approved Facility under this Agreement,

(other than due to Uncontrollable Circumstance) the Contractor shall not be excused from performance. In such case, the Contractor shall continue to provide service in accordance with this Agreement, including use of Alternate Facilities as necessary, in accordance with Section 8.4, and shall prioritize the Authority's materials if capacity limitations are imposed on the Contractor as a result of any regulatory violations or other instances where the Contractor's capacity is limited by a regulatory body, whether initiated by or imposed on the Contractor. Any limitations on capacity, including but not limited to a change in any permitted capacity limitations by material type, shall not be grounds for any excuse from performance and the Contractor shall perform all obligations under this Agreement. The Authority retains the right to demand assurances of performance related to any temporary, sustained, or permanent capacity restriction or closure of an Approved Facility under this Agreement, in accordance with Section 14.11.

2.7 No Guarantees of Materials Volume or Composition

The Authority does not guarantee the quantity or composition of Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste or Mixed Materials (if Mixed Waste Processing is implemented during the Term) Delivered to the Contractor during the Term of the Agreement. The Parties acknowledge that the quantity and composition of Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented during the Term) will be impacted during the Term of the Agreement based on a number of unpredictable factors such as, but not limited to, those factors listed below.

- A. The state of the economy.
- B. The number of residents and the number and type of businesses.
- C. Participation level of residents and businesses in various Source Reduction and Diversion programs.
- D. Rate setting practices for Collection services.
- E. Changes in packaging, products, technology, and other external factors.
- F. Diversion programs or policies of the State, County, the Authority, Member Agencies, and others.
- G. Private efforts by residents and businesses to reduce waste and increase Diversion.
- H. Impact of existing, pending, or future Applicable Law, including but not limited to, AB 939, AB 341, AB 1826, SB 1383, AB 1201, SB 343, SB 54, CALGreen, and the Advanced Clean Fleets Regulation.
- I. Impact of current or future bans or policies on the Disposal of materials, such as, without limitation, polystyrene, single-use plastics, mattresses, carpet, C&D, Hazardous Waste, or materials that are difficult to Process, as established by the Authority, one or more of its Member Agencies, Contra Costa County, the State, or other applicable regulatory bodies.
- J. Impact of current or future Extended Producer Responsibility Programs established by the Authority, one or more of its Member Agencies, Contra Costa County, the State, or other applicable regulatory bodies.

2.8 References to Defined Terms

Throughout this Agreement, references to defined terms that are not capitalized shall have the same meaning as their capitalized counterparts unless the use of such terms indicates they are not the subject

to the exclusivity provisions of this Agreement or the other separate agreements between the Authority and other parties for services directly or indirectly related to this Agreement. Where types of materials are used in their lowercase form, such materials are assumed to have not entered the franchised system by virtue of not having been placed in Collection Containers or otherwise set-out by Generators in accordance with the Franchised Collector(s) set-out instructions. Where actions or activities are used in their lowercase form, such activities are assumed to have not been performed by any person in privity of contract with the Authority for services directly or indirectly related to this Agreement.

2.9 Subcontractors and Affiliates

The Contractor shall not engage a Subcontractor(s) for Transfer, Transport, or Pre-Processing services without the prior written consent of the Executive Director, which may be granted or withheld in their sole discretion. For any Subcontractor(s) pre-approved by the Authority as part of this Agreement that are listed in Exhibit H, Contractor shall demonstrate compliance with the requirements of this Section 2.9 on or before the Commencement Date of this Agreement. Following the Effective Date, if the Contractor desires to engage any Affiliate as a Subcontractor in the provision of services required in under this Agreement, the Contractor shall request approval from the Authority by providing the Executive Director with thirty (30) Days' written notification of its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. The Authority may grant or withhold approval in their sole discretion.

The Contractor shall be solely responsible for management and oversight of the activities of all approved Subcontractor(s) and shall require that all Subcontractor(s) comply with all material terms of this Agreement, including the Indemnification provisions in Article 13 of this Agreement. The Contractor shall require that all Subcontractors file an insurance certificate with the Authority describing such Subcontractor's insurance coverage and name the Authority as an additional insured. The Executive Director may waive or excuse these insurance requirements in its sole discretion. The Contractor shall be considered to be in breach or default should the activities of any Subcontractor(s) constitute a breach or Event of Default under this Agreement.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Of Contractor

By acceptance of this Agreement, the Contractor represents and warrants that, in addition to the other representations and warranties specified herein:

- A. **Existence and Powers.** The Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of California and is qualified to transact business in the State and has full legal right, power, and authority to enter into and perform its obligations under this Agreement.
- B. **Due Authorization and Binding Obligation.** The Contractor has the authority to enter into and perform its obligations under this Agreement. The Contractor has taken all actions required by law or otherwise to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of the Contractor has the authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of the Contractor enforceable against the Contractor under its terms.

- C. **Truth and Accuracy of Information.** The information supplied by the Contractor in all written submittals made in connection with the Contractor's services, including the Contractor's Proposal and any other supplementary information submitted to the Authority, which the Authority has relied on in awarding and entering this Agreement, is true, accurate, and complete, and does not contain material omissions or misleading statements. The Contractor will inform the Authority of any change in that information within one week of discovering any untruth or inaccuracy.
- D. **Contractor's Due Diligence.** The Contractor has made an independent investigation and examination (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Relying solely upon its own investigation, advice, and counsel, the Contractor has taken such matters into consideration in entering this Agreement to provide services in exchange for the Contractor Revenue provided for under the terms of this Agreement.
- E. **Ability to Perform.** The Contractor possesses the business, professional, and technical expertise to manage and the Contractor possesses the equipment, facilities, and employee resources required to perform all obligations of this Agreement.
- F. **Voluntary Use of Approved Facilities and Designated Facilities.** The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facilities, Designated Facilities, or other location(s) approved by the Authority, for the purposes of Transferring, Transporting, Processing, Diverting, or Disposing of all Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste Delivered to the Contractor. Such decision by the Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.
- G. **No Warranty Regarding Volumes or Material Types.** The Contractor recognizes that the Authority expressly disclaims any warranties, either express or implied, as to the volume, type, merchantability, or fitness for any particular purpose of the various materials Delivered to the Contractor.
- H. **Covenant Not to Sue.** For the Term of this Agreement, the Contractor agrees that neither the Contractor, its officers, employees, agents, Subcontractors, nor its Affiliates, shall initiate, commence, or participate in (or directly or indirectly encourage or fund others to undertake) any administrative appeal or lawsuit against the Authority, its Member Agencies, or any of the Authority's selected contractors including the Authority's Franchised Collector, , Disposal Contractor, Recyclables Contractor, Organics Contractor, Reuse Contractor, or Mixed Waste Contractor that alleges any claims related to, arising out of, or in connection with the Authority's Request for Proposals (RFP) process for the Contractor's services or the Authority's selected contractors' services, including the award of any agreement or contract thereunder.
- I. **Iran Contracting Act Certification.** The Contractor shall submit a certification under the Iran Contracting Act (Public Contract Code Sections 2200 et seq.), in the form included as Exhibit J of this Agreement.

3.2 Of the Authority

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

- A. **Existence and Powers.** The Authority is a Joint Powers Authority duly organized and validly existing under the laws of the State of California, with full legal right, power, and authority to enter into and perform its obligations under this Agreement.
- B. **Due Authorization and Binding Obligation.** The Authority has the authority to enter into and perform its obligations under this Agreement. The Authority has taken all actions required by law or otherwise to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of the Authority have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of the Authority enforceable against the Authority under its terms.
- C. **No Warranty Regarding Volumes or Material Types.** Consistent with the terms of Section 2.7, the Authority expressly disclaims any warranties, either express or implied, as to the volume, type, merchantability, or fitness for any particular purpose of the various materials Delivered to the Contractor.

3.3 Of the Parties

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

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

ARTICLE 4 TERM OF AGREEMENT

4.1 Term

The initial Term of this Agreement shall be fifteen (15) years, commencing March 1, 2027, and continuing to at least June 30, 2037 {term is subject to +/- five (5) years and will be finalized during negotiation}. This Agreement shall continue in full force and effect beyond that initial Term until such time as either Party provides notice to the other Party of its intent to terminate the Agreement, consistent with the requirements of Section 4.2.

4.2 Notice to Terminate

After the expiration of the initial Term, either Party, in its discretion, may terminate the Agreement by providing written notice to the other Party; such notice shall be delivered a minimum five (5) years in advance of the termination date and shall be effective March 1 of the specified termination year.

In addition, if at any time during the Term of the Agreement the Contractor becomes aware of any circumstance, whether as a result of the Contractor's action, inaction, or other action or inaction beyond the reasonable control of the Contractor that may prevent, impact, or otherwise interfere with the Contractor's ability to continue to guarantee sufficient capacity for the Authority's Solid Waste, Commercial Food Scraps, and Commingled at the Approved Transfer Facility for at least the following five (5) years, the Contractor has an affirmative duty to immediately issue a formal notice to the Authority. Further, if such circumstances cannot be mitigated, the Contractor has a duty to issue its notice of intent to terminate to the Authority in accordance with this paragraph or provide replacement services to the Authority at no additional cost to the Authority. The Contractor acknowledges that any notice of intent to terminate provided by the Contractor to the Authority under this Section shall not constitute a waiver of other rights and remedies available to the Authority for Contractor's failure to perform or in accordance with the rights and remedies available to the Authority in Article 14 of this Agreement.

ARTICLE 5 MATERIAL ACCEPTANCE, TRANSFER, AND TRANSPORT SCOPE OF SERVICES

This Article 5 describes the general requirements for the Contractor's obligation to Accept, Transfer, and Transport specified materials under this Agreement. The Authority shall enter into an agreement with the Franchised Collector that requires the delivery of all materials specified herein to the facilities specified herein for that material.

5.1 Overview of Scope of Services

- A. **Material Acceptance and Transfer Facility Services.** The Contractor shall Accept at the Approved Transfer Facility all Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste Collected by the Franchised Collector in the Service Area. The Contractor shall safely and lawfully Transfer: (i) all Solid Waste and prepare for Transport to the Designated Disposal Facility; (ii) all Recyclable Materials and prepare for Transport to the Designated Recyclables Materials Processing Facility; (ii) all Commingled Organics and prepare for Transport to the Designated Composting Facility; and, (iii) all Commercial Food Scraps and prepare for Transport to the Designated Anaerobic Digestion Facility, following

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Pre-Processing activities required by Section 6.1.B or the Designated Composting Facility as provided in Section 5.8.B and 6.1.C. Upon commencement of **Mixed Waste** Processing, if implemented during the Term, the Contractor shall also safely and lawfully Transfer all Mixed Materials (which are targeted for Mixed Waste Processing) and prepare the Mixed Materials for Transport to the Designated Mixed Waste Processing Facility and prepare the Authority's Mixed Waste Processing Residue for Transport to the Designated Disposal Facility.

- B. **Load Classification.** Prior to the Commencement Date, the Contractor shall work with the Authority and its Franchised Collector and Designated Facilities to develop a Load classification plan that will be attached to this Agreement as Exhibit P. The Contractor shall, at all times, follow the Load classification procedures for all Franchised Materials Delivered to the Approved Transfer Facility and shall ensure the Load classification procedures are followed for any Approved Alternate Facilities in accordance with Exhibit P. The Contractor further acknowledges the Load classification procedures of the Designated Facilities may change from time to time as directed by the Authority.

At a minimum, the Contractor shall notify the Authority and Franchised Collector upon receipt of: (i) any Commingled Organic Load that appears to exceed _____ percent (___%) physical contamination; or, (ii) any Commercial Food Scrap Load which appears to exceed _____ percent (___%) physical contamination; with the date and time materials were Delivered by the Franchised Collector and the truck number they were Delivered by. In the event that the Contractor Accepts material with Contamination that exceeds the facility limits established by the Designated Facility(ies), Contractor shall photograph the offending Load to evidence the Contamination level and may then Dispose of the offending Load and provide the photographic evidence to the Executive Director within one (1) Business Day.

- C. **Transport.** The Contractor shall safely and lawfully Transport: (i) all **Solid Waste** from the Approved Transfer Facility to the Designated Disposal Facility; (ii) all **Recyclable Materials** from Approved Transfer Facility to the Designated Recyclable Materials Processing Facility; (ii) all **Commingled Organics** from the Approved Transfer Facility to the Designated Composting Facility; and, (iii) all **Commercial Food Scraps** from the Approved Transfer Facility to the Designated Anaerobic Digestion Facility, following Pre-Processing activities required by Section 6.1.B or the Designated Composting Facility as provided in Sections 5.8 and 6.1.C. The Contractor shall Transport materials in Contractor-provided Transfer Vehicles. Upon commencement of Mixed Waste Processing, if implemented during the Term, the Contractor shall also safely and lawfully Transport all **Mixed Materials** (which are targeted for Mixed Waste Processing) from the Approved Transfer Facility to the Designated Mixed Waste Processing Facility and Transport the Authority's Mixed Waste Processing Residue from the Approved Transfer Facility to the Designated Disposal Facility.

If the Contractor plans to change its Transport method, the Contractor shall pay all associated costs after obtaining prior written approval from the Authority; and, the Contractor shall not be reimbursed for any additional costs. The Authority may grant or withhold approval of the proposed Transport method and the duration the Transport method is expected to remain in use in its sole discretion.

- D. **Capacity.** The Contractor warrants that, as of the Commencement Date, it has sufficient Transfer Facility capacity at the Approved Transfer Facility to receive and Transfer the Authority's **Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste** through the Term and that it shall maintain that Transfer Facility capacity through the Term (including any extension).

- E. **Responsibility for Materials.** Once the Franchised Collector Delivers Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste to the Approved Transfer Facility and such materials are Accepted by the Contractor, ownership and the right to possession of the Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented) will transfer directly from the Franchised Collector or other Person designated to Deliver Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste (Mixed Materials if Mixed Waste Processing is implemented) to the Contractor, with the exception of Excluded Waste if the Contractor can identify the Excluded Waste pursuant to Section 8.5. All benefits and liabilities resulting from ownership and possession will accrue to the Contractor until such time as such materials are delivered to and accepted by the operator of an Approved or Designated Facility as required by this Agreement.
- F. **Facility Permits.** The Contractor shall keep all existing Permits and approvals necessary for use of the Approved Facility(ies), in full regulatory compliance or confirm that the owner or operator of such facility does so. The Contractor shall, upon request, provide copies of Permits and/or notices of violation of Permits to the Authority.

5.2 Material Acceptance and Rejection

- A. **Inspection.** In accordance with Section 8.5 of this Agreement, the Contractor shall use Standard Industry Practice to detect and reject Unpermitted Waste in a uniform manner and shall not knowingly Accept Unpermitted Waste at the Approved Transfer Facility. The Contractor shall comply with the inspection procedure contained in its Permit requirements. The Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.
- B. **Unpermitted Waste Handling and Costs.** Except for cases where it can be attributed to the Franchised Collector and/or a specific generator or permitted hauler the Contractor shall arrange for or provide handling, Transportation, and delivery to a Recycling facility, incinerator, or landfill permitted in accordance with Applicable Law of all Unpermitted Waste detected at the Approved Transfer Facility. The Contractor is solely responsible for making those arrangements or provisions and paying for all costs thereof, subject to the remedies available under Section 5.2.C below.
- C. **Remedies for Rejected Materials.** If Unpermitted Waste is delivered to the Approved Transfer Facility, the Contractor shall be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that Unpermitted Waste to the Approved Facility.

If Contractor identifies Unpermitted Waste, Delivered to the Approved Transfer Facility by the Franchised Collector from the Service Area, Contractor shall notify the Franchised Collector and the Authority. The Franchised Collector shall have the primary responsibility to Collect, Transport, and Recycle or Dispose of that Unpermitted Waste and/or remediate any contamination resulting there from at the Franchised Collector's expense. Upon notification by Contractor that the Franchised Collector has failed to remedy the issue following Contractor's notice to the Franchised Collector, the Authority shall have the option to require Contractor to Recycle or Dispose of the Unpermitted Waste and/or remediate any contamination resulting there from and, in such case, Contractor may invoice the Franchised Collector for the actual costs associated with such clean-up and the Authority shall support Contractor in obtaining payment from the Franchised Collector.

- D. **Contamination of Recyclable Materials or of Commingled Organics.** The Contractor shall be responsible for minimizing contamination of Recyclable Materials and Commingled Organics

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Transported and Delivered to the Designated Processing and Designated Composting Facility through its own operational practices and through regular communication with the Franchised Collector and the Authority. Except as provided in Section 5.8.B below, the Contractor shall not permit any Franchised Materials Delivered to the Approved Transfer Facility to be mixed or otherwise commingled with any other materials that are not similarly source separated. The Contractor shall be required to maintain a reasonably sufficient distance between source separated material types within the Approved Transfer Facility to prevent contamination by the Contractor during operations.

5.3 Solid Waste Transfer

All Solid Waste received at the Approved Transfer Facility shall be Transported to the Designated Disposal Facility by the Contractor.

5.4 Recyclable Materials Transfer

All Recyclable Materials received at the Approved Transfer Facility shall be Transported to the Designated Recyclable Materials Processing Facility by the Contractor.

5.5 Commingled Organics Transfer

All Commingled Organics received at the Approved Transfer Facility shall be Transported to the Designated Composting Facility by the Contractor.

5.6 Pre-Processed Commercial Food Scraps Transfer

All Commercial Food Scraps received at the Approved Transfer Facility shall be Pre-Processed consistent with the requirements of Section 6.1 and Transported to the Designated Anaerobic Digestion Facility by the Contractor, unless otherwise provided in Section 5.8.

5.7 Mixed Materials Transfer and Residue Disposal

Upon commencement of Mixed Waste Processing, if implemented during the Term, all Mixed Materials designated by the Authority that are received at the Approved Transfer Facility shall be Transported to the Approved/Designated Mixed Waste Processing Facility by the Contractor and the Authority's Mixed Waste Processing Residue shall be backhauled from the Mixed Waste Processing Facility and Transported to the Designated Disposal Facility by Contractor. Contractor acknowledges that is Mixed Waste Processing is implemented during the Term, and in accordance with the obligations outlined in Section 5.9.O, the Contractor shall work with the Authority and the Mixed Waste Contractor to develop a back-hauling plan in accordance with this Agreement and the Mixed Waste Processing Agreement.

5.8 Right to Redirect Transfer

- A. **Transfer.** The Authority may direct the Contractor to modify the location for delivery of any of the Franchised Materials that Contractor Transfers through the Approved Transfer Facility to any Designated Facility(ies). In the event that the Contractor's Approved Transfer Facility becomes temporarily or permanently unavailable, the provisions described in Section 2.6.F and Section 8.4 shall apply. In the event of a planned change in the designation of a Processing Facility results due to a change in contracts between the Authority and any Designated Processing Facility(ies), the provisions of Section 10.5 shall apply. In either case, Contractor shall take written direction from the Executive Director regarding the date of such

change, location, and any relevant facility rules and regulations for the subject facility. The Authority also reserves the right to remove services related to the Transfer of Recyclable Materials, Commingled Organics, Mixed Materials, and/or Pre-Processing of Commercial Food Scraps from services provided by Contractor under this Agreement under the following circumstances:

1. Prior to the date the Authority executes the agreement with the Franchised Collector, the Authority may, in its sole discretion, remove Transfer services for Recyclable Materials, Commingled Organics and/or Mixed Materials if the Authority enters into an agreement with its Recyclables Contractor, Organics Contractor and/or Mixed Waste Contractor that permits the Franchised Collector to direct haul materials to the Designated Processing Facility, Designated Composting Facility, and/or Designated Mixed Waste Processing Facility and where the overall cost of direct haul is lower than the cost to utilize a transfer facility. In making its determination, the Authority shall consider the cost(s) to the Franchised Collector to direct haul the material plus the associated tip fee(s) at the Designated Processing Facility, Designated Composting Facility, and/or Designated Mixed Waste Processing Facility relative to the cost(s) to the Franchised Collector to Transport the material to the Approved Transfer Facility plus the associated tip fee(s) at the Approved Transfer Facility plus transport costs to the Designated Processing Facility, Designated Composting Facility, and/or Designated Mixed Waste Processing Facility plus the tip fees at the Designated Processing Facility, Designated Composting Facility, and/or Designated Mixed Waste Processing Facility.
2. After the date the Authority executes the agreement with the Franchised Collector, the Authority may, in its sole discretion, remove all or part of the Transfer Services for Recyclable Materials, Commingled Organics, Mixed Materials, and/or Commercial Food Scraps Pre-Processing if the Authority's agreement with its Recyclables Contractor, Commercial Food Scraps Processor, Organics Contractor, and/or Mixed Waste Contractor is terminated for any reason and the Authority enters into another agreement for Recyclable Materials Processing, Commercial Food Scraps Processing and/or Composting, Commingled Organics Composting, and/or Mixed Waste Processing services that permits the Franchised Collector to direct haul materials to the Designated Processing Facility, Designated Commercial Food Scraps Processing and/or Composting Facility, and/or the Designated Mixed Waste Processing Facility and where the overall cost of direct haul is lower than the cost to utilize a transfer facility. In making its determination, the Authority shall consider the cost(s) to the Franchised Collector to direct haul the material plus the associated tip fee(s) at the Designated Processing Facility, Designated Commercial Food Scraps Processing and/or Composting Facility, and/or the Designated Mixed Waste Processing Facility relative to the cost(s) to the Franchised Collector to Transport the material to the Approved Transfer Facility plus the associated tip fee(s) at the Approved Transfer Facility plus transport costs to the Designated Processing Facility, Designated Commercial Food Scraps Processing and/or Composting Facility, and/or the Designated Mixed Waste Processing Facility plus the tip fees at the Designated Processing Facility, Designated Commercial Food Scraps Processing and/or Composting Facility, and/or the Designated Mixed Waste Processing Facility. Whether the subject agreement naturally expires, or the Authority otherwise terminates the subject agreement prior to the natural expiration date, the Contractor shall have been given constructive notice. The Authority shall offer the Contractor the opportunity to lower its then-current Tipping Fees to reduce the overall cost of utilizing the Approved Transfer Facility to consider in making any such determination under this paragraph.

In the case outlined above, Contractor shall take written direction from the Executive Director regarding the date of such change, location, and any relevant facility rules and regulations for the subject facility.

B. **Reserved.**

5.9 Facility Operations

The Contractor shall provide Transfer services at the Approved Transfer Facility in accordance with Applicable Law, Standard Industry Practice, due diligence and specification, and other requirements of this Agreement. In addition, Contractor shall comply with the following service specifications:

- A. Operating, managing, and maintaining the Approved Transfer Facility including all buildings, scales, roads, utilities, equipment, and other Facility requirements.
- B. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations and maintenance.
- C. Operating and maintaining the scale house and scale system and weighing all inbound and outbound Franchised Materials in accordance with Section 8.9.
- D. Directing on-site traffic to appropriate unloading areas in accordance with Section 8.7 and providing a safe working environment for Approved Transfer Facility users, visitors, and employees.
- E. Accepting Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste Delivered by Franchised Collector from the Service Area.
- F. Safely managing the Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented) Accepted at the Approved Transfer Facility, including, but not limited to, meeting requirements of Section 5.2.
- G. Implementing an Unpermitted Waste and Hazardous Substance screening, identification, and prevention protocol. The Contractor shall not knowingly Deliver Unpermitted Waste to the Designated Facilities.
- H. Managing Recovered Materials in a manner compliant with AB 939, SB 1383, and other Applicable Law to ensure that the Authority shall benefit from full programmatic compliance and Diversion credit for that material.
- I. Loading materials into Transfer Vehicles and using its reasonable efforts to ensure that Transfer Vehicles Loads' do not exceed legal road limits.
- J. Transporting Solid Waste received from the Franchised Collector to the Designated Disposal Facility.
- K. Transporting Recyclable Materials received from the Franchised Collector to the Designated Recyclable Material Processing Facility(ies).
- L. Transporting Commingled Organics received from the Franchised Collector to the Designated Composting Facility. {Note: this may be updated to include compaction or grinding prior to transport upon receipt of proposals and negotiations.}
- M. Transporting Commercial Food Scraps received from the Franchised Collector to the Designated Anaerobic Digestion Facility, following Pre-Processing activities required by Section 6.1 or as otherwise required pursuant to Section 5.8.B.

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- N. Upon commencement of Mixed Waste Processing, if implemented during the Term, Transporting Mixed Materials to the Designated Mixed Waste Processing Facility.
- O. Upon commencement of Mixed Waste Processing, if implemented during the Term, Transporting Mixed Waste Processing Residue that is solely attributable to the Authority from the designated Mixed Waste Processing Facility to the Designated Disposal Facility. This shall be accomplished as a backhaul after Transporting Mixed Materials to the designated Mixed Waste Processing Facility.

ARTICLE 6

PRE-PROCESSING SCOPE OF SERVICES

{Note to Proposer: This Article 6 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 6 may be moved to Exhibit B: Scope of Work. The determination of whether Pre-Processed or un-Processed Commercial Food Scraps may be or must be mixed with Commingled Organics prior to Transfer will be at the direction of the Authority and updated following successful negotiations with the selected Transfer Contractor and Composting Contractor. Proposing on Commercial Food Scraps Pre-Processing is an **optional** service to propose on by Transfer Contractor.}

6.1 Commercial Food Scraps Pre-Processing

- A. **General.** The Contractor shall Accept and Pre-Process Commercial Food Scraps Collected by the Franchised Collector and Delivered to the Approved Pre-Processing Facility.

Further Processing of Commercial Food Scraps shall be conducted at the Designated Anaerobic Digestion Facility or the Designated Composting Facility, as directed the Authority. The Pre-Processing services required under this Section 6.1 shall result in material that conforms to the acceptance standards of the Designated Anaerobic Digestion Facility.
- B. **Unavailability of Designated Anaerobic Digestion Facility.** If the Designated Anaerobic Digestion Facility is temporarily unable to accept Pre-Processed Commercial Food Scraps, the Contractor shall Pre-Process Commercial Food Scraps consistent with the requirements of this Section 6.1 and shall Transport the Pre-Processed Commercial Food Scraps to the Designated Composting Facility. In such a case, the Contractor shall be compensated for Commercial Food Scraps Pre-Processing as well as the Transfer and Transport of Pre-Processed Commercial Food Scraps for each Ton subject to the temporary closure.
- C. **Temporary Disruption in Pre-Processing Operations.** If the Contractor's Pre-Processing equipment is temporarily unavailable to Pre-Process Commercial Food Scraps at the Approved Pre-Processing Facility, the Contractor shall Transport un-Processed Commercial Food Scraps to the Designated Composting Facility, that may or may not be mixed with Commingled Organics prior to Transport. In such a case, the Contractor shall only be compensated for Transfer and Transport of un-Processed Commercial Food Scraps for each Ton, subject to the provisions of Section 2.6 of this Agreement.
- D. **Capacity.** The Contractor warrants that, as of the Commencement Date, it has sufficient capacity at the Approved Pre-Processing Facility to Pre-Process Commercial Food Scraps Delivered by the Franchised Collector as intended for Pre-Processing through the Term. The Contractor shall maintain that Commercial Food Scraps Pre-Processing capacity throughout the Term (including any extension).

{Note: the following Section will be moved to an Exhibit during negotiations and is here for review.}

- E. **Pre-Processing Operations.** The following Pre-Processing operations, at a minimum, shall be performed by the Contractor at the Approved Pre-Processing Facility prior to Transfer to the Designated Anaerobic Digestion Facility to remove any inbound materials that are unacceptable to the Designated Anaerobic Digestion Facility:
1. For purposes of this section only, unacceptable materials shall mean materials other than Food Scraps and allowable paper products (tissue, coffee filters, tea bags, paper towels, etc.). Unacceptable materials shall include, but are not limited to: Plastic (including Compostable Plastic), polystyrene, glass, metal, non-allowable paper products wood, Yard Trimmings, straps, ropes, cords, wires, latex, Hazardous Waste, Household Hazardous Waste, and any item greater than two (2) inches in any direction.
 2. Passing Commercial Food Scraps through processing/de-packaging machinery (Scott Turboseparator or equivalent as approved by the Executive Director) to remove all but a de minimis quantity of unacceptable materials (as defined in Section 6.1.E.1 above) reduce the particle size to less than or equal to two (2) inches in all dimensions, and reduce the Pre-Processed Commercial Food Scraps to a pumpable slurry.
 3. Disposing of Residue.
 4. Transferring and Transporting of the Pre-Processed Commercial Food Scraps to the Designated Anaerobic Digestion Facility using a water-tight trailer that shall remain in the enclosed Approved Transfer Facility for tarping prior to Transport.
 5. Operating the Approved Pre-Processing Facility in accordance with 14 CCR Section 17409.5.6 and keeping Commercial Food Scraps separate from all other materials, including other Organic Materials, to prevent unpermitted materials and other contaminants described in this Section 6.1.B from being introduced in Commercial Food Scraps Transported to the Designated Anaerobic Digestion Facility.
 6. Ensuring that the performance of the Pre-Processing operations results in the achievement of all relevant performance standards under SB 1383 for Incompatible Materials and/or remnant organic materials as described in 14 CCR Section 17409.5.4 and 14 CCR Section 17409.5.8 and the Pre-Processed Commercial Food Scraps the Contractor Transports to the Designated Anaerobic Digestion Facility are compliant with the Authority's obligations to the Designated Anaerobic Digestion Facility, as described in Sections 6.1.B.1 and 6.1.B.5 above. In the event of more than one (1) such failure in any twenty-four- (24-) month period, the Executive Director may require the Contractor to modify operations, including the addition of personnel or equipment reasonably necessary to remedy the performance deficiency. In the event the Contractor and the Executive Director do not agree on the necessary modifications, the Authority may select, and the Contractor shall pay all reasonable costs associated with, an assessment and recommendation by an independent engineer with specific expertise in the design and operation of such Pre-Processing equipment and Facilities.
 7. If directed by the Authority, and in addition to the provisions of Section 6.1.B.6 above, Delivering Pre-Processed Commercial Food Scraps to the Designated Composting Facility rather than the Designated Anaerobic Digestion Facility until such time that the Contractor has sufficiently demonstrated, to the satisfaction of the Authority, its ability to sufficiently prevent unpermitted materials and other contaminants in the Pre-Processed Commercial Food Scraps intended for Delivery to the Designated Anaerobic Digestion Facility, as described in Sections 6.1.B.1 and 6.1.B.5 above. If, as a result of the Contractor's failure, the Authority directs the Contractor to Deliver the

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Pre-Processed Commercial Food Scraps to the Designated Composting Facility, the Contractor shall be compensated for Commercial Food Scraps Pre-Processing in accordance with Article 10; however, the Contractor shall not receive additional compensation for costs associated with the Transfer or Transport of Pre-Processed Commercial Food Scraps to the Designated Composting Facility.

6.2 Reserved

ARTICLE 7 OTHER RELATED SERVICES

{Note to Proposer: This Article 7 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 7 may be moved to Exhibit B and Exhibit C, as appropriate. Sections 7.7 and 7.8 will also be further developed and incorporated as a result of the plan(s) submitted by the proposer(s) and negotiations with the selected contractor(s).}

7.1 Public Education and Outreach

The Authority places the utmost importance on effective and accurate public education and outreach in helping residents, businesses, and visitors fully understand options for, and benefits of, Source Reduction, reuse, repair, Recycling, and Composting. The Contractor acknowledges that the services they provide are a portion of a multi-party system that impacts every Generator within the Service Area and diligent coordination in the provision of accurate public education is critical in such a multi-party system. The Authority and/or the Franchised Collector shall be responsible for the design, development, content, printing, and/or distribution of public education materials. The Contractor shall, within twenty (20) Business Days after a request from either Authority staff or the Franchised Collector:

- A. Provide descriptions, schematics, (digital) photographs, operational data, identification of problem materials/practices, or other information related to the Contractor's general operations under this Agreement that may be useful for public education.
- B. Review and provide constructive, factual, and/or corrective comments on public education materials that relate to the services provided by the Contractor under this Agreement.
- C. Participate in and contribute content to meetings related to the design and development of public education and outreach materials that involve the services provided by the Contractor under this Agreement.

In the event that the Contractor elects to design, develop, and distribute its own public education or advertising materials related in any way to or referencing the Contractor's services under this Agreement, the Contractor shall provide the Authority's Executive Director the opportunity to review, request modifications to, and approve all public education materials including, but not limited to: print, radio, television, or internet materials/media before publication, distribution, and/or release. Following publication, distribution and/or release, the Contractor shall provide copies or documentation of all final materials to the Authority's Executive Director. The Contractor, and its Subcontractors, shall cooperate and coordinate with Authority staff on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Authority shall have the right to review and approve when the Contractor includes the Authority's name, other form of identification, and contact information on public education materials. The Authority may request inclusion of the Authority and/or Member Agency information on public education materials (subject to the Authority's review and approval) and such request shall not be unreasonably withheld.

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7.2 Facility Tours

The Contractor shall host up to four (4) tours per calendar year of this Agreement of each Approved Facility used by the Contractor in the performance of its obligations under this Agreement. Each tour and group shall be determined by the Authority's Executive Director and shall be scheduled on the date selected by the Executive Director, provided that at least twenty (20) Business Day's advance notice of the tour has been provided to the Contractor. The Contractor may review the list of participants and participant's affiliate organization(s) and Contractor may provide written feedback to the Executive Director if the Contractor has a legitimate protectable interest in precluding a participant's participation. The Executive Director shall have the discretion to hold the tour during a time of active facility operations or during a time when the facility is idle. The Contractor shall be responsible for providing: i) a facility representative who can knowledgeably lead the tour and describe the operations of the facility to participants; ii) adequate personal protective equipment, including but not limited to high visibility vests, eye protection, ear protection, and hard hats for tour participants; and, iii) a parking location for tour participants. The Contractor may, but is not required to, provide a van or bus for the tour participants to be transported through the facility. The Contractor may limit the size of the tour group to no more than thirty (30) participants. In addition to Facility Tours, Authority staff may visit and inspect each facility per Section 11.1. The Contractor may request the tour participants to sign a confidentiality and non-disclosure agreement; provided however, that tour participation may not be withheld if the participant refuses to sign.

7.3 Billing

- A. **General Requirements.** The Contractor shall bill the Authority at Tipping Fees established under this Agreement for each Franchised Material. Billing shall be performed on the basis of services rendered under this Agreement. The Contractor shall not invoice the Authority for any amount in excess of the number of Tons for each Franchised Material delivered by the Franchised Collector multiplied by the Tipping Fee for that Franchised Material in the subject calendar month. Tipping Fees for Transfer and Pre-Processing shall be based on the weight of inbound materials.
- B. **Billing Frequency.** The Contractor shall invoice the Authority no later than the tenth (10th) Business Day of each month for the prior month's services. The Authority shall remit payment of all undisputed Tipping Fees to the Contractor no later than sixty (60) Days following their receipt of such invoice from the Contractor.
- C. **Bill Format.** The format of the itemized Billing statements shall be reviewed and approved by the Authority before the Commencement Date of this Agreement. At a minimum, the Billing statements shall include the number of Loads and Tons delivered by Franchised Collector to the Contractor subject to each Tipping Fee and a monthly invoice total.
- D. **Payment Options.** The Contractor shall cooperate with the Authority to implement reasonable payment options that may include, but are not necessarily limited to check, electronic check, or wire transfer.
- E. **Finance Charges.** In the event that the Authority fails to pay any invoice within sixty (60) Days after receipt of the Contractor's invoice, the Contractor may attach a finance charge each month thereafter until the Authority resolves any and all delinquent amounts. The interest rate shall be calculated monthly and may not exceed the median Secured Overnight Financing Rate published by the New York Federal Reserve Bank (SOFR) plus two (2). For example, if the November 2023 SOFR Median is 5.33, the maximum finance charge applied may not exceed 7.33 percent annual percentage rate.

- F. **Billing Disputes and Errors.** In the event of a dispute between the Parties with respect to a Billing matter, the provisions of Section 15 shall apply. The Contractor shall refund any amounts overpaid by the Authority within thirty (30) Days after determining such an overpayment has been made. The Contractor shall invoice the Authority within thirty (30) Days after determining that the Authority was previously under-Billed. In the event of a Billing error, the Contractor may require the Authority to pay any undisputed amounts in the normal timeline but shall not assess any finance charges related to unpaid portions that are in dispute. The Contractor may not withhold provision of services, payments, or other obligations of this Agreement during the pendency of or resulting from any dispute related to payment.

7.4 Provision of Emergency Services

- A. **Disaster Response Planning.** No less than ninety (90) Days prior to the Commencement Date, the Parties shall meet to discuss development of a disaster response plan to address the role of the Contractor in addressing Authority needs related to wartime, natural, physical, or other disaster in, or proximate to the Service Area resulting in the declaration of an emergency by the Governor, County Board of Supervisors, County Health Office, County Sheriff, any Member Agencies, or other responsible government official, as well as any measures that may be necessary for the Contractor to take over time to address climate change ("Disaster Response Plan").

- B. **Disaster Response Plan.** The Parties shall develop and finalize a Disaster Response Plan prior to the Commencement Date that identifies specific communication and logistical actions, and such other coordination between the Parties and internal to each Party such that Contractor assistance can occur immediately following a declaration of an emergency. The plan shall be developed by the Parties as provided in this Section and incorporated into this Agreement as part of Exhibit B. The Parties shall review the plan no less than annually and revise as warranted.

As part of the Disaster Response Plan, the Contractor shall provide a contingency plan to the Authority demonstrating how services will be provided during the period impacted by a declaration of an emergency. The contingency plan is subject to Authority approval (which shall not be unreasonably withheld) and the Contractor shall amend the plan until it meets Authority requirements, including reasonably demonstrating how the Authority's basic Transfer and Disposal and sanitary needs will be met to the Authority's satisfaction. This provision shall not, however, release the Contractor from using its best efforts to avoid or remove such cause and continue performance hereunder whenever such causes are removed.

- C. **Essential Service.** The Contractor acknowledges that it provides an essential service, and that while provision of Transfer service during or following a disaster may be affected by impacts to facilities, equipment, and/or public infrastructure, the Contractor is obligated to take all measures reasonably necessary to provide such service in a timely and effective manner in compliance with this Agreement, Section 14.10 notwithstanding. Such measures may include but are not limited to a change in Approved Facility(ies) and/or Designated Facility(ies).
- D. **Availability of Contractor's Personnel and Equipment.** In the event of a declaration of emergency, the Contractor shall provide, upon Authority request, all equipment, vehicles, and/or personnel normally performing services under this Agreement, for use by the Contractor in conducting emergency operations. These emergency services shall be performed in consultation with the Authority's Executive Director to ensure appropriate

prioritization of services. The Authority shall not be required to compensate the Contractor for the Contractor's provision of equipment, vehicles, or personnel normally performing services under this Agreement when made available during a declaration of emergency for the Contractor's use in excess of what is otherwise payable to the Contractor pursuant to this Agreement.

- E. **Contractor Reimbursement for Use of Additional Resources.** In the event of a declaration of emergency, should the Contractor provide, upon Authority's request, additional equipment, vehicles, and/or personnel beyond that normally performing services under this Agreement, for use by the Contractor in conducting emergency operations under the Authority's direction, the Contractor may submit to the Authority detailed records of specific, additional, and reasonable costs and expenses borne by the Contractor in providing such additional resources. The Authority shall reimburse the Contractor for such documented, reasonable expenses within ninety (90) Days after the Authority receives State and/or Federal emergency agency reimbursement specific to these expenses. Should such State and/or Federal reimbursement not occur within five hundred and forty (540) Days after the Contractor's complete submission as verified by the Authority Contractor may seek compensation under the terms of this Agreement. The Contractor shall promptly cooperate with the Authority, State and/or Federal reporting and documentation requirements related to a request for reimbursement. The Contractor shall further comply with all applicable Federal, State, or local funding and accounting requirements that may apply to expenses that will be reimbursed upon notice of the same from the Authority.
- F. **Disaster Waivers.** In the event of a disaster, the Authority may grant the Contractor a waiver of some or all Transfer requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Transfer and Disposal requirements shall be addressed as a change in scope in accordance with Section 2.4.

7.5 Extended Producer Responsibility Programs

- A. **General.** The Authority and the Contractor acknowledge that the requirements under the existing Extended Producer Responsibility Programs (including, but not limited to, AB 1201, SB 1383, SB 54, and SB 343) may be applicable to the services provided by the Contractor under this Agreement, and that additional or amended Extended Producer Responsibility Programs may be established in the future. The Contractor further acknowledges that, because the Approved Transfer Facility accepts materials from the public that may be regulated by an Extended Producer Responsibility Program, the Contractor may be uniquely positioned to operate or participate in such programs.
- B. **Change in Scope.** The Authority may require Contractor's compliance with, and participation in, existing and/or new Extended Producer Responsibility Programs that may include a modification to Exhibit C or Contractor implementation of drop-off program(s) at the Approved Transfer Facility, to the extent that doing so is reasonably appropriate and does not violate the permits of the subject Facility.

Notwithstanding Section 10.4.A.4, any and all such Authority requests and/or requirements related to any Extended Producer Responsibility Program shall be treated as a change in scope in accordance with Sections 2.4, 10.4.A.1, and 10.5 and shall not be treated as a Change in Law pursuant to Section 10.4.A.4; provided, however, that the Contractor shall be expressly precluded from requesting a Special Tipping Fee Review for a change in scope if the Contractor's is compensated, in whole or in part, for Processing, Recovery, and/or Diversion cost associated with such participation. Additionally, the Contractor shall be

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expressly precluded from requesting any Special Tipping Fee Review, as described in this Section, for any materials Contractor represented it was already Recovering and Diverting, as described in Exhibit G, even if the addition of the subject material is covered under what might otherwise be considered an eligible item under Section 10.4.A.1 and Section 10.4.A.

- C. **Authority Rights to Solicit Proposals.** The Authority may, from time-to-time, request that the Contractor initiate or participate in an Extended Producer Responsibility Program; provided, however, that the Contractor acknowledges and agrees that the Authority is under no obligation to request any such proposal from the Contractor. Furthermore, the Contractor acknowledges and agrees that, at any time during the Term of this Agreement, the Authority may solicit proposals from other Persons related to Extended Producer Responsibility Programs and may permit other Persons besides Contractor to provide such services, as provided for in Section 2.2.A.8. and that nothing herein shall prevent the Authority from also soliciting cost and operating information from other Persons in order to inform the Authority's evaluation of any Contractor-provided proposal.
- D. **Authority Requested Proposal.** If the Authority requests an Extended Producer Responsibility Program proposal from Contractor under this Section, the Contractor shall be required seek out and coordinate with the applicable Stewardship Organization designated for the applicable program and shall describe such partnership in its proposal; these requirements are in addition to the requirements provided in Section 2.4. The Authority's written request for a proposal may also require additional and/or specific information relating to the Extended Producer Responsibility Program, including such information determined by the Executive Director (at the Executive Director's sole discretion) to be reasonably necessary. The Authority shall review the proposal and may request additional supporting documentation, calculations, or other information necessary to evaluate the Contractor's proposal for reasonableness and to evaluate Contractor's ability to comply with the requirements of the Extended Producer Responsibility Program.

As such, Contractor shall, by default, accept the Authority's request to enact the Extended Producer Responsibility program, unless the Contractor can demonstrate significant barriers that would make providing such services impracticable. The Contractor shall express any objections or concerns during the meet-and-confer period and Contractor shall provide substantial evidence of such barriers in Contractor's proposal. Such information will be further reviewed by the Authority.

- E. **Record Keeping and Reporting.** The Contractor acknowledges that, as part of the services provided under this Agreement, the Contractor's participation in any Extended Producer Responsibility Program may impact the Authority and/or its Member Agencies, Subscribers to Franchised Collection services, and the Authority's other service providers. As such, regardless of whether the Contractor is specifically contracted under this Agreement to provide any such Extended Producer Responsibility Programs under this Agreement, the Contractor acknowledges and agrees it has obligations to the Authority, nonetheless.

Throughout the Term of this Agreement, the Contractor shall maintain records of all funding or other resources the Contractor receives directly or indirectly through an Extended Producer Responsibility Program. The Contractor shall inform and report to the Authority as part of Contractor's obligations under Exhibit D and shall calculate and demonstrate the dollar amount that can be attributed to services provided under this Agreement. Any cost savings identified shall be remitted to the Authority as either a direct payment sent to the Authority within thirty (30) Days after Contractor's receipt of funds or as a reduction to the

Contractor's Tipping Fee in accordance with Article 10, at the Executive Director's sole discretion. The Contractor shall include copies of invoices or receipts with the applicable Stewardship Organization with its payment or Tipping Fee Application, as appropriate, regardless of whether the Authority is aware such funding or other resources have been received by the Contractor.

The Contractor shall also maintain all operational and financial records related to Extended Producer Responsibility Programs as provided in Article 12 and report such information to the Authority in accordance with Exhibit D or as otherwise requested by the Executive Director.

7.6 Generation, Characterization, and Pilot Studies

The Contractor acknowledges that the Authority, CalRecycle, or other governmental agencies may wish to perform and/or participate in periodic material generation or characterization studies or pilot programs related to materials covered under this Agreement. The Contractor agrees to participate and cooperate with the Authority and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated, Disposed, Diverted or otherwise Processed or Composted, including the resultant Residue. If the Authority requires Contractor to participate in such a study or program, Contractor and the Authority shall mutually agree on the scope of services to be provided by Contractor and compensation, if any, that the Authority will pay to Contractor specifically for such participation. In any event, Contractor shall permit and in no way interfere with the handling of the subject materials by other Persons for such purposes.

7.7 Free Dump Days

{Note: the process and mechanics for the compensation adjustment will be added to Article 10.}

The Contractor shall allow Single-Family and Multi-Family Customers of the Franchised Collector's Collection services, from the Service Area to periodically deliver solid waste and yard trimmings to the Approved Transfer Facility for no charge, upon presentation and relinquishment of a non-expired voucher and proof of their eligibility (through a Franchised Collector invoice and/or other forms of identification). The Authority shall be responsible for providing each Customer with {number to be updated} vouchers that will each allow the Customers from the Service Area to deliver one (1) load of material per voucher to the Approved Transfer Facility. Each voucher shall include an expiration date, and shall describe limitations on the delivery method, the allowable material type(s) and quantities, volumes and/or dimensions, and incorporates any other restrictions imposed by the Approved Transfer Facility Permits or the Contractor as provided in Exhibit B. Residential vehicles shall not exceed one- (1-) ton capacity; trailers shall not exceed five (5) feet by ten (10) feet and, Bulky Items and/or Residential appliances shall be accepted provided they are delivered in a manner that do not exceed these limitations. The Contractor shall be compensated for each non-expired voucher redeemed on a per unit basis

7.8 Self-Hauled Food Scraps

The Contractor acknowledges that SB 1383 requires Generators divert their organic wastes, as defined within SB 1383, and the Authority desires to ensure all Customers have the opportunity to Self-Haul their Food Scraps to a location that will ensure these materials are Diverted. The Contractor shall accept these Self-Hauled, Source Separated Food Scraps, including Food-Soiled Paper from Generators within the Service Area at the Approved Transfer Facility during normal Transfer Facility hours, as described in Section 8.3 of this Agreement. The Contractor shall not charge Customers that deliver up to twenty-five (25) gallons of Food Scraps and/or Food-Soiled Paper in a single day and shall be permitted to charge

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Customers that deliver more than twenty-five (25) gallons of Food Scraps and/or Food-Soiled paper on more than the rate for accepting an equivalent amount of solid waste. The Contractor shall abide by the diversion plan for these materials, as provided in Exhibit B.

7.9 Reserved

7.10 Reserved

ARTICLE 8 STANDARD OF PERFORMANCE

{Note to Proposer: This Article 8 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 8 may be moved to Exhibit B, as appropriate.}

8.1 General

The Contractor shall at all times comply with all laws and regulations and provide services in a manner that is safe to the public, the Franchised Collector's employees, and the Contractor's employees, employees of the Designated Facilities, and employees of any subsequent downstream facilities managing any of the Authority's Franchised Material. Except to the extent that a higher performance standard is specified in this Agreement, Contractor shall perform services in accordance with Solid Waste, Recyclable Materials, and Organic Materials management practices common to Northern California.

8.2 Disposal of Recyclable Material, Commercial Food Scraps, Commingled Organics, and Mixed Materials Prohibited

{Note: Pending baseline study to be performed to determine residue, recovery, and water/liquid thresholds.}

With the exception of Residue resulting from Commercial Food Scraps Pre-Processing, which shall not exceed ___ percent (___%) of the inbound Commercial Food Scraps Tonnage to the Approved Transfer Facility, Recyclable Materials, Organic Materials and Mixed Materials (if Mixed Waste Processing is implemented) may not be Disposed in lieu of Transfer and Transport to the Designated Recyclables Materials Processing, Composting Facility Designated Anaerobic Digestion Facility or Designated Mixed Waste Processing Facility (if Mixed Waste Processing is implemented).

If approved by the Executive Director, Contractor may Dispose of, rather than Process, specific types of Organic Materials that are subject to quarantine and that meet the requirements described in 14 CCR Section 18984.13(d), for a period of time specified by the Executive Director or until the Authority provides notice that the quarantine has been removed. In accordance with Exhibit D, the Contractor shall maintain records and submit reports regarding compliance agreements for quarantined Organic Materials that are Disposed pursuant to this section.

8.3 Days and House of Operation

- A. **Approved Transfer Facility.** The Contractor shall operate the Approved Transfer Facility for the receipt of the Authority's Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, in accordance with the days and hours of operation set forth below. At a minimum, the Contractor shall Accept Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, Monday through Friday from ___ a.m. to ___

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p.m. and [] a.m. to [] p.m. on Saturdays. The Contractor may not change the specific times or reduce the total number of hours during which the Contractor Accepts the Authority's Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, without prior written approval of the Authority. The Contractor shall provide the Authority with a minimum of sixty (60) Days written notice of such an anticipated modification.

B. **Reserved.**

C. **Holiday Schedule.** The Contractor may request approval from the Authority to not Accept, Transfer, Transport, and Pre-Process on a Holiday. The Contractor shall not change its designation of Holidays or Holiday-related closures of Approved Facility(ies) without prior written approval by the Authority and no less than six (6) months advance notice to the Franchised Collector, Organics Contractor, and Disposal Contractor.

8.4 Alternate Approved Facilities

A. **Purpose.** Pursuant to Section 2.6.F of this Agreement, the Contractor is obligated to provide service and shall (no later than 180 days prior to the Commencement Date) identify arrangements with Approved Alternate Facilities, whether an Affiliate or owned by a third-party, which shall be subject to review by the Authority, upon Authority request, in order to ensure uninterrupted service should Contractor for any reason be unable to provide services at the Approved Transfer Facility. Contractor shall ensure that Alternate Facilities comply with all provisions of this Agreement and Applicable Law.

B. **Alternate Facility Arrangements.** The Contractor's arrangements with Approved Alternate Facilities must ensure that Contractor can Accept, Transfer, Pre-Process, and Transport Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, and Mixed Materials (if Mixed Waste Processing is implemented) to an Approved Alternate Facility within two (2) Business Days after the Contractor or the Authority notice of need to use such Approved Alternate Facility. The Contractor shall ensure that Approved Alternate Facility(ies) are able to Accept Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste on a continuous basis for no less than thirty (30) Days. Should Contractor's use of the Approved Alternate Facility exceed thirty (30) Days, the Authority may require the Contractor to provide additional reasonable assurances of the Approved Alternate Facility's ability to Accept Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste on an ongoing basis under the terms of this Agreement. The Contractor may request, and Authority may at its discretion grant a change in, an Alternate Facility owned and operated by Contractor or an Affiliate, or owned and/or operated by a third party with the third party's prior written consent.

C. **Alternate Facilities for Reasons within Contractor's Control.** If Contractor does not Accept the Authority's Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste for reasons other than Uncontrollable Circumstances, following Authority approval given in the Authority's sole discretion, Contractor shall:

1. Perform Transfer and Pre-Processing services at another Transfer Facility owned by it or an Affiliate at a price not to exceed the Tipping Fee established pursuant to Article 10. Contractor shall be solely responsible for any additional Transportation costs incurred by the Franchised Collector in Delivering the Authority's Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, and Mixed Materials (if Mixed Waste Processing is implemented) to the other Transfer Facility.

2. Arrange for the Authority's Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, and Mixed Materials (if Mixed Waste Processing is implemented) to be Transferred at another Transfer Facility not owned by it or an Affiliate, in which case Contractor shall pay any difference in the fees charged at that Transfer Facility plus any additional Transportation costs incurred by the Franchised Collector in Delivering materials to the other facility, and the charges thereat.
- D. **Alternate Facilities Related to Uncontrollable Circumstances.** If Contractor does not Accept the Authority's Recyclable Materials, Commingled Organics, Commercial Food Scraps, and/or Solid Waste at the Approved Transfer Facility due to Uncontrollable Circumstances, then promptly upon Authority direction, Contractor shall, to the extent it is legally able to do so in accordance with Applicable Law, Accept the materials at Contractor's Approved Alternate Facility pursuant to Section 8.4 of this Agreement, at a price not to exceed the respective Tipping Fees in effect under this Agreement as described in Sections 10.2.C.1.B.i, 10.2.C.2.B.i, 10.2.C.3.B.i, or 10.2.C.4.B.i of this Agreement. Should no Approved Alternate Facility owned by Contractor or an Affiliate be available or should another available facility identified by the Contractor not be acceptable to the Authority or not be within a cost-effective distance, at the Executive Director's sole discretion, the Authority may direct Delivery of materials to another facility, unrelated to Contractor, for the performance of similar services during the pendency of the service disruption resulting from the Uncontrollable Circumstances.
 - E. **Termination for Continued Disruption.** If the Franchised Collector is unable to use an Approved Facility(ies) under this Agreement for more than thirty (30) Days in a consecutive twelve- (12-) month period, the Authority may, in its sole discretion, terminate this Agreement as provided in accordance with Section 14.6.B.

8.5 Rejection of Unpermitted Waste

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

Contractor's Load checking personnel, including personnel at Approved Facilities, shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of Unpermitted Waste; and, (iii) emergency notification and response procedures.
- B. **Response to Unpermitted Waste Identified at Approved Transfer Facility.** In the event that Load checkers and/or equipment operators at such Approved Facility(ies) identify Unpermitted Waste in the Loads delivered by Franchised Collector, such personnel shall remove these materials for storage in approved, on-site, Unpermitted Waste storage Container(s). Except for cases where it can be attributed to the Franchised Collector and/or a specific generator or permitted hauler, the Contractor shall arrange for removal of the Unpermitted Wastes, at its sole cost, in accordance with Applicable Law. The Contractor may, at its sole expense, attempt to identify and recover the cost of removal from the Franchised Collector or other Persons.

8.6 Permits

- A. **Securing, Maintaining, and Modifying Permits.** The Contractor shall obtain and maintain, at the Contractor's sole cost, all Permits required under all laws and regulations to perform services required by this Agreement. The Contractor shall provide the Authority with copies

Authority/{Insert Contractor Name}

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

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

8.7 Traffic Control and Direction

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

8.8 Vehicle Turnaround Guarantee

- A. **General.** The Contractor shall maintain a maximum vehicle turnaround time of no more than twenty (20) minutes for Franchised Collector Delivery of Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste to the Approved Transfer Facility.
- B. **Guaranteed Collection Vehicle Turnaround Time.** The maximum vehicle turnaround time shall be no more than twenty (20) minutes for any Franchised Collector vehicle. The vehicle turnaround time shall be measured as the elapsed time from the vehicle entering the Approved Transfer Facility property to the vehicle leaving the Approved Transfer Facility property. The Contractor shall operate the Approved Transfer Facility so that all Franchised Collector vehicles are processed, unloaded, and exited from the Approved Transfer Facility property within the maximum vehicle turnaround time.
- C. **Supporting Documentation.** Upon Authority request, Contractor shall provide the Authority reports or access to electronic scale house system records and/or on-site camera recordings that provide the Authority information to determine actual vehicle turnaround times. The Contractor acknowledges that the Authority and/or the Franchised Collector may conduct on-site surveys to verify compliance with the guaranteed vehicle turnaround times for Franchised Collector vehicles. The Contractor acknowledges that the Authority may also use

records provided by Franchised Collector for Franchised Collector vehicles to calculate actual vehicle turnaround times. At the Contractor's option, the Contractor may, at its own cost, implement and maintain a technology-based vehicle tracking system of recording inbound and outbound Franchised Collector vehicle times (such as a system that uses RFID vehicle tags and RFID readers). Such system shall not inconvenience the Franchised Collector or the Authority nor delay Franchised Collector vehicles from arriving at and departing from the Approved Transfer Facility.

- D. **Contractor Dispute of Complaints.** The Contractor may provide evidence disputing any complaint received by the Franchised Collector, including, but not limited to, camera recordings of Franchised Collector vehicle(s), scale house records, or other documented timestamp of the Franchised Collector arrival and departure times from the Approved Transfer Facility. The Contractor's evidence shall be presented no later than ten (10) Business Days after receipt of Franchised Collector or the Authority's written notice of complaint(s). The Authority shall review both Contractor and Franchised Collector evidence and provide written notice of the Authority's determination that the complaint was valid or invalid.

8.9 Scale Operation

- A. **Maintenance and Operation.** This Section 8.9 applies to motor vehicle scales at the Approved Transfer Facility. The Contractor shall maintain at least two State-certified motor vehicle scales at each Approved Transfer Facility in accordance with Applicable Law. The Contractor shall provide documentary evidence of such certification within ninety (90) Days after the Commencement Date and within ten (10) Business Days after Authority's request during the Term. The Contractor shall link all scales to a centralized computer recording and billing system that shall be compatible with the Contractor's systems. Such computerized system shall track pertinent data on all incoming and outgoing vehicles and materials, as further described in Section 8.9.G. The Contractor shall employ licensed weigh master(s) to operate those scales during Approved Facility open hours and during other hours as determined by the Contractor as needed to weigh all inbound Collection vehicles Delivering Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste, and all and outbound Transfer Vehicles Transporting Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, and Mixed Materials (if Mixed Waste Processing is implemented). The Contractor shall provide the Authority with access to any weighing information maintained by the Contractor at all times, and copies thereof shall be provided on the next Business Day following the Authority's request.
- B. **Vehicle Tare Weights.** Upon request of the Authority, the Contractor shall promptly weigh Franchised Collector vehicles and Contractor's Transfer Vehicles and determine the unloaded ("tare") weight(s) of the vehicle(s). The Contractor shall record the tare weight and vehicle identification number. Within ten (10) Business Days after weighing, the Contractor shall provide the Authority with a report listing vehicle tare weight information. The Contractor shall have the right to request re-determination of tare weights of Franchised Collector vehicles and Contractor's Transfer Vehicles two (2) times each calendar year. If there is reasonable suspicion or evidence that tare weights are not accurate, the Authority may, at any time and without limitation, request re-determination of tare weights, in which case Contractor shall promptly re-determine tare weights for requested vehicles. The Contractor shall update tare weights, at the Contractor's own initiative or, at the request of the Authority, more frequently.
- C. **Substitute Scales.** If any scale at the Approved Transfer Facility is inoperable, being tested, or otherwise unavailable, the Contractor shall use reasonable business efforts to weigh

vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired. The Contractor shall arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, the Contractor shall immediately obtain a temporary substitute scale(s).

- D. **Estimates.** Pending substitution of portable scales or during power outages, the Contractor shall estimate the Tonnage of the **Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste** Delivered to and Accepted at the Approved Transfer Facility by utilizing the arithmetic average of each vehicle's recorded Tons of that specific type of **Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste** Delivered on its preceding three (3) Deliveries, on the same day of the week, to the Approved Transfer Facility.

During any period that the scales are out of service, Contractor shall continue to record all information required by Section 8.9.G for each Delivery of **Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste** to the Approved Transfer Facility and each Load Transported to the **Designated Disposal Facility, Designated Composting Facility, Designated Anaerobic Digestion Facility, or the Mixed Waste Processing Facility (if Mixed Waste Processing is implemented)**.

- E. **Testing.** The Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months or upon Authority request.
- F. **Weighing Standards and Procedures.** At the Approved Transfer Facility, the Contractor shall weigh and record inbound weights of all Franchised Collector vehicles Delivering **Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste** when the vehicles arrive at the Approved Transfer Facility, and weigh and record outbound weights of Franchised Collector vehicles for which the Contractor does not maintain tare weight information. Furthermore, the Contractor shall weigh and record outbound weights of all Contractor vehicles Transporting **Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste, and Mixed Materials (if Mixed Waste Processing is implemented)** from the Approved Transfer Facility to the **Designated Disposal Facility, Designated Composting Facility, or Designated Anaerobic Digestion Facility, or the Mixed Waste Processing Facility (if Mixed Waste Processing is implemented)**. The Contractor shall provide each driver a receipt showing the date, time, and quantity of materials that the vehicle Delivered to the respective Approved or Designated Facility. The Contractor shall similarly require each of its Transfer drivers to weigh inbound for each load at each Approved or Designated Facility and to obtain a receipt showing the date, time, and quantity of materials for that Facility.
- G. **Records.** The Contractor shall maintain computerized scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials Delivered, type of material, company/hauler identification, and classification, type, weight, and destination of material (where the destination of materials shall be the Approved Facilities, Designated Facilities, or market location to where materials are Transported from the Approved or Designated Facilities).
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall make those videos available for

Authority/{Insert Contractor Name}

Authority review during the Facility's operating hours, upon request of the Authority, and shall provide the name of the driver of any particular Load if available.

8.10 On-Road Vehicle Requirements

- A. **General.** The Contractor shall comply with the Advanced Clean Fleets Regulation and emissions standards specified in Section 8.10.D. The Contractor shall be permitted to utilize its existing fleet of vehicles purchased prior to the Effective Date of this Agreement, as identified in Exhibit G, provided that the Contractor shall obtain express written approval by the Executive Director for any new vehicle purchased or other changes to the Contractor's fleet after the Effective Date of this Agreement, in accordance with Section 8.10.B.
- B. **Maintenance and Operation.** The Contractor shall provide a fleet of Transfer Vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in accordance with its terms. The Contractor shall have available sufficient back-up vehicles, for each type of vehicle used, to respond to scheduled and unscheduled maintenance, service requests, and emergencies. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow.

The Contractor's Transfer Vehicles shall utilize Recycled motor oil to the extent practicable. The Contractor shall not place the Authority logo on its Transfer Vehicles, except through educational or promotional signage that has been approved by the Authority in writing prior to its use. The Contractor shall inspect each Transfer Vehicle daily to ensure that all equipment is operating properly, including functioning climate controls in the cab, to meet the emission requirements described above and to safely perform all services required in this Agreement. Transfer Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. The Contractor shall repair, or arrange for the repair of, all of its Transfer Vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. Transfer Vehicles used to perform services under this Agreement shall not exceed fifteen (15) years of age; unless otherwise extended by the Executive Director and not unreasonably withheld, on a case-by-case basis, in order to manage compliance with Applicable Law and regulations. The Executive Director may inspect any of the Contractor's vehicles at any reasonable time, and within three (3) Days after such a request, to determine compliance with this Section.

In the event that the duty cycle of any of the Contractor's Transfer Vehicles are found to be insufficient for the Contractor to perform its obligations under this Agreement, such as excessive vehicle downtime due to maintenance, the Authority may direct the addition of equipment to the Contractor's fleet, at the Contractor's sole cost.

All Transfer Vehicles shall be capable of loading at the Approved Transfer Facility and unloading at the Designated Facility(ies) by equipment that is compatible with unloading equipment and procedures at the Designated Facility(ies).

The Contractor's fleet shall initially include all vehicles listed in Exhibit G and shall be managed in accordance with the Contractor's fleet replacement plan that will be developed by the Contractor and approved by the Executive Director prior to the Commencement Date to be included in Exhibit M, or as otherwise approved or designed by the Executive Director. Changes, substitutes, or additions of vehicles by service type from those specified in the Contractor's vehicle inventory herein shall be subject to approval from the Executive Director, at their sole discretion. Prior to ordering or acquiring any new or substituted Transfer Vehicle

for the purposes of providing services under this Agreement, the Contractor shall submit a written request to the Executive Director with information including, but not limited to: i) a description of the reason for the request, ii) all vehicle inventory information required under Section 8.10.C for the proposed vehicle, iii) vehicle cost, iv) description of how the proposed vehicle purchase aligns or deviates from the Contractor's vehicle replacement plan and ZEV vehicle plans set forth in Exhibit M; and, v) the proposed dates when the vehicle will be acquired and deployed for service. Upon request, the Contractor shall provide any additional information deemed reasonably necessary by the Executive Director, in their sole discretion, to evaluate the vehicle purchase request for compliance with this Agreement and Applicable Law and regulations.

- C. **Reporting.** The Contractor shall furnish the Authority with a written (electronic) inventory of all vehicles, including Transfer Vehicles, and shall update the inventory report at least annually, in accordance with Exhibit D. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, model name, model year, vehicle mileage, fuel type, capacity, anticipated replacement date, and decibel rating. Any proposed changes to the Contractor's vehicle fleet must be approved by the Executive Director, pursuant to subsection 8.10.B. The Contractor shall furnish the Authority with a proposed vehicle inventory list as part of its vehicle purchase request required under Section 8.10.D, and upon Executive Director's approval of vehicle purchase, the Contractor shall provide the Authority with a final revised vehicle inventory list within thirty (30) Business Days of delivery of any new inventory.
- D. **Regulations.** All Transfer Vehicles shall comply at all times with Applicable Law, including but not limited to California Air Resources Board (CARB) Truck and Bus Regulation (13 CCR 2025) and Advanced Clean Trucks Regulation (13 CCR 1963-1963.5 and 2012-2012.2), including any modifications, administrative or legal determinations, and amendments thereto. All Transfer Vehicles shall meet On-Road Heavy Duty Vehicle emissions requirements for model year 2024, or the appropriate emission requirements for the model year of the vehicle purchased, if newer, and comply with all Federal, State, and local laws and regulations. The Contractor is aware that the Advanced Clean Fleets Regulation is a current State law and Contractor's compliance with the Advanced Clean Fleets Regulation, as it may be amended, throughout the Term shall be eligible to request a Special Tipping Fee Adjustment under Section 10.4.A.7. Contractor's obligation to transition to zero-emission fleet and all costs associated therewithin shall not burden the Authority disproportionately to other jurisdictions or agencies serviced by the Contractor or its Affiliates, and if Contractor expands its fleet as a result of new, expanded, or extended service contractors or an expansion into new market areas, the Authority shall benefit proportionately from that expansion of services and impacts on Contractor's fleet.

The Contractor shall implement the Advanced Clean Fleets Regulation in accordance with its ZEV vehicle plan included in Exhibit M, unless otherwise directed by the Executive Director. The ZEV vehicle plan shall articulate the schedule and strategic considerations for how Contractor will cost-effectively accomplish fleet transition in the Contractor's market area that services the Authority, and a forecast for each Rate Year in this Agreement of Contractor's proposed change in maintenance, fuel, depreciation, and interest expense on Contractor's operations covered by the fleet. The financial forecast shall also illustrate the allocation of costs to various jurisdictions and/or customers on a proportional basis to the number of vehicles. The Contractor shall include in the vehicle plan, or in subsequent notices to the Authority of vehicles to be purchased in accordance with 8.10.B, any grants, subsidies, or tax incentives that impact the financial forecast and allocation of costs. The plan shall be subject to review, due diligence, reasonable requests for changes, and approval by the

Authority's Executive Director that shall not be unreasonably withheld. Once approved, the plan shall form the basis for the Contractor's vehicle plan and shall be incorporated into this section of the Agreement by reference.

The identification of Transfer Vehicles to be purchased under the Contractor's ZEV vehicle plan included in Exhibit M shall in no way constitute approval from the Executive Director to purchase such vehicles, and Contractor shall be responsible for obtaining written approval for any new Transfer Vehicle purchased, in accordance with Section 8.10.B. These requirements apply to Transfer Vehicles owned by Contractor as well as any Transfer Vehicles used in the performance of this Agreement.

- E. **Parking and Maintenance of Transfer Vehicles.** The Contractor shall park empty Transfer Vehicles at the Approved Transfer Facility in the area(s) designated for this purpose and as described in the Contractor's Operations Plan component of Contractor's Proposal, attached as Exhibit G. Transfer Vehicles containing Authority Delivered Materials shall be parked in areas that prevent liquids that have come into contact with or resulted from the materials in the Transfer Vehicles from entering the stormwater system. In addition, the Contractor shall use due care generally to prevent liquids that have come into contact with or resulted from the materials in the Transfer Vehicle from entering the stormwater system.
- F. **Segregation of Materials for Transportation.** The Contractor shall maintain the segregation of Recyclable Materials, Organic Materials, Solid Waste, C&D, and disaster debris that have been delivered to the Approved Transfer Facility from one another and from other materials, and shall separately Transport such materials to the Designated Facility(ies) in accordance with this Agreement.

8.11 Personnel

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

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

- B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. The Contractor shall, at a minimum, use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- C. **Safety Training.** The Contractor shall provide suitable operational and safety training for all its employees who operate Transfer Vehicles or equipment and shall provide a Safety Plan prior to the Commencement Date for the Authority's review and approval. The Contractor shall train its employees involved in Acceptance and Transfer to identify, and not to collect, Unpermitted Waste. The plan shall be developed by the Contractor as provided in this Section, and once approved by the Authority, shall be incorporated into this Agreement as part of Exhibit I-1. Upon the Authority's request, the Contractor shall provide the Authority

with a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

D. **Reserved.**

E. **Uniforms and Identification.** All employees of the Contractor performing field service under this Agreement shall be dressed in clean uniforms with employee's name or numbered badge that also shows the Contractor's name, thereon at all times while engaged in the work. No portion of this uniform may be removed while working.

F. **Employee Behavior.** If any Contractor manager, supervisor, or employee is found to be discourteous or not to be performing services in the manner required by this Agreement, the Contractor shall take all necessary and legal corrective measures, including, but not limited to, transfer, discipline, or termination. If the Authority has notified the Contractor of a complaint related to discourteous or improper behavior, the Contractor will consider reassigning the employee to duties not entailing contact with the public within the Service Area while the Contractor is pursuing its investigation and corrective action process.

G. **Hiring Displaced Employees.** The Contractor shall offer employment to existing employees working under the Authority's current agreements that include the services being provided under this Agreement who become unemployed by reason of the change in Contractors; provided, however, that:

1. This requirement shall not be applicable to management or supervisory personnel.
2. The Contractor shall not be obligated to offer employment to more existing employees than the Contractor needs to perform the services required under this Agreement.
3. The Contractor shall not be obligated to offer employment to existing employees that are not working prior to the Commencement Date due to a leave of absence related to disability or workers' compensation claim.
4. The Contractor shall not be obligated to displace any of its current employees or modify its current job performance requirements or employee selection standards.
5. Additional employees, if needed by the Contractor, shall be obtained pursuant to procedures currently in effect under the collective bargaining agreement for covered employees.
6. Wages and benefits applicable to employees performing work under this Agreement shall be commensurate with current compensation or in accordance with existing agreements with represented labor groups.
7. Unless prohibited by law or denied by the affected bargaining unit, the Contractor shall honor the existing seniority of any displaced workers for all applicable purposes under the bargaining agreement.
8. The Contractor may enter into agreement(s) with subcontractors to provide services covered during the Implementation Period, subject to the prior written consent of the Authority and subcontractors shall be required to comply with the obligations stated in Sections 8.11.G.1 through 8.11.G.7, above.
9. The Contractor shall provide monthly reports during the Implementation Period in each of the three (3) months prior to the Commencement Date documenting the status of their offers to displaced employees, acceptance by those employees, and all applicable dates for training and start of work under this Agreement. Following the Commencement Date, the Contractor shall provide monthly reports documenting

their retention status (still employed, resigned, terminated, on leave, etc.) of each employee that was hired described herein and as further described in Exhibit D.

- H. **Labor Peace.** The Contractor acknowledges and agrees the health and safety considerations involved in a possible interruption in the services under this Agreement emphasizes the importance of labor peace during the term of the Agreement. The Contractor shall remain entirely neutral in the event that a question of employee representation arises during the term of the Agreement.
- I. **Subcontractor and Approved Affiliates' Obligations.** The Authority requires Subcontractors and Approved Affiliates to comply with the obligations of this Agreement, in accordance with Section 2.9 and Section 8.11.
- J. **Labor Agreements.** Labor agreements shall be included as Exhibit I and any future modification shall be provided to the Authority as they occur. The Contractor shall provide full copies of the labor agreements, including any and all amendments, extensions, renewals, or other forms of modification.

8.12 Equipment and Supplies

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

8.13 Compliance with Facility Rules

The Contractor shall observe and comply with all regulations in effect at the Approved Facilities and Designated Facilities and shall cooperate with the operators thereof with respect to Acceptance, Transfer and Transport of Solid Waste, Recyclable Materials, Commingled Organics, Pre-Processed Commercial Food Scraps, and/or Mixed Materials, including directions to unload Transfer Vehicles in designated areas, accommodating operations and maintenance activities, and complying with Unpermitted Waste exclusion programs.

8.14 Reserved

8.15 Reserved

ARTICLE 9 PAYMENTS TO THE AUTHORITY AND DESIGNATED FACILITIES

9.1 Payments to the Authority

The Authority Board reserves the right to establish or modify Authority Reimbursements at any time during the Term of this Agreement. Such a decision by the Authority shall be treated as a pass through pursuant to Section 10.2.B. The Contractor shall submit all Payments to the Authority at the frequency approved by the Authority Board and, as appropriate, the Authority shall distribute the payments to the Member Agencies. The Contractor is prohibited from withholding or offsetting payments to the Authority and/or any Designated Facility(ies) as a remedy for any dispute under this Agreement.

9.2 Adjustment of Payments

All payments described in Section 9.1 shall be included in the calculation of Tipping Fees as provided in Article 10. In its sole discretion, the Authority may adjust the amount of any payment required by Section 9.1, as necessary. Such adjustment shall be reflected in the adjustment of Tipping Fees as provided in Article 10.

9.3 Method of Payments

The Contractor shall remit all required payments to the Authority on a monthly basis, or as otherwise specifically provided in this Article 9 by check or other payment method approved by the Executive Director.

9.4 Timing of Payments and Penalties for Late Payments

Contractor shall remit all payments required under Section 9.1 and 9.6.B below within thirty (30) Days after the date the Contractor receives payment of Tipping Fees from the Authority and within thirty (30) Days after the date the invoice received from each Designated Facility in Section 9.6.B below. Payments in Section 9.6.B shall be payable to each of the Designated Facility(ies). All payments shall be paid by check or electronic payment method accepted by the Authority and each Designated Facility. If any of the payments specified in this Article 9 are not paid to the Authority within thirty (30) Days as described above, Contractor shall be liable for finance or interest charges to the Authority and the appropriate Designated Facility as governed and limited by the Authority's contract with the Designated Facility. In the event that Contractor is delinquent on payments to Designated Facilities and the Authority makes or arranges payment to that Designated Facility on Contractor's behalf in order to satisfy Authority's compensation obligations under that contract, Contractor shall be liable to the Authority for all amounts paid to the Contractor plus the late payment penalty described in the above paragraph.

The late payment penalty amounts are not intended as Interest on debt, but rather are intended as a predetermined penalty for failure to meet an obligation under this Agreement.

9.5 Billing and Payment Audit

The Authority may, at any time during the Term or within three (3) years following the expiration or early termination of this Agreement, perform an audit of Contractor's Tonnage records, Billings, and payment of monies due to the Authority under Section 9.1; and Designated Facility(ies) under Section 9.6 provided however, that the Authority has up to three (3) years to provide such notice to the Contractor that such an audit is being required if the request follows the expiration or early termination of the Agreement. The Contractor shall fully cooperate with the Authority in any such audit. Should the Authority or its agent perform this review and identify Billing errors or other errors in payments due to the Authority or Designated Facility(ies) cumulatively valued at one percent (1%) or more of Contractor's prior year annual revenues under this Agreement, in addition to compensating the Authority and/or Designated Facility(ies) for lost payments and applicable delinquency penalties, Contractor shall reimburse the Authority's cost of the review.

9.6 Payments to Designated Facilities

- A. **Per-Ton Charges.** The Authority shall pay all per-Ton charges associated with the Contractor's Delivery of i) **Recyclable Materials** to the Designated Recyclable Materials Processing Facility; iii) **Commingled Organics** to the Designated Composting Facility; ii) **Pre-Processed**

Commercial Food Scraps to the Designated Anaerobic Digestion Facility; iii) Solid Waste to the Designated Disposal Facility; and iv) Mixed Materials to the Designated Mixed Waste Processing Facility if Mixed Waste Processing is implemented). The per-Ton charges for each Approved and each Designated Facility shall be equal to the amounts currently in effect as determined and periodically adjusted through this Agreement and the Authority's contracts with each Designated Facility.

- B. **Costs for Failure to Comply with Facility Rules.** The Contractor shall be solely responsible, without right of reimbursement or compensation, for paying any charges, costs, or fees associated with Contractor's failure to conform to the rules of the Designated Facility(ies), which may include, but are not limited to, costs for untarped/uncovered loads, excessive time in the tipping area, costs of remediating or managing Unpermitted Waste delivered by Contractor, costs associated with property damage to the Designated Facility(ies), finance or interest charges established by a Designated Facility relating to Contractor's delinquent payment to the Designated Facility of an undisputed amount, and any other reasonable facility rules or policies established by the Designated Facility and generally applicable to all users of such facility.
- C. **Coordination and Payment Disputes with Other Authority Contractors.** The Contractor's obligations under Section 10.6 to cooperate and share information with other Authority contractors specifically apply to their relationship with and payments to Designated Facility(ies). Any disputes related to such Authority contractor(s) shall be managed consistent with the requirements of Section 15.1. The Contractor is prohibited from withholding or offsetting payments to Authority and/or any Designated Facility(ies) as a remedy for any dispute under this Agreement.

ARTICLE 10 CONTRACTOR'S COMPENSATION

{Note to Proposer: This Article 10 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 10 may be moved to Exhibit E: Rate Adjustment Methodology.}

10.1 Overview

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

If the Contractor's actual costs, including fees due to Authority, are more than Contractor's Revenue for services rendered by Contractor under this Agreement, Contractor shall not be compensated for the difference between actual costs and actual Contractor Revenue for services rendered by Contractor under this Agreement. If Contractor's actual costs are less than the actual Contractor Revenue services rendered by Contractor under this Agreement, Contractor shall retain the difference provided that Contractor has made all payments required in Article 9.

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

The Tipping Fees for Rate Year One are based on Contractor's Proposal (Exhibit G) including certain per unit costs and operating assumptions as identified in Section 10.2.B below, which are presented in Exhibit G. Tipping Fees for subsequent Rate Years shall be adjusted annually in accordance with Section 10.2.C using an index-based adjustment method.

The annual adjustment to Tipping Fees involves adjusting Contractor's compensation and integrates Governmental Fees and Authority Reimbursements (collectively "Pass-Through" components) paid by Contractor.

10.2 Process for Setting and Adjusting Tipping Fees

- A. **General.** The Executive Director shall be responsible for receiving, reviewing, and approving or denying the Contractor's application for adjustment of Tipping Fees as described in this Article. Such approval or denial shall only be made on the basis of Contractor's mathematical accuracy and logical adherence to the calculation methodology.
- B. **Maximum Rates for Rate Year One.** Tipping Fees for Rate Year One are based on the Contractor's Proposal, attached as Exhibit G, and include separate components for the Transfer, Transportation, and Pass-Throughs, which are summed to a Tipping Fee for each material type.

{Note to Proposer: Any Transfer services that are not proposed would be removed during negotiations.}

{Note to Proposer: If Mixed Waste Processing is implemented during the Term, the Solid Waste Transfer Tipping component would be used and the Solid Waste Transfer Transportation Tipping component and Governmental Fee Tipping component would be updated, as applicable, depending on the location of the Designated Mixed Waste Processing Facility. Additionally, for the back-hauling of Mixed Waste Processing Residue, compensation would only be adjusted to accommodate loading and any variance in Transport time to the Designated Disposal Facility}

- 1. Solid Waste Transfer Tipping Fee. The Solid Waste Transfer Tipping Fee shall be \$XX.XX per Ton and shall include each of the following components, which Contractor shall use when calculating the adjustment in Section 10.2.C below. The Solid Waste Transfer Tipping Fee shall be Contractor's compensation for the direct services provided under Section 5.3 (and Section 5.4 if Mixed Waste Processing services are implemented during the Term), and all other obligations and services of Contractor under this Agreement.
 - a. Solid Waste Transfer Tipping component: \$XX.XX per Ton
 - b. Solid Waste Transfer Transportation Tipping component: The initial Transfer Transportation Tipping component is dependent on the selection of the Designated Disposal Facility, which will occur following the Parties execution of this Agreement. The initial Transfer Transportation Tipping component shall be determined on a per-Ton basis to be: {Transport cost per hour from Contractor's Proposal} multiplied by {travel time in hours calculated based on Google Maps for three (3) likely travel times to and twenty (20) minutes unloading time at

Authority/{Insert Contractor Name}

Designated Disposal Facility} plus {per trip cost of bridge tolls} divided by {Tons per load for Solid Waste from Contractor's Proposal}.

- c. Solid Waste Transfer Pass-Through Tipping component: \$XX.XX per Ton

{Note to Proposer: If Commercial Food Scraps Pre-Processing equipment is temporarily unavailable or the Designated Anaerobic Digestion Facility is temporarily unavailable, Commercial Food Scraps will be Transported to the Designated Composting Facility and may need to be mixed with Commingled Organics prior to Transport. In either case, the Commercial Food Scraps Transfer Tipping component or the Commingled Organics Transfer Tipping component will be used for material handling and the Commingled Organics Transfer Transportation Tipping component will be used for Transport}

2. Commercial Food Scraps Pre-Processing and Transfer Tipping Fee. The Commercial Food Scraps Pre-Processing and Transfer Tipping Fee shall be \$XX.XX per Ton and shall include each of the following components, which Contractor shall use when calculating the adjustment in Section 10.2.C below. The Commercial Food Scraps Pre-Processing and Transfer Tipping Fee shall be Contractor's compensation for the direct services provided under Sections 5.3 and 6.1, and all other obligations and services of Contractor under this Agreement.

- a. Commercial Food Scraps Pre-Processing Tipping component: \$XX.XX per Ton

- b. Commercial Food Scraps Transfer Tipping component: \$XX.XX per Ton

- c. Commercial Food Scraps Pre-Processing and Transfer Transportation Tipping component: The initial Transportation Tipping component is based on Delivery to the Designated Anaerobic Digestion Facility. The initial Pre-Processing and Transfer Transportation Tipping component shall be determined on a per Ton basis to be: {Transport cost per hour from Contractor's Proposal} multiplied by {travel time in hours calculated based on Google Maps for three (3) likely travel times to, and twenty (20) minute unloading time at, the Designated Anaerobic Digestion Facility} plus {per trip cost of bridge tolls} divided by {Tons per load for Commercial Food Scraps from Contractor's Proposal}.

- d. Commercial Food Scraps Pre-Processing and Transfer Pass-Through Tipping component: \$XX.XX per Ton

3. Commingled Organics Transfer Tipping Fee. The Commingled Organics Transfer Tipping Fee shall be \$XX.XX per Ton and shall include each of the following components, which shall be used by Contractor in calculating the adjustment in Section 10.2.C below. The Commingled Organics Transfer Tipping Fee shall be Contractor's compensation for the direct services provided under Section 5.3 and all other obligations and services of Contractor under this Agreement.

- a. Commingled Organics Transfer Tipping component: \$XX.XX per Ton

- b. Commingled Organics Transfer Transportation Tipping component: The initial Transportation Tipping component is dependent on the selection of the Designated Composting Facility, which will occur following the Parties execution of this Agreement. The initial Transfer Transportation Tipping component shall be determined on a per-Ton basis to be: {Transport cost per hour from Contractor's Proposal} multiplied by {travel time in hours calculated based on Google Maps for three (3) likely travel times to, and twenty (20) minute unloading time at, the Designated Composting Facility} plus {per trip cost of

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bridge tolls} divided by {Tons per load for Commingled Organics from Contractor's Proposal}.

- c. Commingled Organics Transfer Pass-Through Tipping component: \$XX.XX per Ton

- 4. **Recyclable Materials Transfer Tipping Fee.** The Recyclable Materials Transfer Tipping Fee shall be \$XX.XX per Ton and shall include each of the following components, which Contractor shall use when calculating the adjustment in Section 10.2.C below. The Recyclable Materials Transfer Tipping Fee shall be Contractor's compensation for the direct services provided under Sections 5.3 and all other obligations and services of Contractor under this Agreement.

- a. Recyclable Materials Transfer Tipping component: \$XX.XX per Ton.
- b. Recyclable Materials Transfer Transportation Tipping component: The initial Transfer Transportation Tipping component is dependent on the selection of the Designated Recyclable Materials Processing Facility which will occur following the Parties execution of this Agreement. The initial Transfer Transportation Tipping component shall be determined on a per Ton basis to be: {Transport cost per hour from Contractor's Proposal} multiplied by {travel time in hours calculated based on Google Maps for three (3) likely travel times to, and twenty (20) minute unloading time at, the Designated Recyclable Materials Processing Facility} plus {per trip cost of bridge tolls} divided by {Tons per load for Recyclable Materials from Contractor's Proposal}.
- c. Recyclable Materials Transfer Pass-Through Tipping component: \$XX.XX per Ton

- C. **Annual Adjustment.** The Tipping Fees shall be adjusted annually, upon approval by the Executive Director as described in Section 10.2.A, commencing with Rate Year Two (July 1, 2028) through the remaining Term of this Agreement including any extension periods. The following formulas shall be used to calculate the adjustment to each component of each Tipping Fee.

- 1. **Adjusted Solid Waste Transfer Tipping Fee.** The adjusted Solid Waste Transfer Tipping Fee for Rate Year Two, and each subsequent Rate Year thereafter, shall be determined by summing each of the components in Sections 10.2.C.1.a through 10.2.C.1.c.

- a. **Solid Waste Transfer Tipping Component.** The adjusted Solid Waste Transfer Tipping component shall be calculated as follows:

adjusted component = current component x (1 + Annual Percentage Change in the CPI-U)

- b. **Solid Waste Transfer Transportation Tipping Component.** The adjusted Solid Waste Transfer Transportation Tipping component shall be calculated as described in subsection (i) below for the adjustment of the initial Transfer Transportation Tipping component to establish the Rate Year Two Transfer Transportation Tipping component or for any Rate Year when the Authority has approved a Special Tipping Fee Review pursuant to Section 10.4.A.5; and, as described in subsection (ii) below for the adjustment of the Transfer Transportation Tipping component in any other Rate Year:

- i. Rate Year Two and Section 10.4.A.5 Adjustment.

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) x (actual time expressed in hours observed by the Authority through time study described in 10.4.A.5)) / (tons per load for specified material as defined by Contractor's Proposal)

ii. Typical Adjustment.

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) x (actual time expressed in hours as determined by last time study) / (tons per load for specified material as defined by Contractor's Proposal)

- c. **Solid Waste Transfer Pass-Through Tipping Component.** The Solid Waste Transfer Pass-Through Tipping component shall only be adjusted for actual changes in Governmental Fees and/or Authority Reimbursements applicable to this material type and subject facilities as evidenced by documentation from the entity imposing the Governmental Fees or as required by the Authority pursuant to Section 9.1. In the event that Governmental Fees are applied on a basis other than per Ton, as Tipping Fees are applied, the Executive Director may direct Contractor to denominate such Governmental Fees into a per Ton basis using a method prescribed by the Executive Director that reasonably compensates Contractor for such Governmental Fees.

2. Adjusted Commercial Food Scraps Pre-Processing and Transfer Tipping Fee. The adjusted Commercial Food Scraps Pre-Processing and Transfer Tipping Fee for Rate Year Two, and each subsequent Rate Year thereafter, shall be determined by summing each of the components in Sections 10.2.C.2.a through 10.2.C.2.c.

- a. **Commercial Food Scraps Pre-Processing and Transfer Tipping Component.** The adjusted Commercial Food Scraps Pre-Processing and Transfer Tipping component shall be calculated as follows:

adjusted component = current component x (1 + Annual Percentage Change in the CPI-U)

- b. **Commercial Food Scraps Pre-Processing and Transfer Transportation Tipping Component.** The adjusted Commercial Food Scraps Pre-Processing and Transfer Transportation Tipping component shall be calculated as described in subsection (i) below for the adjustment of the initial Pre-Processing and Transfer Transportation Tipping component to establish the Rate Year Two Transportation Tipping component or for any Rate Year when the Authority has approved an Special Tipping Fee Review pursuant to Section 10.4.A.5; and, as described in subsection (ii) below for the adjustment of the Transportation Tipping component in any other Rate Year:

i. Rate Year Two and Section 10.4.A.5 Adjustment

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) x (actual time expressed in hours observed by the Authority through time study described in 10.4.A.5)) / (tons per load for specified material as defined by Contractor's Proposal)

ii. Typical Adjustment.

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) + x (actual time expressed in hours as determined by last time study) / (tons per load for specified material as defined by Contractor's Proposal)

- c. **Commercial Food Scraps Pre-Processing and Transfer Pass-Through Tipping Component.** The Commercial Food Scraps Pre-Processing and Transfer Pass-Through Tipping component shall only be adjusted for actual changes in Governmental Fees and/or Authority Reimbursements applicable to this material type and subject facilities as evidenced by documentation from the entity imposing the Governmental Fees or as required by the Authority pursuant to Section 9.1. In the event that Governmental Fees are applied on a basis other than per Ton, as Tipping Fees are applied, the Executive Director may direct Contractor to denominate such Governmental Fees into a per Ton basis using a method prescribed by the Executive Director that reasonably compensates Contractor for such Governmental Fees.
3. Adjusted Commingled Organics Transfer Tipping Fee. The adjusted Commingled Organics Transfer Tipping Fee for Rate Year Two, and each subsequent Rate Year thereafter, shall be determined by summing each of the components in Sections 10.2.C.3.a through 10.2.C.3.c.
 - a. **Commingled Organics Transfer Tipping Component.** The adjusted Commingled Organics Transfer Tipping component shall be calculated as follows:

adjusted component = current component x (1 + Annual Percentage Change in the CPI-U)
 - b. **Commingled Organics Transfer Transportation Tipping Component.** The adjusted Commingled Organics Transfer Transportation Tipping component shall be calculated as described in subsection i below for the adjustment of the initial Transfer Transportation Tipping component to establish the Rate Year Two Transfer Transportation Tipping component or for any Rate Year when the Authority has approved an Special Tipping Fee Review pursuant to Section 10.4.A.5; and, as described in subsection ii below for the adjustment of the Transfer Transportation Tipping component in any other Rate Year:
 - i. Rate Year Two and Section 10.4.A.5 Adjustment

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) x (actual time expressed in hours observed by the Authority through time study described in 10.4.A.5)) / (tons per load for specified material as defined by Contractor's Proposal)
 - ii. Typical Adjustment.

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) + x (actual time expressed in hours as determined by last time study) / (tons per load for specified material as defined by Contractor's Proposal)
 - c. **Commingled Organics Transfer Pass Through Tipping Component.** The Commingled Organics Transfer Pass Through Tipping component shall only be adjusted for actual changes in Governmental Fees and/or Authority

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Reimbursements applicable to this material type and subject facilities as evidenced by documentation from the entity imposing the Governmental Fees or as required by the Authority pursuant to Section 9.1. In the event that Governmental Fees are applied on a basis other than per Ton, as Tipping Fees are applied, the Executive Director may direct Contractor to denominate such Governmental Fees into a per Ton basis using a method prescribed by the Executive Director that reasonably compensates Contractor for such Governmental Fees.

4. **Adjusted Recyclable Materials Transfer Tipping Fee.** The adjusted Recyclable Materials Transfer Tipping Fee for Rate Year Two, and each subsequent Rate Year thereafter, shall be determined by summing each of the components in Sections 10.2.C.4.a through 10.2.C.4.c.

- a. **Recyclable Materials Transfer Tipping Component.** The adjusted Recyclable Materials Transfer Tipping component shall be calculated as follows:

adjusted component = current component x (1 + Annual Percentage Change in the CPI-U)

- b. **Recyclable Materials Transfer Transportation Tipping Component.** The adjusted Recyclable Materials Transfer Transportation Tipping component shall be calculated as described in subsection (i) below for the adjustment of the initial Transfer Transportation Tipping component to establish the Rate Year Two Transfer Transportation Tipping component or for any Rate Year when the Authority has approved an Special Tipping Fee Review pursuant to Section 10.4.A.5; and, as described in subsection (ii) below for the adjustment of the Transfer Transportation Tipping component in any other Rate Year:

- i. Rate Year Two and Section 10.4.A.5 Adjustment

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) x (actual time expressed in hours observed by the Authority through time study described in 10.4.A.5) / (tons per load for specified material as defined by Contractor's Proposal)

- ii. Typical Adjustment.

adjusted component = (current transport cost per hour x (1 + Annual Percentage Change in the CPI-U) + x (actual time expressed in hours as determined by last time study) / (tons per load for specified material as defined by Contractor's Proposal)

- c. **Recyclable Materials Transfer Pass-Through Tipping Component.** The Recyclable Materials Transfer Pass-Through Tipping component shall only be adjusted for actual changes in Governmental Fees and/or Authority Reimbursements applicable to this material type and subject facilities as evidenced by documentation from the entity imposing the Governmental Fees or as required by the Authority pursuant to Section 9.1. In the event that Governmental Fees are applied on a basis other than per Ton, as Tipping Fees are applied, the Executive Director may direct Contractor to denominate such Governmental Fees into a per Ton basis using a method prescribed by the

Executive Director that reasonably compensates Contractor for such Governmental Fees.

10.3 Tipping Fee Application Process

A. Application Date and Content.

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

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

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

3. Transportation Time Study. In the event of: (1) an Authority-directed change in Approved or Designated Facility(ies) consistent with Authority's rights under Section 5.5 and 10.5.B of this Agreement; or, (2) Contractor's belief that Transportation time to Designated Facility(ies) have changed by more than twenty (20) minutes per round trip compared with the basis for Contractor's then-current compensation for that material, the Contractor may request, and the Executive Director shall perform, a time study to calculate the appropriate Transportation Tipping component as described in Section 10.2.C.1.B.i, 10.2.C.2.B.i, 10.2.C.3.B.i, or 10.2.C.4.B.i.

Such time study may rely on Contractor-provided scale house data related to the time of day that Contractor typically departs the Approved Transfer Station, facility data related to the time of day that Contractor typically arrives at the Designated Facility, third party travel time data such as Google Maps or Waze, following Contractor's transfer vehicles for a period of time, or such other methods that the Executive Director reasonably determines are necessary to assess the average travel time for the subject material and facility. In the event that an adjustment is approved for a significant change in travel time that the Executive Director later believes has been alleviated, the Executive Director may, at their sole discretion and initiative, reperform the time study and notify Contractor of its obligation to utilize a revised time in the following Rate Year's application for that particular Transportation Tipping component.

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- B. **Authority Review of Application.** The Executive Director shall review the Contractor's application for an adjustment of Tipping Fee and, upon completion of review, Executive Director shall approve, or deny with requirement for correction. The Executive Director shall act in good faith to approve or direct changes required to provide for such adjustments to Tipping Fees by {March 1} of the Rate Year. The adjusted Tipping Fees shall not take effect until the Executive Director has provided written approval of such Tipping Fees.
- C. **Failure to Adjust Rates or Tipping Fees by {March 1}.** If the Contractor submits its application for adjustment of Tipping Fees in a correct and compliant format and with all required content on or before the application date identified in Section 10.3.A.1, and the Executive Director does not approve adjusted Tipping Fees under this Agreement or the Authority Board does not approve Maximum Rates under the Franchised Collector's contract to be effective on or before {March 1} of a Rate Year, the Authority shall provide a payment(s), adjustment(s), or surcharge(s) such that Contractor receives payment for any shortfall in Contractor's Compensation resulting from the delay in approval of appropriate adjustments to Tipping Fees. To determine the amount of a shortfall, if any, the Authority and Contractor shall meet and confer to determine the effect the delayed approval of appropriate adjustments in Tipping Fees has on the Contractor's compensation. The assessment of the revenue impact shall consider the Contractor's Billing cycle (e.g., impact to Subscribers billed in advance and to Subscribers billed in arrears), the ability of Contractor to delay issuance of bills, the payment cycle of the Franchised Collector, and other variables.

If the Contractor does not submit the application in a correct and compliant format and with all required content on or before the application date identified in Section 10.3.A.1, adjusted Tipping Fees may not be approved by March 1 of a Rate Year and therefore, may not become effective by July 1 of a Rate Year. In such case, appropriate adjustments of Tipping Fees shall be approved and made effective as soon as practical, but Authority shall not be required to provide retroactive payment(s), adjustment(s), or surcharges(s) to allow the Contractor to recover compensation that Contractor would have collected had the application been timely submitted and the Tipping Fee adjustment been implemented in accordance with the prescribed schedule.

10.4 Special Tipping Fee Review

- A. **Eligible Items.** The Contractor is entitled to apply to the Authority for consideration of a Special Tipping Fee Review, or the Authority may initiate such a review, should one (1) or more of the following events occur:
1. Change in Scope. Authority-approved change in scope, as provided for under Section 2.4, 7.5 and 10.5.
 2. Emergency Services. Provision of emergency services pursuant to Section 7.4.
 3. Uncontrolled Circumstance. Occurrence of Uncontrollable Circumstances (other than Change in Law). Labor unrest is not an Uncontrollable Circumstance.
 4. Change in Law. Change in Law after the Effective Date that were not reasonably known to the Contractor before the Effective Date.
 5. Redirection Pursuant to Section 5.5 or Significant Change in Travel Time. Occurrence of an Authority-directed change in Approved or Designated Facility(ies) consistent with Authority's rights under Section 5.5 of this Agreement or as requested by Contractor pursuant to Section 10.3.A.3.

6. Advanced Clean Fleets Regulation. In the event the Contractor's approved fleet replacement plan in Exhibit M identifies the need for Contractor to purchase zero-emissions vehicle(s) (ZEVs) to ensure regulatory compliance for services provided under this Agreement pursuant to Section 8.10.D and where the Contractor's request to the Authority is initiated prior to ordering or acquiring any new or substituted Transfer Vehicle(s) in accordance with Section 8.10.B.
 7. Vehicle Capacity Reduction. In the event that vehicle capacity is reduced for a reason outside of the Contractor's control (reduction in payload, ZEVs, etc.)
- B. **Ineligible Items.** In addition to the specific circumstances identified in Sections 5.4, 10.4.A.1 and 10.4.A.4 above, a Special Tipping Fee Review may not be initiated for the following items and the Contractor shall not be compensated for such items over the Term of the Agreement.
1. Cost Increases. Increases in the cost of providing all services and performing all obligations under this Agreement which are in excess of the increases provided through the annual adjustment mechanism described in Section 10.2 unless cost increases are related to eligible items listed in Section 10.4.A.
 2. Change in Facility Conditions. Increases in the cost of providing all services and performing all obligations under this Agreement that may be impacted by change in operating conditions of an Approved or Designated Facility unless such change is initiated by, resulting from a contract modification with, or at the direction of the Authority.
 3. Change in Material Quantities and Composition. Change in the Tonnage or composition of Solid Waste / Recyclable Materials / Commercial Food Scraps / Commingled Organics / Mixed Materials.
 4. Change in General Economic Conditions. Changes in general economic conditions including but not limited to: inflation, deflation, recession, depression, supply chains, default on the debts of any government agency, commodity markets, stock markets, pension systems, automation, labor availability, or other factors broadly impacting businesses that are not explicitly contemplated in Section 10.4.A above.
 5. Decreases in Revenues from Sale of Materials. In the event that the Contractor relies upon sales of materials that the Contractor is entitled to under this Agreement and the value of those materials change over time. Nothing in this Agreement shall entitle the Contractor to retain, market, sell, or otherwise make use of any material that the Authority has contracted to a Designated Facility or that the Contractor is required to deliver to a Designated Facility.
- C. **Review of Costs.** If the Contractor or the Authority requests a Special Tipping Fee Review, the Authority shall have the right to review any or all financial and operating records of Contractor and Affiliates.
- D. **Submittal of Request.** If the Contractor is requesting a Special Tipping Fee Review, the Contractor must submit its request along with cost and operational data, in a form and manner specified by the Authority, at least six (6) months before the proposed effective date of any Tipping Fee adjustment. The Authority may waive the six- (6-) month submittal requirement if the reason for the special review is a Change in Law that will become effective in less than six (6) months, as described below.

If the Authority is requesting a Special Tipping Fee Review, the Authority shall notify the Contractor at least seven (7) months before the proposed effective date of any Tipping Fee

adjustment. Upon such notification, the Contractor shall, within thirty (30) Days, submit reasonable cost and operational data as requested by the Authority, in a form and manner specified by the Authority.

A Special Tipping Fee Review shall include a proposal on whether the Tipping Fee adjustment resulting from the special review shall be an adjustment in addition to or in lieu of the annual adjustment to Tipping Fees performed in accordance with Section 10.2.C above.

If one (1) or more of the eligible events in Section 10.4.A have an effect totaling two percent (2%) or more of Contractor's total annual compensation under this Agreement for the then-current Rate Year, such cost impact may be considered eligible for retroactive compensation under this Agreement between the time that the occurrence created a material effect on Contractor's total compensation and when Tipping Fees are adjusted during the next annual adjustment process in accordance with Section 10.2 and if approved by the Authority, a special one-time adjustment may be made to the Tipping Fee for the next Rate Year that would be removed in the subsequent Rate Year. If one (1) or more of the eligible events have an effect totaling less than two percent (2%) of Contractor's total annual compensation under this Agreement for the then-current Rate Year, such cost impact shall be considered at the time the next annual adjustment process for Tipping Fees is performed in accordance with Section 10.2, and Contractor shall not be compensated retroactively for such cost between the time that the occurrence created a material effect on Contractor's total compensation and the effective date of the next Rate Year.

- E. **Burden of Justification.** The Contractor shall bear the burden of justifying to the Authority by substantial evidence any entitlement to current, as well as increased, Tipping Fees under this Section 10.4. Records required to be maintained pursuant to Article 12 shall be subject to review, in accordance with appropriate professional standards, and inspection for the primary purpose of reviewing Contractor's change in costs attributable to the circumstances that triggered the Special Tipping Fee Review, at any reasonable time by the Executive Director or a third party selected by the Authority. The Contractor shall not interfere with, or have any right to object to, the selection of the third party nor the scope of work provided by the Authority's chosen third party reviewer. The independent reviewer shall provide a final draft of its review to the Authority and the Contractor. The Party requesting the Special Tipping Fee Review shall bear the cost of the review.

If the Authority determines that the Contractor has not met its burden, the Contractor may request a meeting with the Authority to produce additional evidence. Upon such request, the Authority shall permit said additional hearing. Any resulting disputes shall be managed pursuant to Article 15.

- F. **Grant of Request.** Notwithstanding Section 10.5.A below and based on evidence submitted by the Contractor, the Authority Board may grant some, all, or none of Contractor's requested adjustment to Tipping Fees, exercising reasonable discretion.
- G. **Compensation.** If Contractor requests a Special Tipping Fee Review, Contractor shall pay all of Authority's reasonable costs for participating in such review up to a maximum of fifty thousand dollars (\$50,000) and such costs shall not be reimbursed through Tipping Fees. If a Special Tipping Fee Review occurs in response to an Authority-directed change in scope (pursuant to Section 10.4.A.1), the Authority shall be considered the Party requesting the Special Tipping Fee Review and the Authority's costs of the review may be reimbursed through the Tipping Fees.

10.5 Adjustment to Tipping Fees for Changes in Scope

- A. **Changes in Scope.** As part of Contractor's written proposal under Section 2.4.B of this Agreement, the Contractor shall furnish the Authority with projected operational and cost data for the change in scope to support any requested Special Tipping Fee Review. For the purpose of analyzing cost impacts resulting from changes in scope, the Contractor's profit shall be calculated using an operating ratio of ninety percent (90%) of actual reasonable and necessary costs. The Authority reserves the right to require that the Contractor supply any additional cost data or other information the Authority may reasonably need to ascertain the appropriate adjustment to Tipping Fees, if any, for the change in scope. The Authority shall review this operational and cost data, and the Authority Board shall approve Tipping Fees for the change in scope, if warranted.

The granting of any change in scope shall be contingent upon the Authority's written approval and establishment of new Tipping Fees, if appropriate. The Authority Board, with input from Member Agencies, shall approve Tipping Fee adjustments in good faith, coincident with any adjustment made pursuant to this Section so that the change in scope and the corresponding Tipping Fees become effective on the same date. In the event that such alignment is not practical for reasons including, but not limited to, the involvement of other Authority contracts, the Authority shall be entitled to compensate Contractor over time or through alternative methods as described above in Section 10.3.C.

- B. **Changes in Facility.** In the event of an Authority-initiated redirection of Transfer services consistent with Section 5.5 of this Agreement, Contractor shall be entitled to a revised Transfer Transportation Tipping component for Tipping Fees charged on material directly impacted by the Authority's redirection of Transfer services, beginning on the first date that such materials are redirected by the Authority. The change in the Transfer Transportation Tipping component shall be calculated consistent with the method used for adjusting the Transfer Transportation Tipping component in Section 10.4.A.5.

10.6 Coordination with Other Authority Contractors

The Contractor acknowledges that it is one of several contractors to the Authority whose compensation adjustments impact the Maximum Rates that may be charged by the Franchised Collector to Subscribers. The Contractor shall provide an advisory copy of its original and any revised Tipping Fee application to the Franchised Collector at the same time it is provided to the Executive Director. The Contractor shall provide timely notice to the Authority and the Franchised Collector of any anticipated delays in Contractor's schedule for obtaining data related to or submitting applications required for the coming Rate Year. The Contractor shall timely incorporate and resubmit its application based on revised or updated data from the Authority and/or the Franchised Collector.

ARTICLE 11

REVIEW OF SERVICES AND PERFORMANCE

11.1 Right to Enter Facility and Observe Operations

The Authority and its designated representative(s) reserve the right to: i) enter, observe, and inspect the Approved Facilities during Facility operations at any time and without notice; ii) to conduct studies or surveys of the Approved Facilities that do not interfere with or impede Contractors' operations without at least forty-eight (48) hours advance notice; and iii) to meet with the Approved Facility manager(s) or their

representatives at any time, provided that the Authority and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with the work of the Contractor or its Subcontractors. If Authority exercises its right to enter the Approved Facilities, Contractor is obligated to allow entry to the Approved Facilities and allow for representatives to conduct observations, inspections, studies, or surveys. However, if the Contractor representative or Approved Facility manager is not at the Approved Facility when the Authority or its designated representative(s) visit without prior announcement, Contractor may limit the visit of the Authority or its designated representative to a portion of the Facility including, but not limited to, offices, container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for Authority or its designated representative(s) to return for a visit of the complete Facility within twenty-four (24) hours of the Authority's visit. Upon Authority direction, Contractor shall make personnel available to accompany Authority employees or representatives on inspections. The Contractor shall ensure that its employees cooperate with the Authority and respond to the Authority's reasonable inquiries. The Contractor shall facilitate similar observation and inspection at Approved Facilities owned by it or an Affiliate upon Authority request and within three (3) Business Days after receiving such request.

11.2 Performance Review

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

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

If any partial compliance or noncompliance with: i) the performance standards of this Agreement; or, ii) billing or payment terms of this Agreement which exceed one percent (1%) of Contractor's prior year annual revenues under this Agreement, is found through a Authority-initiated performance review, Contractor shall be responsible for correcting the billing or payment issue and for reimbursing the Authority's actual costs of performing the performance review up to fifty thousand dollars (\$50,000) in any calendar year.

ARTICLE 12 RECORD KEEPING AND RECORDING

12.1 General Record Keeping Provisions

Contractor shall maintain, in its principal office in the County, such accounting, statistical, and other records required to conduct its operations, to support requests it may make to Authority, to respond to requests from Authority, and as shall be necessary to develop the financial statements and other reports required by this Agreement. Adequate record security shall be maintained to preserve records from events

that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically-maintained data/records shall be protected and a second copy of data/records shall be saved to a protected source, such as a combination of off-site and cloud-based backup with the ability to restore complete functionality within twenty-four (24) hours, or a hot fail-over database configuration.

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

12.2 Review and Inspection

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

12.3 Retention of Records

Unless otherwise herein required, Contractor shall retain all records and data required by this Agreement for five (5) years after the expiration or early termination of this Agreement.

12.4 Other Information Requirements

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

12.5 Reporting

- A. **General.** The Contractor shall submit monthly reports within fourteen (14) Days after the end of the calendar month and annual reports no later than thirty (30) Days after the end of each calendar year. Monthly and annual reports shall include at a minimum, all data and information described in Exhibit D, unless otherwise specified under this Agreement.
- B. **Report Format.** The Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the Executive Director, in their sole discretion. The Executive Director may, from time to time during the Term, review, and request changes to the Contractor's report formats and content and Contractor shall not unreasonably deny such requests.

The Contractor shall submit all reports to the Executive Director electronically via e-mail using software acceptable to the Authority. The Authority reserves the right to require the

Contractor to maintain records and submit the reports required herein through use of an Authority-selected web-based software platform, at the Contractor's expense.

- C. **No Claim of Confidentiality, Proprietary, or Trade Secret.** The Contractor shall not claim confidentiality, proprietary, trade secret or similar status as an excuse from providing any records or data required to be maintained or are required to evidence data that is required to be maintained under this Agreement. The Contractor further acknowledges that such information may be subject to the California Consumer Privacy Act. The California Consumer Privacy Act requires Contractor to notify any party from which they are gathering sensitive information to disclose that such information may be shared with the Authority. The Contractor may mark certain records provided to Authority as confidential, proprietary, trade secret, or otherwise exempt from disclosure by stamping each page of such records with the appropriate designation under the law. Notwithstanding such marking, the Authority may disclose such records without any prior notice to the Contractor if the records are required to be reported to any regulatory agency or to demonstrate the Contractor's compliance with this Agreement or Franchised Collector's or Designated Facility's compliance with their contracts with the Authority. In the event that the Authority believes that records marked by the Contractor are required to be disclosed under the California Public Records Act, Authority shall provide timely notice to Contractor so that Contractor can pursue, if it desires and at its sole cost, a judicial determination that the records are exempt from disclosure.

12.6 Recycling and Disposal Reporting System Reporting

The Contractor acknowledges that the Authority's Franchised Collector may route its Collection vehicles in a manner that will result in the commingling of Franchised Materials from multiple Member Agencies during Collection. The Contractor further acknowledges that its Approved Transfer Facility manages materials from multiple jurisdictions of origin. The Parties acknowledge the interdependent nature of the Authority's Franchised Collector and the Authority's various post-Collection contractors and that each is part of a larger integrated system that requires the diligent and accurate tracking and sharing of data where Franchised Material is handled by multiple parties.

The Authority has a fiduciary duty to ensure the appropriate allocation of costs to Subscribers between Member Agencies when setting Maximum Rates charged by the Franchised Collector. As such, the Authority and its Member Agencies place the utmost importance on accurate reporting and transparency, especially with regard to information required to make those allocations of costs. Further, the Authority is a regional agency under AB 939 with a single jurisdictional origin under AB 901 and the County is not included under the regional agency for AB 901. The Authority finds it critically important to maintain jurisdiction of origin to the Member Agency level rather than the regional agency level. The Authority is therefore interested in ensuring regional agency and Member Agency compliance with AB 901, precise allocations to the Member Agency level, and accurate completion and timely submittal of reports into the CalRecycle Recycling and Disposal Reporting System (RDRS).

The Parties acknowledge that in order for the Authority to comply with its fiduciary duty to its constituents and obligations to each of its contractors within its interdependent system from Collection through Delivery to Designated Facility(ies), the Authority must have sufficient access to each facilities' data related to inbound and outbound Tons by jurisdiction of origin and delivering entity. Further, as the owner/operator of a permitted Transfer/Processor Facility in California, the Contractor is a regulated entity under AB 901, and in accordance with Section 13.3 of this Agreement, the Authority relies in part on the Contractor to ensure under AB 901 accurate allocation and data entry into the RDRS system for the Authority and its Member Agencies. As such, the Parties hereby agree that certain data that may otherwise

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not be publicly available related to the allocations of tonnage at Contractor's Facilities used in the performance of any and all services under this Agreement, including to agencies other than the Authority and its Member Agencies, will be provided by the Contractor to the Authority.

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

- The Franchised Collector, as part of their Franchise Agreement, must accurately track and timely report to the Authority, all Franchised Material Tonnage data by jurisdiction of origin and material type Delivered to the Contractor's Approved Transfer Facility. The data provided by the Franchised Collector must reconcile to inbound weight data, by material type, provided by the Contractor. The Authority reserves the right at any time to review the Franchised Collector's data for accuracy and make any necessary adjustments.

The Contractor shall track and report the jurisdiction of origin of each Member Agency to the Authority; however, it may report regional agency data to the RDRS provided that County data is reported separately. The Contractor shall track and use the jurisdiction of origin Tonnage allocation data provided by the Franchised Collector for each Load of Recyclable Materials, Commingled Organics, Commercial Food Scraps, and Solid Waste Delivered to the Contractor and shall use any revised jurisdiction of origin inbound Tonnage allocations and/or data provided by the Authority to the Contractor in its AB 901 reporting. The Contractor shall use the inbound jurisdiction of origin allocations to track and allocate outbound Tons of Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented) by jurisdiction of origin in its reports to the Authority and its quarterly RDRS submittals. The Contractor shall provide the Authority with any and all reports and data that the Executive Director reasonably requires to validate the accuracy of RDRS submittals attributable to the Authority and/or relative other Tons received by the Contractor at the Approved Transfer Facility, where Loads of Recyclable Materials, Commingled Organics, Commercial Food Scraps, Solid Waste and Mixed Materials (if Mixed Waste Processing is implemented) Delivered by the Franchised Collector may or may not have been commingled with Tons attributable to other jurisdictions. Additional information on the Contractor's reporting obligations relative to AB 901 are further described in Exhibit D.

12.7 CERCLA Reporting

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

ARTICLE 13

INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND

13.1 General Indemnification

The Contractor shall indemnify, defend with counsel acceptable to Authority (provided that such acceptance shall not be unreasonably withheld), and hold harmless the Authority and its Member Agencies, officers, directors, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims (including challenges to the Authority's authority to enter into this Agreement or to contract for the services required under this Agreement, regardless of the legal theory advanced), liability, loss, injuries, damages, expense, penalties, and costs (including, without limitation, the Authority and Member Agency staff costs, litigation costs and fees, including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of every nature arising out of or in connection with the Contractor's performance or non-performance (including the Contractor's officers, employees, agents and/or Subcontractors' performance) of this Agreement, including its failure to comply with any of its obligations contained in the Agreement, and any administrative or legal proceedings regarding the actions of the Contractor or its Affiliates that are alleged to violate California Business and Professions Code Sections 17200 et seq., or any similar statutory provisions under Federal or State law. The foregoing shall not apply to the extent any of the above loss or damage was caused by the active gross negligence or willful misconduct of Indemnitees. The Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

The Authority reserves the right to retain co-counsel at its sole cost and expense, and the Contractor shall direct the Contractor's counsel to assist and take direction from such co-counsel with respect to the Authority's defense.

13.2 Hazardous Substance Indemnification

To the extent allowed by applicable law, Contractor shall indemnify, defend with counsel acceptable to Authority (provided that such acceptance shall not be unreasonably withheld), and hold harmless Indemnitees from and against any and all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs (including but not limited to all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including attorneys' and expert witness' fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity (collectively, "damages")) of any nature whatsoever paid, incurred, suffered by, or asserted against Indemnitees, arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any Hazardous Substances or Hazardous Waste released, spilled, or disposed of by Contractor pursuant to this Agreement. Notwithstanding the foregoing, however, the Contractor is not required to indemnify the Indemnitees against claims arising from Contractor's Delivery of Franchised Materials to a Processing Facility, Disposal Site, or Transfer Facility owned or operated by a third party, unless such claims are a direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

13.3 CalRecycle Indemnification

In addition to any other indemnity obligations set forth herein, Contractor agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all fines and/or penalties imposed by CalRecycle or the Local Enforcement Agency ("LEA"), in proportion to its fault, and subject to other restrictions set forth in California Public Resources Code Section 40059.1, if the requirements of AB 939, SB 1016, AB 341, AB 1826, and/or SB 1383, are not met with respect to the Franchised Materials Accepted by Contractor under this Agreement, and such failure is due to the failure of Contractor to meet its obligations under this Agreement or due to Contractor delays in providing information that prevents Contractor or Authority from submitting accurate reports required by CalRecycle in a timely manner. The Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

13.4 Environmental Indemnity

Contractor shall defend, indemnify, and hold harmless Indemnitees against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind, and description including attorneys' fees and costs incurred, attributable to and to the extent of the negligence or willful misconduct of Contractor in handling Excluded Waste. For purposes of clarity, Franchised Collector is prohibited from Delivering Excluded Waste to Contractor under this Agreement.

13.5 Insurance

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

- A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
 - 1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001 0413).
 - 2. The most recent editions of Insurance Services Office form number CA 0001 covering Automobile Liability, symbol 1 "any auto" and endorsement CA 0025.
 - 3. Workers' compensation Employers Liability insurance as required by California Labor Code Sections 3700 et seq.
- B. **Minimum Limits of Insurance.** The Contractor shall maintain limits no less than:
 - 1. Commercial General Liability: Ten Million Dollars (\$10,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
 - 2. Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident for bodily injury and property damage.
 - 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million dollars (\$1,000,000) per accident/occurrence.
 - 4. Pollution Legal Liability: Ten Million Dollars (\$10,000,000) covering liability arising from the release of pollution at the Approved Transfer Facility. The Pollution Legal Liability policy shall contain the same endorsements as required for Commercial General Liability.
- C. **Deductibles and Retentions.** Regardless of the existence or amount of any deductibles or self-insured retentions that may exist under Contractor's insurance policies, Contractor shall

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provide to the Authority the benefits of policy coverages, so that the policy coverage shall apply starting with the first dollar of any covered defense cost or indemnity obligation.

- D. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverage.
 - a. The Authority, its Member Agencies, their officials, directors, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Authority, its Member Agencies, their officials, directors, employees, or volunteers.
 - b. Contractor's insurance coverage shall be primary insurance as respects Authority, its Member Agencies, its officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its Member Agencies, its officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Authority, its Member Agencies, its officials, employees, or volunteers.
 - d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurers' liability.
 - e. Contractor's insurers shall agree to waive all rights of subrogation against Authority, its Member Agencies, its officials, employees, and volunteers for losses arising from work performed by Contractor under this Agreement.
 2. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Authority, its Member Agencies, its officials, employees, and volunteers for losses arising from work performed by Contractor under this Agreement.
- E. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance company or companies approved to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless Authority agrees in writing to alternative ratings. To the extent permitted by law, all or any part of the required insurance may be provided under a plan of self-insurance, only if, in the sole discretion of Authority, Contractor can provide adequate assurances that the self-insured coverage provides commercially equivalent protection to Authority and its Member Agencies, their officials, employees, volunteers, and agents.
- F. **Verification of Coverage.** The Contractor shall furnish the Authority with certificate(s) of insurance and with original endorsements affecting coverage required by this clause. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by the insurer(s) to bind coverage on its behalf. The certificates and

endorsements are to be on forms provided by or acceptable to Authority and are to be received and approved by Authority on or before the Effective Date.

- G. **Approved Affiliates and Subcontractors.** The Contractor shall include all Approved Affiliates and Subcontractors as additional insureds under its policies, except Workers' Compensation/Employer's Liability, or shall furnish separate certificates and endorsements for each Affiliate or Subcontractor. All coverages for Affiliates and Subcontractors shall be subject to all of the requirements stated herein. The Contractor shall require any Approved Affiliates and Subcontractors to provide Workers' Compensation and Employer's Liability Insurance for Approved Affiliates and Subcontractors' employees. The Contractor's Workers' Compensation and Employer's Liability coverage will be Contractor's employees only.

- H. **Required Endorsements.** The Commercial General Liability policy shall contain the following blanket endorsement in substantially the following form:

1. "Thirty (30) Days prior written notice shall be given to Authority in the event of cancellation of this policy. Such notice shall be emailed from the insurer(s)' authorized representative to Authority@recyclesmart.org, and upon written request by the Executive Director, such notice shall also be submitted in hard copy to:

Executive Director
Central Contra Costa Solid Waste Authority
1850 Mt. Diablo Blvd, Suite 320
Walnut Creek, CA 94596"

2. "Inclusion of Authority and Member Agencies as an additional insured shall not affect Authority's or its Member Agencies' rights as respects any claim, demand, suit, or judgement brought or recovered against Contractor. This policy shall protect Contractor and Authority and Member Agencies in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one Party had been named as an insured. The thirty (30) day notice of cancellation shall be emailed from the insurer(s)' authorized representative to Authority@recyclesmart.org, and upon written request by the Executive Director, such notice shall also be submitted in hard copy to:

Executive Director
Central Contra Costa Solid Waste Authority
1850 Mt. Diablo Blvd, Suite 320
Walnut Creek, CA 94596"

- I. **Delivery of Proof of Coverage.** Within fifteen (15) Days of the Effective Date, Contractor shall furnish the Authority certificate(s) of insurance evidencing each policy of insurance required hereunder, in form and substance satisfactory to Authority. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies and shall have all required endorsements. Renewal certificates will be furnished periodically to Authority to demonstrate maintenance of the required coverages throughout the Term. Furthermore, in the event of a coverage dispute between the Authority and an insurance carrier of Contractor that names the Authority as an additional insured under this Agreement, the Contractor shall, at the Authority's request, provide the Authority's counsel with the copy of the policy in question.

- J. **Other Insurance Requirements.**

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1. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to Authority.
2. If Contractor fails to procure and maintain any insurance required by this Agreement, Authority may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

13.6 Performance Bond

{Note to Proposer: This amount will be updated during negotiations depending on the projected revenue for the services provided under this Agreement; however, it is expected to be at least \$1,000,000}

Within seven (7) Days after the Authority's notification to the Contractor that the Authority has executed this Agreement, the Contractor shall file with the Authority a bond, payable to the Authority, in the form presented in Exhibit K, securing Contractor's performance of its obligations under this Agreement. Such bond shall be approved by the Authority and renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be {enter three months of projected revenue} and shall be adjusted every three (3) years, commencing with Rate Year Three, to equal one and half (1.5) months of the prior Rate Year's annual Gross Receipts. The bond shall be executed as a surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to Authority.

ARTICLE 14 BREACH, DEFAULT, REMEDIES, AND TERMINATION

14.1 Events of Breach

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

- A. **Failure to Maintain Coverage.** The Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- B. **Violations of Applicable Law.** The Contractor violates Applicable Law relative to this Agreement, provided that Contractor may contest any such orders or filings in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred upon final resolution of the contest or appeal in favor of Contractor.
- C. **Failure to Pay or Report.** The Contractor fails to make any payments to the Authority or its Member Agencies required under this Agreement, and/or refuses to provide Authority with required information, reports, and/or records in a timely manner as provided for in this Agreement.

- D. **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor's operating equipment, including, without limitation, its maintenance or office facilities, or any part thereof.
- E. **Breach or Default of Other Authority Agreement.** If the Contractor or its Affiliate has entered into an agreement with the Authority for services outside the scope of this Agreement and is in breach or default of that Agreement.
- F. **Failure to Achieve Processing Standards.** The Contractor materially contributes to a failure or fails to achieve the Processing standards specified in Article 5, Article 6, and/or Article 8, which are essential for the Authority to achieve compliance with Applicable Law including but not limited to SB 1383.
- G. **Failure to Provide Capacity.** The Contractor fails to provide adequate capacity in accordance with Section 5.1.D and Section 6.1.D.
- H. **Labor Unrest.** Pursuant to Section 2.6, Contractor fails to perform services as required under this Agreement for any period of time due to labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor or an Affiliate; or any labor action initiated by Contractor including, but not limited to, a lock-out.

14.2 Contractor's Right to Remedy Breach

The Authority shall promptly, or as soon as practicable, provide Contractor written notice of an Event of Breach; provided, however, that Labor Unrest shall not require any written notice by the Authority and the cure period shall begin on the first day of Labor Unrest. Upon written notice, or beginning on the first day of Labor Unrest, Contractor shall have ten (10) Days to cure the breach. However, if Contractor demonstrates that: (a) the breach is curable; and, (b) ten (10) Days is insufficient to cure the breach, then Contractor may receive thirty (30) Days or another extension of time agreed to by the Authority in order to cure the breach. Labor unrest shall not be allowed any extension of time beyond the initial ten (10) day cure period.

14.3 Acts Necessary to Perform Service

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

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

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

14.4 Event of Default

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

- A. **Failure to Cure Breach.** The Contractor fails to cure an Event of Breach as provided above in Section 14.2.
- B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the combination of breaches constitutes a material failure by Contractor to perform its obligations, even if the Contractor cures each individual breach.
- C. **Fraud or Deceit.** The Contractor practices, or attempts to practice, any fraud or deceit upon the Authority.
- D. **False or Misleading Statements.** Any representation or disclosure made to the Authority by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement. In addition, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting typographical and grammatical errors.
- E. **Failure to Perform.**
 - 1. General. Except as provided under Section 14.10, Contractor fails to provide Transfer, Transport, Pre-Processing, or Diversion services as required under this Agreement for a minimum of either two (2) consecutive Business Days or three (3) non-consecutive Business Days within one (1) week. The Authority may give notice of the Contractor's failure to perform verbally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such verbal notification shall be sent to the Contractor within twenty-four (24) hours of the verbal notification.
 - 2. Facility Disruption. The Franchised Collector is unable to use any of the Approved Facilities under this Agreement for more than thirty (30) Days in a consecutive twelve (12) month period.
- F. **Criminal Activity.** The Contractor, its officer, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other Agreement held with the Authority.

- G. **Assignment without Approval.** The Contractor transfers or assigns this Agreement without express written approval of the Authority, unless the assignment is permitted without Authority approval pursuant to Section 16.7.
- H. **Insolvency or Bankruptcy.** The Contractor becomes insolvent, unable, or unwilling to pay its debts, a receiver is appointed or Contractor's assets are involuntarily assigned, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

14.5 Event of Default Not Curable

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

14.6 Authority's Remedies in the Event of Default

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

- A. **Waiver of Default.** The Authority may waive any Event of Default if Authority determines that such waiver would be in the best interest of the Member Agencies. The Authority's waiver of an Event of Default is not a waiver of future events of default that may have the same or similar conditions.
- B. **Right to Terminate.** The Authority Board may terminate this Agreement. The Authority Board shall conduct a hearing upon ten (10) Days written notice to the Contractor to determine if termination is in the best interests of the public health, safety, and welfare of the Authority, its Member Agencies, and their constituents. In the event the Authority Board decides to terminate this Agreement, termination shall be effective thirty (30) Days, or such other period determined by the Authority Board, after Authority has given written notice to Contractor.
- C. **Right to Suspend.** The Authority Board may suspend this Agreement, in whole or in part, if Contractor fails to cure within the time frame specified in Section 14.2, until Contractor can provide assurance of performance in accordance with Section 14.11.
- D. **Other Available Remedies.** The Authority's election of one or more remedies described herein shall not limit Authority from any and all other remedies at law and in equity, such as a right to immediately contract with another service provider.

14.7 Specific Performance

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

14.8 Authority's Remedies Cumulative

Authority's rights to suspend or terminate this Agreement, to obtain specific performance, and to perform under this Article are not exclusive, and Authority's exercise of one (1) such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the Authority may have, including a legal action for damages or imposition of Liquidated Damages under Section 14.9 and Exhibit F.

14.9 Liquidated Damages

The Parties agree that, as of the time of execution of this Agreement, it is impractical and extremely difficult to reasonably ascertain the extent of damages that Authority and its Member Agencies will suffer as a result of a breach by Contractor of its obligations under this Agreement. The Parties acknowledge that consistent and reliable Collection, Transfer, Transport, Processing, Diversion, and Disposal services are of utmost importance to Authority, its Member Agencies, and their constituents. The Parties further recognize that some quantifiable standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. Therefore, without prejudice to Authority's right to treat such non-performance as an Event of Default, and in addition to any other remedies provided for in this Agreement, except as otherwise provided in Section 14.10, Authority may assess Liquidated Damages for Contractor's failure to meet specific performance standards, and Contractor agrees to pay the Liquidated Damages amounts specified in Exhibit F. Liquidated Damages are paid as damages, and not as a penalty. The Parties agree that the amounts set forth in Exhibit F represent a reasonable estimate of the amount of the damages that Authority and its Member Agencies will suffer for the specified breaches, considering all of the circumstances existing on the date of this Agreement.

- A. Prior to assessing Liquidated Damages, the Authority shall give Contractor written notice of its intention to do so. The notice shall include a brief description of the incident(s)/non-performance giving rise to the damages. Within three (3) Days after receiving the notice of intent, Contractor shall have the right to request that the Authority meet and confer regarding the notice of intent; the Parties should promptly meet and confer in good faith.
- B. Authority shall assess Liquidated Damages and provide Contractor with a written explanation of its determination for each incident(s)/non-performance. The Authority may assess Liquidated Damages for each Day or incident of non-performance with the Agreement. The decision of the Executive Director or designee shall be final, and subject only to the right to appeal the imposition of the Liquidated Damages to the Authority Board when the amount imposed exceeds ten thousand dollars (\$10,000) per month in total for multiple events of non-performance. Thereafter, it is deemed the Contractor has exhausted all required administrative remedies.
- C. Contractor shall pay any Liquidated Damages assessed by Authority within ten (10) Days after they are assessed. If they are not paid within the ten (10) Day period, Authority may proceed against the performance bond required by the Agreement, treat such failure as an Event of Default subject to the remedies in this Article.

14.10 Excuse from Performance

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

- A. The Uncontrollable Circumstance and the cause thereof (to the extent known).
- B. The date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the Party's performance of its obligations hereunder will be delayed.

- C. Potential mitigating actions that might be taken by either Party and any areas where costs might be reduced and the approximate amount of such cost reductions.

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

Labor unrest is not an Uncontrollable Circumstance and will not excuse performance, and Contractor will be obligated to continue to perform in accordance with this Agreement, as further described in Section 2.6.

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

14.11 Right to Demand Assurances of Performance

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

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

If the Contractor fails or refuses to provide the Authority with adequate information to establish its ability to perform within thirty (30) Days, such failure or refusal shall be an Event of Default for the purposes of Section 14.4.

14.12 Waiver of Defenses

In order to ensure the non-interruption of a vital public service, except as provided in Section 14.10, the Contractor acknowledges that it is solely responsible for providing the services described herein, and hereby irrevocably waives the following defenses to the payment and performance of its obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that may be a basic assumption of the Contractor with regard to any provision of this Agreement.

14.13 Guaranty of Contractor's Performance

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

ARTICLE 15 RESOLUTION OF DISPUTES

15.1 Cooperation and Disputes Between Contractors

The Contractor shall fully comply with its obligations to provide services under this Agreement including Acceptance of Franchised Materials delivered by the Franchised Collector in a manner that meets the requirements of this Agreement and Applicable Law. The Contractor shall also fully comply with its obligations to deliver Franchised Materials to Approved and Designated Facilities. In the event of disputes between the Franchised Collector and the Contractor or between Contractor and the Approved/Designated Facility(ies), either party may provide written notice of the dispute to the Authority and the other that includes a summary of the dispute, the Section(s) of the Agreement or agreements the asserted dispute arises from, an estimate of the financial implications to Contractor asserted, and a proposed resolution. Contractor agrees to timely meet and confer directly with the Franchised Collector or Approved/Designated Facility(ies) in good faith to resolve the dispute for thirty (30) Days following the initial notice to the Authority and the other party, or a longer period may be established if mutually agreed upon between the parties. If, at the end of this meet and confer period, Contractor and Franchised Collector or Contractor and Approved/Designated Facility(ies) have met and conferred in good faith but have not resolved the dispute, either party to the dispute may notify the Authority and the Authority shall follow the dispute resolution procedures provided in Section 15.2, 15.3, and 15.4 of this Agreement as well as any applicable provisions of the other party's contract with Authority. In the event of a dispute, Contractor shall continue performance of Contractor's obligations under this Agreement and shall attempt to continue to resolve that dispute in a cooperative manner including, but not limited to, negotiating in good faith.

15.2 Informal Resolution

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

15.3 Mediation

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

15.4 Pendency of Dispute

During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall not be tolled. In addition, the pendency of any dispute shall not stay or affect the Authority's remedies under this Agreement including, but not limited to, the Authority's rights to terminate, suspend, or take possession of Contractor's property.

ARTICLE 16 OTHER AGREEMENTS OF PARTIES

16.1 Relationship of Parties

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

16.2 No Third Party Beneficiaries

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

16.3 Compliance with Law

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

16.4 Governing Law

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

16.5 Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Contra Costa County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Contra Costa County. Nothing in this Agreement shall be construed to limit the rights of either Party to seek judicial review of or remedies for any alleged breach of this Agreement by either Party.

16.6 Notice to Parties

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

To Authority:

Executive Director
Central Contra Costa Solid Waste Authority
1850 Mt. Diablo Blvd, Suite 320
Walnut Creek, CA 94596

Authority/{Insert Contractor Name}

To Contractor:

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

16.7 Assignment and Transfer of Agreement

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

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

Authority/{Insert Contractor Name}

finalize any document required as a condition for approving any such assignment including the performance of a Compliance Audit, as provided in Section 16.9 of this Agreement. Such payment shall be required regardless of the ultimate determination of the Authority regarding the approval or denial of the assignment. Upon submittal of the Contractor's request for assignment to the Authority, the Contractor shall submit an initial non-refundable deposit of seventy-five thousand dollars (\$75,000) for this purpose for this purpose, that shall be adjusted annually by the Annual Percentage Change in CPI-U.

2. The Contractor shall furnish the Authority with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
 3. The Contractor shall furnish the Authority with satisfactory proof that: (1) the proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, and/or Organic Materials management experience on a scale equal to or exceeding the scale of operations conducted by the Contractor under this Agreement; (2) in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any Federal, State or local agency having jurisdiction over its materials management operations due to, in the Authority's sole and reasonable discretion, any material or significant failure to comply with State, Federal or local waste management laws and that the assignee has provided the Authority with a complete list such citations and censures; (3) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (4) the proposed assignee conducts materials management practices in full compliance with all Federal, State and local laws regulating the transfer and transport of all solid waste, including Hazardous Waste; and, (5) any other information required by the Authority to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and effective manner.
- E. The Contractor shall provide the Authority with any and all additional records or documentation which, in the Authority's sole determination, would facilitate the review of the proposed assignment.
- F. On the date the Authority provides notice to the Contractor that the Authority intends to approve the Contractor's written request for an assignment, the Contractor shall pay the Authority a transfer fee in the amount of ten percent (10%) of the Gross Receipts for the most-recently-completed Rate Year. The Authority's approval of such an assignment shall be conditioned on the receipt of the transfer fee.
- G. **Authority Assignment.** Any assignment by the Authority may only be made to a different or successor joint powers agency, a Member Agency or Agencies, or similar public corporation. While nothing in this Agreement is intended to prevent the Authority from assigning its rights and obligations under this Agreement to a different or successor joint powers authority organized for the purpose of dealing with materials management matters on a county-wide or regional basis, such an assignment may occur without prior written consent of the Contractor only where the Authority or all of its Member Agencies become members of that successor or new authority or agency. If the Authority requests consideration of and consent to an assignment (other than to a different or successor county-wide or regional joint powers agency as described above), the Contractor may deny or approve such request. The Contractor may request that the proposed assignee of the Authority provide such documents, resolutions, and ordinances that may be necessary for the Contractor to properly evaluate assignment to the proposed assignee. Nothing in this Section is intended to limit

the Authority's discretion in allowing for new Member Agencies or altering the present composition of the Authority, however, such changes in composition or membership shall not affect the Service Area or mode of operation to which this Agreement applies.

- H. **Assignment by Member Agency Withdrawal.** In the event a Member Agency seeks to withdraw from the Authority before the end of the Agreement's Term, the Member Agency's withdrawal is conditioned upon its consent to Assignment of this Agreement as well as the respective obligations of the Authority as it pertains to the Member Agency's jurisdictional area. The act of withdrawal shall also operate as the Authority's consent to Assignment of its respective rights and obligations under this Agreement to the withdrawing Member Agency. Any additional terms and conditions of withdrawal as well as the details of assuming the specific obligations of this Agreement shall be governed by the provisions of the Authority's Joint Powers Agreement as amended, and the decisions of the Authority Board.

16.8 Transition to Next Contractor

If the transition of services to another contractor occurs through expiration of the Term, default and termination, or otherwise, then Contractor will cooperate with Authority and subsequent contractor(s) to assist in an orderly transition. The Contractor may, but is not obligated to, sell its vehicles, or equipment to the next contractor.

16.9 Compliance Audit

In the event the Contractor has requested the Authority's consideration of an Assignment, as provided in Section 16.7 of this Agreement or, if, in Authority's sole determination, there is any doubt regarding the compliance of Contractor with this Agreement, the Authority may require an audit of Contractor's compliance and the costs of such an audit shall be paid by Contractor in advance of the performance of said audit. This Audit is in addition to the Performance Review described in Section 11.2 of this Agreement.

16.10 Binding on Successors

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

16.11 Non-Waiver

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

ARTICLE 17 MISCELLANEOUS PROVISIONS

17.1 Entire Agreement

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

17.2 Amendment

Except as provided in Section 17.10, neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except in written agreement duly executed by and between the Authority and Contractor.

17.3 Section Headings

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

17.4 References to Laws

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

17.5 Interpretation

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

17.6 Severability

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

17.7 Further Assurance

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

17.8 Counterparts

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

17.9 Exhibits

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

17.10 The Authority's Right to Make Administrative Changes

The Parties acknowledge that the Franchised Collector will, and the Recyclables Contractor, Organics Contractor, Reuse Contractor, Disposal Contractor, and Mixed Waste Contractor may, be selected by the Authority after the execution of this Agreement. The Contractor acknowledges that the Authority drafted and negotiated this Agreement with the aim of maintaining uniformity and consistency across all its service agreements with its contractors and ensuring interdependent and/or interrelated provisions among or across the service agreements do not conflict. The Contractor hereby grants the Authority the unilateral right to make administrative and/or non-material changes to this Agreement (e.g., to align the use of

Authority/{Insert Contractor Name}

defined terms, to reflect the names and addresses of facilities, to correct inadvertent ambiguity) after it is executed by the Contractor through the date the Authority executes the last in the series of agreements with the Franchised Collector. Such changes will not require mutual consideration and are not intended to uniquely benefit or disadvantage any one (1) contractor or the Authority. The Authority shall provide written notice of any changes made to this Agreement by the Authority pursuant to this Section within thirty (30) Days after the date the Franchised Collection Agreement is executed. The Authority's changes will be made in the form of a restated Agreement that will be limited to the administrative changes mentioned in this Section 17.10. The Authority and the Contractor shall each promptly execute such restated Agreement; the Contractor shall not interfere with, frustrate, or otherwise delay execution of such restated Agreement made in accordance with this Section 17.10.

17.11 Electronic Signatures

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

17.12 Actions of the Authority in its Governmental Capacity

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

IN WITNESS WHEREOF, Authority and Contractor have executed this Agreement as of the day and year first above written.

Authority

By: _____
Board Chairperson

Printed name

CONTRACTOR

By: _____
{TITLE}

Printed name

Approved as to Form:

By: _____
Authority Legal Counsel

Printed name

Approved as to Form:

By: _____
Contractor Legal Counsel

Printed name

Attest:

By: _____
Board Secretary

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EXHIBIT A:
DEFINED TERMS

EXHIBIT A: DEFINED TERMS

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

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

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

"AB 1201" means Assembly Bill 1201, approved by the Governor of the State of California on October 5, 2021, which amended Sections 42356, 42356.1, and 42357 of, and amended the heading of Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of, the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time.

"AB 1594" means Assembly Bill 1594 approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 of the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time.

"AB 1669" means Assembly Bill 1669 approved by the Governor of the State of California on September 30, 2016 which amends California Labor Code Sections 1070 through 1076 with respect to the hiring of displaced employees under service contracts for the collection and transportation of solid waste.

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

"AB 2176" means the Large Venue Recycling Act (an act to amend Section 42911 of, and to add Chapter 12.7 (commencing with Section 42648) to Part 3 of Division 30 of, the California Public Resources Code, relating to Recycling), also commonly referred to as "AB 2176," as amended, supplemented, superseded, and replaced from time to time.

"Abandoned Waste" means Recyclable Materials, Organic Materials, Solid Waste, C&D, Bulky Items, or other materials that have been abandoned, littered, or illegally dumped in the public right of way or other public property.

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

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

EXHIBIT A: DEFINED TERMS

“Affiliate” means any Person, corporation, or other entity directly or indirectly controlling or controlled by another Person, corporation, or other entity, or under direct or indirect common management or control with such Person, corporation, or entity. As between any two (2) or more Persons or entities, when ten percent (10%) of one is owned, managed, or controlled by another, they are hereunder Affiliates of one another. In a joint venture, each party to the joint venture may have their own Affiliate.

“Agreement” means this Agreement for Recyclable Materials, Commingled Organics and Solid Waste Transfer and Transport, and Commercial Food Scraps Pre-Processing, Transfer and Transport services between the Authority and the Contractor, including all exhibits, attachments, and any future amendments hereto.

“Allowable” or “Allowed” (or other variations thereof) means the type of materials that are permitted to be placed in each of the different Source Separated Containers by Generators to maximize Acceptance by the Approved and Designated Facilities and may include limited materials that are considered Contaminants, as specified in Exhibit C, in order to facilitate ease of set-out and containment of materials by Generators.

“Anaerobic Digestion” means a method of treatment in which Organic Materials are biologically decomposed in an enclosed chamber using microorganisms to break down biodegradable material, normally in the absence of oxygen, and converted into renewable energy by producing biogas and digestate.

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

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

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

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

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

EXHIBIT A: DEFINED TERMS

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

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

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

“Approved Facility(ies)” means those facilities owned and/or operated by the Contractor that are the subject of this Agreement and approved by the Authority for use by the Contractor in the performance of services under this Agreement.

“Approved Pre-Processing Facility” means the {Insert Facility Name} that is located at the Approved Transfer Facility at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}. The Approved Pre-Processing Facility shall serve as the primary Pre-Processing Facility for Commercial Food Scraps under this Agreement.

“Approved Transfer Facility” means the {Insert Facility Name} at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}. The Approved Transfer Facility shall serve as the primary Transfer Facility for all Solid Waste, Recyclable Materials, and Organic Materials Collected by the Franchised Collector to be Delivered to the Designated Facilities and the Approved Pre-Processing Facility for Commercial Food Scraps Collected by the Franchised Collector to be Delivered to the Designated Anaerobic Digestion Facility. For the purpose of this Agreement, the Approved Transfer Facility shall also include the Approved Alternate Facility(ies) where the collective reference to the facilities is most appropriate.

“Authority” or “The Authority” means the Central Contra Costa Solid Waste Authority or its Executive Director.

“Authority Board” or “Board” means the duly elected representatives from each Member Agency’s governing body, or its successor municipal governing body of the Authority.

“Authority Reimbursements” means fixed or per-Ton amounts the Authority may require Contractor to pay the Authority in consideration of the exclusive rights provided in Section 2.1, the costs of administering the Source Reduction and Recycling Elements and Non-Disposal Facility Elements of AB 939, the Authority’s costs associated with managing the programs and services, the rights, privileges, and services provided under this Agreement and the related agreements that may be established in accordance with Article 9.

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“Average Index Value” means the sum of the monthly index values during the most recently available twelve- (12-) month period divided by twelve (12) (in the case of indices published monthly) or the sum of the bi-monthly index values divided by six (6) (in the case of indices published bi-monthly).

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

“Bin(s)” means a Container with a capacity of one (1) to eight (8) cubic yards and a hinged lid. Bins may or may not have wheels.

“Bulky Items” means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that require special Collection due to their size that can be Collected by two (2) Persons without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle Load limits. Bulky Items do not include abandoned automobiles, large auto parts, or trees.

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

“CALGreen” means the California Green Building Standards Code, Part 11, Title 24, of the CCR, as amended, supplemented, superseded, and replaced from time to time, and including, but not limited to, any implementing local regulations related to CALGreen that are included in any Member Agency Municipal Code.

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

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

“CARB” means the California Air Resources Board.

“Cart(s)” means a plastic Container with a hinged lid and wheels with varying capacities ranging from twenty (20) to ninety-six (96) gallons.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9600 et seq.).

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

- A. The enactment, adoption, promulgation, issuance, modification, elimination, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date.
- B. The order or judgment of any Federal, State, or local governmental body having jurisdiction over the Collection, Transfer, Transport, Processing, Diversion, or Disposal of Solid Waste, Recyclable Materials, Organic Materials, C&D, and/or Excluded Waste, on or after the

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Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission, or lack of reasonable diligence of the Authority or the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission, or lack of reasonable diligence.

“CNG Fuel Index” means the per-therm price for Core Natural Gas Service for Compression on Customer’s Premises, Schedule G-NGV1, compiled and published by the Pacific Gas and Electric Company Analysis and Rate Department and reported monthly in its “Gas RateFinder” publication (<http://www.pge.com/tariffs/GRF.SHTML>). The August 2023 Fuel Index is \$0.87375 per therm, which reflects the sum of the customer charge, procurement charge, transportation charge, and public purpose program (PPP) charge for natural gas service for compression on customer’s Premises as reported by Pacific Gas and Electric Company.

“Collect” or “Collection” (or other variations thereof) means the act of removing Franchised Materials from the place of generation within the Service Area and Delivering such materials to an Approved or Designated Facility.

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

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

“Commercial Edible Food Generator” includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

“Commercial Food Scraps” means when used together, Food Scraps and Allowable Food-Soiled Paper that are separated from Solid Waste by Commercial Generators and set out in accordance with the Authority’s Collection program. Commercial Food Scraps does not include Unpermitted Waste, Excluded Waste, or other Franchised Materials. Allowable Commercial Food Scraps includes, at a minimum, the materials listed in Exhibit C that may be replaced by a list posted by the Authority’s Executive Director in their sole discretion from time to time and provided to the Contractor.

“Commingled Organics” means Food Scraps, Food-Soiled Paper, and Yard Trimmings that are separated from Solid Waste by Generators and set out in accordance with the Authority’s Collection program. Commingled Organics may also mean Commingled Organics and Commercial Food Scraps that are commingled at the Transfer Contractor’s Transfer Facility / Organics Contractor’s Composting Facility, as described in Section 5.8.B. Commingled Organics does not include Unpermitted Waste, Excluded Waste, or other Franchised Materials. Commingled Organics includes, at a minimum, the materials listed in Exhibit

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C, that may be replaced by a list posted by the Authority's Executive Director in their sole discretion from time to time and provided to the Contractor.

"Compactor" means a mechanical apparatus that compresses materials to reduce their volume.

"Compost" or "Composting" (or other variations thereof) means a method of treatment in which Organic Materials are biologically decomposed under controlled aerobic conditions to produce a safe and nuisance-free Compost Product.

"Compost Product" means the product resulting from the controlled biological decomposition of Organic Materials that are Source Separated from Solid Waste, or are separated at a centralized Composting Facility and have met the standards outlined in 14 CCR Sections 17868.1 through 17868.5.

"Compostable Plastic(s)" means plastic materials that meet Biodegradable Products Institute (BPI) standards for certification.

"Construction and Demolition Debris" or "C&D" means Discarded Materials removed from Premises during the construction or renovation of a structure as a result of construction, remodeling, repair, or demolition operations on any Residential or Commercial building or other structure, including pavement. Typically, building or other modification Permits are required for Premises during construction or renovation; however, a property owner's failure to secure Permits shall not change the way materials from such projects are defined herein.

"Container(s)" means a receptacle for temporary storage of Discarded Materials. Containers include, but are not limited to, Bins, Carts, Compactors, and Drop Boxes.

"Contaminant(s)" (or other variations thereof) means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as Allowable Recyclable Materials in the Authority's Collection program or by the Designated Recyclable Materials Processing Facility, as identified in Exhibit C; (ii) Discarded Materials placed in the Commercial Food Scraps Container that are not identified as Allowable Commercial Food Scraps in the Authority's Collection program or by the Designated/Approved Pre-Processing Facility or Designated Anaerobic Digestion Facility as identified in Exhibit C and Section 6.1.E; (iii) Discarded Materials placed in the Commingled Organics Container that are not identified as Allowable Commingled Organics in the Authority's Collection program or by the Designated Composting Facility as identified in Exhibit C; (iv) Discarded Materials placed in the Solid Waste Container that are identified as Allowable Recyclable Materials, Commercial Food Scraps, and/or Commingled Organics to be placed in the Franchised Collector's Containers or otherwise managed under the Authority's Collection program; and, (v) Excluded Waste and/or Unpermitted Waste placed in any Container.

"Contractor" means {Insert Contractor Legal Name and any DBAs} and any Approved Affiliates and Subcontractors.

"Contractor Revenue" means Gross Receipts plus any revenue received by the Contractor for sale of Franchised Materials or their resulting by-products allowable under this Agreement, less any revenue shared with the Authority pursuant to Article 9.

"Contractor's Proposal" means that certain proposal submitted by the Contractor to the Authority dated {mm/dd/yyyy} that is attached as Exhibit G to this Agreement.

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

“Curb” or “Curbside” (or other variations thereof) means the location of a Collection Container for pick-up, where such Container is placed on the public or private street or alley against the face of the street edging or curb, or where no curb exists, Container is placed on the street surface and not more than three (3) feet from the outside edge of the street or alley nearest the property’s entrance that is safely accessible by or to the Collection vehicle.

“Customer” means the Person receiving Residential or Commercial Collection services for Franchised Materials Generated on Premises located in the Service Area from the Franchised Collector or Reuse Contractor, or other entities with whom the Authority has contracted. The Customer may be the Occupant, Owner, or manager of the Premises.

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

“Delivered” or “Delivery” (or other variations thereof) means arrival of Franchised Materials in the Franchised Collector’s Collection vehicles at the entrance of Approved or Designated Facility(ies) during Facility receiving hours for the purposes of Acceptance.

“Designated Anaerobic Digestion Facility” means the East Bay Municipal Utility District Site at 2020 Wake Avenue, Oakland, CA, which is owned and operated by East Bay Municipal Utility District and designated by the Authority for Processing of Commercial Food Scraps through Anaerobic Digestion and conversion into renewable energy.

“Designated Composting Facility” means the {Insert Facility Name} located at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}. For the purpose of this Agreement, the Designated Composting Facility shall also include the Organics Contractor’s approved alternate facility(ies).

“Designated Disposal Facility” means the {Insert Facility Name} located {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}. For the purpose of this Agreement, the Designated Disposal Facility shall also include the Disposal Contractor’s approved alternate facility(ies).

“Designated Facility(ies)” means any one (1) or combination of the Designated Anaerobic Digestion Facility, Designated Disposal Facility, Designated Recyclable Materials Processing Facility, Designated Composting Facility, and Designated Pre-Processing Facility that are not the subject of this Agreement and where the Authority has entered into a separate agreement for the service(s) provided. Upon commencement of Mixed Waste Processing, if implemented during the Term, this Designated Facilities definition shall also include the Designated Mixed Waste Processing Facility.

“Designated Mixed Waste Processing Facility” means the {Insert Facility Name} located at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}, upon commencement of Mixed Waste Processing, if implemented during the Term. For the purpose of this Agreement, the Designated Mixed Waste Processing Facility shall also include the Mixed Waste Contractor’s approved alternate facility(ies).

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“Designated Recyclable Materials Processing Facility” means the {Insert Facility Name} located at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}. For the purpose of this Agreement, the Designated Recyclable Materials Processing Facility shall also include the Recyclable Materials Contractor’s approved alternative facility(ies).

“Designated Transfer Facility” means the {Insert Facility Name} located at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}.

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

“Diesel Fuel Index” means the Producer Price Index for No. 2 Diesel, seasonally adjusted, compiled, and published by the U.S. Department of Labor, Bureau of Statistics.

“Discarded Material” means any waste materials (other than Excluded Waste) produced by Generators that are no longer of use to the Generator and that have become the subject of regulation. Discarded Materials may become Franchised Materials if the Generator Source Separated the Discarded Materials into one or more type(s) of Franchised Materials.

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

“Disposal Contractor(s)” means the contractor to the Authority at any given time during the Term of this Agreement that is responsible for Disposing of Solid Waste at the Designated Disposal Facility. The Parties acknowledge that this entity may be selected by the Authority after the execution of this Agreement and the Authority shall notify the Contractor of the Disposal Contractor within thirty (30) Days after the effectiveness of the contract with the initial Disposal Contractor and upon any change in the Designated Disposal Facility and/or Disposal Contractor.

“Disposal Site” means a permitted location for the ultimate Disposal of solid waste or Processing Residue.

“Diversion” (or other variations thereof) means to prevent Franchised Materials from Disposal at a landfill or transformation facilities (including pyrolysis, distillation, gasification, or biological conversion methods) through Source Reduction, reuse, Recycling, Composting, Anaerobic Digestion, or other method of Processing, in accordance with the provisions of AB 939 and SB 1383.

“Drop Box” means an open-top Container with a capacity of eight (8) to forty (40) cubic yards that is serviced by a roll-off Collection vehicle.

“Dwelling Unit” means any individual living unit in a Single-Family Dwelling (SFD) or Multi-Family Dwelling (MFD) structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a hotel or motel.

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“ECI” means the Employment Cost Index, Total Compensation, Private Industry, Service-Providing Industries, seasonally adjusted, compiled, and published by the U.S. Department of Labor, Bureau of Labor Statistics.

“Edible Food” means food intended for human consumption, as defined in 14 CCR Section 18982(a)(18). For the purposes of this Agreement, Edible Food is not Solid Waste or Food Scraps if it is recovered as intended. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code portion of the California Health and Safety Code.

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

“Event of Default” means a default by the Contractor as described in Section 14.4.

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

“Executive Director” means the Executive Director of the Authority or their designated representative, which may include outside attorneys, accountants, consultants, volunteers, or contractors to the Authority.

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

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

“Facility User” means any Person delivering Discarded Materials, Franchised Materials, Solid Waste, or any other material, to an Approved or Designated Facility, including, but not limited to, the Franchised

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Collector, the Reuse Contractor, Authority staff or designees, Stewardship Organizations or Extended Producer Responsibility Program participants, and Self-Haulers.

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

“Food Distributor” means a company that distributes food to entities including, but not limited, to Supermarkets and grocery stores as defined in 14 CCR Section 18982(a)(22).

“Food Recovery” means actions to collect and distribute food for human consumption which otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

“Food Recovery Organization” means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the California Health and Safety Code.
- B. A nonprofit charitable organization as defined in Section 113841 of the California Health and Safety code.
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the California Health and Safety Code.

“Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26).

“Food Scraps” means discarded food that will decompose and or/putrefy including: (i) all kitchen and table food; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings, and other organic waste common to the occupancy of Residential dwellings and some Commercial kitchen operations.

“Food Service Provider” means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations as defined in 14 CCR Section 18982(a)(27).

“Food-Soiled Paper” means Compostable paper material that has come into contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, and pizza boxes.

“Franchise” means the right granted by the Authority to the Contractor to provide Franchised Materials Collection services within the Service Area in accordance with the terms and conditions of this Agreement.

“Franchised Collector” means the contractor to the Authority at any given time during the Term of this Agreement that is responsible for the Collection of all Franchised Materials from Customers. The Parties acknowledge that this entity will be selected by the Authority after the execution of this Agreement and the Authority shall notify the Contractor of the Franchised Collector within thirty (30) Days after the effectiveness of the contract with the Franchised Collector and upon any change in the Franchised Collector.

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“Franchised Materials” means collectively Solid Waste, Recyclable Materials, Commercial Food Scraps, and Commingled Organics set out by Customers in accordance with the Authority’s Collection program.

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

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

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

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

“Hazardous Substance” means any of the following:

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

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

“Holidays” are defined as New Year’s Day and Christmas Day, unless otherwise agreed to between the Parties as provided in Section 8.3.C.

“Household Batteries” means alkaline batteries that are typically found in common household items such as flashlights, cameras, and toys.

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“Household Hazardous Waste” or “HHW” means, as defined in California Health and Safety Code Section 25218.1(e), any Hazardous Waste generated incidental to owning or maintaining a place of residence but does not include any waste generated in the course of operating a business at a residence.

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

“Incompatible Material” or “Incompatibles” mean(s) human-made inert material, including, but not limited to, glass, metal, and plastic, and also includes organic waste that the receiving end-user, Facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 17402(a)(7.5).

“Indemnity(ies)” or “Indemnification” means all defense and indemnities under this Agreement.

“Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than two thousand (2,000) individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event, or as otherwise defined in 14 CCR Section 18982(a)(38).

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than two thousand (2,000) individuals within the grounds of the facility per day of operation of the venue facility, or as otherwise defined in 14 CCR, Division 7, Chapter 12. A venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one (1) Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue.

“Liquidated Damages” means the amounts agreed upon by the Contractor and the Authority as fair and reasonable damages for the Contractor’s failure to meet specific quantifiable standards of performance, as described in Section 14.9 and Exhibit F.

“Litter” means any quantity of Discarded Material that has been improperly discarded or that has migrated by wind or equipment away from the operations area or escaped from Collection or Transfer Vehicles during loading or Transport. Litter includes, but is not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastics, and other natural and synthetic materials thrown or deposited on land and/or water.

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

“Maintenance Yard” means the primary location for maintenance of equipment and vehicles used by contractors.

“Maximum Rates” means those maximum rates or charges approved from time-to-time by the Authority Board to be charged by the Franchised Collector to Subscribers. The Authority Board sets forth the

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maximum amount that the Franchised Collector may charge Subscribers for services under the Franchise Agreement.

“Medical Materials” means biomedical materials generated at hospitals public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified as “medical waste” in California Health and Safety Code Section 25117.5 as may be amended from time to time. For the purposes of this Agreement, untreated Medical Materials are not Franchised Materials unless they have been treated and deemed to be Solid Waste.

“Member Agency(ies)” means one, all, or a combination of the members of the Authority, including the Cities/Towns of Danville, Lafayette, Moraga, Orinda, and Walnut Creek, Contra Costa County, as such may change over time (e.g., as other governmental agencies may join the Authority in the future).

“Mixed Materials” means materials from Residential Premises and Commercial Premises, which includes both Recoverable Materials and non-Recoverable Materials, that may be Processed at a Mixed Waste Processing Facility.

“Mixed Waste Processing” means those services provided by the Mixed Waste Contractor to Process Solid Waste that has been designated by the Authority to be Processed and/or Composted in lieu of Disposal that are Delivered by the Franchised Collector to the Designated Mixed Waste Processing Facility(ies). Mixed Waste Processing may include any combination of Processing and/or Composting at a Designated Mixed Waste Processing Facility(ies).

“Mixed Waste Contractor” means the contractor to the Authority at any given time during the Term of this Agreement that is responsible for operating the Designated Mixed Waste Processing Facility, if Mixed Waste Processing is implemented during the Term. The Parties acknowledge that this entity may be selected by the Authority after the execution of this Agreement, and the Authority shall notify the Contractor of the Mixed Waste Contractor within thirty (30) Days after the effectiveness of the contract with the initial Mixed Waste Contractor and upon any change in the Designated Mixed Waste Processing Facility and/or Mixed Waste Contractor.

“Multi-Family Dwelling” or “Multi-Family” means any Residential Premises, other than a Single-Family Premises, where there is centralized, shared Collection service for all units in the building.

“Occupant” means a Person who may or may not hold the legal title to the real property constituting the Premises, including businesses or other entities, and who permanently or temporarily lives or works at the Premises.

“Organic Materials” means collectively Commingled Organics and Commercial Food Scraps.

“Organics Contractor” means the contractor to the Authority, at any given time during the Term of this Agreement, responsible for operating the Designated Composting Facility. The Parties acknowledge that this entity may be selected by the Authority after the execution of this Agreement and the Authority shall notify the Contractor of the Organics Contractor within thirty (30) Days after the effectiveness of the contract with the Organics Contractor and upon any change in the Designated Composting Facility and/or Organics Contractor.

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“Organic Waste” means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

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

“Pass-Throughs” means Governmental Fees and Authority Reimbursements.

“Permits” means all Federal, State, county, Authority, other local, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to services performed under this Agreement, as renewed or amended from time to time.

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

“Premises” means any land or building in the Service Area where Franchised Materials are generated or accumulated.

“Pre-Process” or “Pre-Processing” means the Processing of Commercial Food Scraps for the purpose of Recovery to produce Recoverable Materials for Anaerobic Digestion.

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

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

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

“Rate Year” means a twelve- (12-) month period, commencing July 1 and concluding on the last day of June of the following year.

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

“Recover,” “Recovery,” or “Recovered” (or other variations thereof) means the classification, extraction, and aggregation of marketable commodities, Compost, and other Recovered Materials from Residue during Processing.

EXHIBIT A: DEFINED TERMS

“Recovered Material” means marketable commodities that are Recovered through Processing, Composting, and/or Anaerobic Digestion in a way that constitutes landfill reduction pursuant to 14 CCR, Division 7, Chapter 12, Article 2 and is suitable for Recycling.

“Recyclable Materials” means materials, by-products, or components of such materials that are set aside, handled, or packaged and are separated from Solid Waste by Generators and set out in accordance with the Authority’s Collection program. Recyclable Materials do not include Unpermitted Materials, Excluded Materials, or other Franchised Materials. Recyclable Materials are the materials listed in Exhibit C that may be replaced by a list posted by the Authority’s Executive Director in their sole discretion from time to time and provided to the Contractor.

“Recyclables Contractor” means the contractor to the Authority at any given time during the Term of this Agreement that is responsible for operating the Designated Recyclable Materials Processing Facility. The Parties acknowledge that this entity may be selected by the Authority after the execution of this Agreement and the Authority shall notify the Contractor of the Recyclables Contractor within thirty (30) Days after the effectiveness of the contract with the initial Recyclables Contractor and, upon any change in the Designated Recyclable Materials Processing Facility and/or Recyclables Contractor.

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

“Renewable Natural Gas” or “RNG” means gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

“Renewable Diesel” means a diesel fuel substitute produced from non-petroleum renewable sources, including vegetable oils and animal fats, that meets both i) Title 40, Code of Federal Regulations, Part 79 – Registration of Fuels and Fuel Additives (July 2021); and, ii) American Society for Testing and Materials specification D975 (approved August 1, 2021), or as otherwise defined by CARB.

“Residential” means Single-Family Dwellings and Multi-Family Dwellings used for human shelter, irrespective of whether such Dwelling Units are rental units or are owner-occupied, excluding hotels, motels, or other similar Premises.

“Residue” means materials that remain after Processing, Pre-Processing, Composting, and/or Anaerobic Digestion that cannot be Diverted and require Disposal.

“Reusable Items” means materials that are subsequently used in their original form for the same or similar purpose such as, but not limited to: used furniture, clothing, toys, bicycles, books, household items, and tools. Reusable Items are those materials that are separated from Franchised Materials by Generators and set out in accordance with the Reuse Contractor’s Collection program. Reusable Items include, at a minimum, the materials listed in Exhibit C.

EXHIBIT A: DEFINED TERMS

“Reuse and Cleanup Days Program” means the program operated by the Reuse Contractor to collect Solid Waste, Recyclable Materials, Organic Materials, Reusable Items, E-Materials, Abandoned Waste, and other materials as specified in the Authority’s contract with the Reuse Contractor Curbside and at designated locations throughout the Service Area.

“Reuse Contractor” means the contractor to the Authority at any given time during the Term of this Agreement that is responsible for operating the Reuse and Cleanup Days Program. The Parties acknowledge that this entity may be selected by the Authority after the execution of this Agreement and the Authority shall notify the Contractor of the Reuse Contractor within thirty (30) Days after the effectiveness of the contract with the initial Reuse Contractor and upon any change in the Designated Reuse Facility and/or Reuse Contractor.

“SB 54” means the Plastic Pollution Prevention and Packaging Producer Responsibility Act approved by the Governor of the State of California on June 30, 2022, which amended Section 41821.5 of the California Public Resources Code to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30, as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 54 includes any implementing regulations developed by CalRecycle, as amended supplemented, superseded, and replaced from time to time.

“SB 343” means the Environmental Advertising: Recycling Symbol: Recyclability: Products and Packaging Senate Bill approved by the Governor of the State of California on October 5, 2021, which amended Sections 17580, 17580.5 of the California Business and Professions Code, and amended Sections 18015 and 42355.5 of, and added Section 42355.51 to, the California Public Resources Code, relating to environmental advertising, as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 343 includes any implementing regulations developed by CalRecycle, as amended, supplemented, superseded, and replaced from time to time.

“SB 1016” means Senate Bill 1016 approved by the Governor of the State of California on September 26, 2008, which amended Sections 40183, 40184, 41783, 41820.6, 41821, 41850, 42921, and 42926 of, amended the headings of Article 4 (commencing with Section 41825) and Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of, added Sections 40127, 40145, 40150.1, 41780.05, 42921.5, and 42927 to, and repealed and added Section 41825 of, the Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor of the State of California on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the California Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the California Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

“Sector” means the Customer’s, Person’s, or Generator’s category, including but not limited to, Single-Family, Multi-Family, Commercial, Self-Haul, Compactor Customers, Drop Box Customers, and

EXHIBIT A: DEFINED TERMS

governmental entities. The Sector shall be used for the purposes of record keeping and reporting and shall be approved by the Executive Director.

“Self-Hauler” or “Self-Haul” means a Person who hauls Discarded Materials, Recovered Material, or any other material (other than Excluded Waste) the hauler has Generated, solely in or on their own Premises using their own equipment and employees to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste, as defined in 14 CCR Section 18982(a)(66)(A), gardeners, and landscapers.

“Service Area” means the physical area encompassed by the jurisdiction of the Authority’s Member Agencies, in which Franchised Materials are Collected by the Franchised Collector Only a portion of unincorporated Contra Costa County is included in the Service Area. Should the scope of Member Agencies change over time (e.g., other governmental agencies become members of the Authority during the Term of this Agreement and choose to receive Collection services from the Franchised Collector), then the Service Area will change accordingly.

“Single-Family Dwelling” or “Single-Family” means each unit used for or designated as a Premises for one (1) family, including each unit of a duplex, triplex, townhouse, or condominium that receives individual or separate (not shared) Collection service.

“Solid Waste” means and refers to the definition of “solid waste” in California Public Resources Code Section 40191, as may be amended or superseded from time to time. Notwithstanding the foregoing, Solid Waste are those materials that are separated from other Franchised Materials by Generators and set out in accordance with the Authority’s Collection program. All or part of the Solid Waste Collected by the Franchised Collector may become Mixed Materials to be directed for Mixed Waste Processing, if designated by the Authority.

“Source Reduction” means any action that causes a net reduction in the generation of Solid Waste, and has the same definition as California Public Resources Code Section 40196. Source reduction includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with Reusable Items and products, reducing packaging, reducing the amount of organic wastes generated, establishing rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. Source reduction does not include steps taken after the material becomes Discarded Materials or Franchised Materials or actions that would impact air or water resources in lieu of land, including, but not limited to, transformation.

“Source Separated” means the Generator segregated the Franchised Materials into separate Containers for Collection by the Franchised Collector, such that all Solid Waste will be placed in a Solid Waste Container, all Recyclable Materials will be placed in a Recyclable Materials Container, all Commingled Organics will be placed in a Commingled Organics Container, and Commercial Food Scraps will be placed in a Commercial Food Scraps Container.

“Special Tipping Fee Review” means an adjustment to the Tipping Fee(s) in addition to or at a time other than when periodic adjustments of the Tipping Fee(s) are made under this Agreement pursuant to Section 10.4.

EXHIBIT A: DEFINED TERMS

“Specialty Recyclable Materials” means those materials that are not Recyclable Materials and that may be Recycled using special handling or unique Processing services, and that are identified in Exhibit C.

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

“State” means the State of California.

“Stewardship Organization” means a Person(s) that is approved or designated under Applicable Law or by a relevant governing body, including, but not limited to, CalRecycle, CARB, the County, or the Authority, to manage, coordinate, fund, or otherwise oversee one or more Extended Producer Responsibility Programs, and that is selected by the Authority. The applicable Stewardship Organization for each Extended Producer Responsibility Program under this Agreement shall be designated or approved by the Executive Director, at their sole discretion.

“Subcontractor” means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that involves Collection, Processing, Transport, Transfer, Diversion, Disposal and/or other handling of the Franchised Materials or that involves communications with or interactions with the Authority and/or Customers that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to the Contractor shall not be considered Subcontractors.

“Subscriber” means the Person whom the Franchised Collector submits its billing invoice to and collects payment from for services provided to Customers under this Agreement.

“Supermarket” means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000) or more, and which sells a line of canned goods, or nonfood items and some perishable items.

“Term” means the duration of this Agreement as provided for in Section 4.1.

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one (1) of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket
- B. Grocery store with a total facility size equal to or greater than ten thousand (10,000) square feet
- C. Food Service Provider
- D. Food Distributor
- E. Wholesale Food Vendor

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one (1) of the following, each as defined in 14 CCR Section 18982:

EXHIBIT A: DEFINED TERMS

- A. Restaurant with two hundred and fifty (250) or more seats, or a total facility size equal to or greater than five thousand (5,000) square feet
- B. Hotel with an on-site food facility and two hundred (200) or more rooms
- C. Health facility with an on-site food facility and one hundred (100) or more beds
- D. Large Venue
- E. Large Event
- F. A State agency with a cafeteria with two hundred and fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet

G. A local education agency with an on-site food facility **“Tipping Fee”** or **“Tip Fee”** is the per-Ton cost assessed by an Approved Facility or Designated Facility for Transfer, Transport, Processing, Composting, Anaerobic Digestion, and/or Disposal services, plus Pass-Throughs.

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

“Total Calculated Contractor Costs” means the Contractor’s costs of providing all services required by this Agreement excluding Pass-Throughs. The Total Calculated Contractor Costs do not in any way guarantee the Gross Receipts that are to be generated by Rates or retained by the Contractor.

“Transfer” or **“Transferring”** (or other variations thereof) means receiving Solid Waste, Recyclable Materials, Commercial Food Scraps, or Commingled Organics at an Approved or Designated Facility or another Transfer Facility and loading the material into Transfer Vehicles.

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

“Transfer Vehicle” means a tractor and trailer designed to haul Pre-Processed Commercial Food Scraps, Solid Waste, Recyclable Materials, Commingled Organics, and/or Residue from a Transfer Facility, Recyclable Material Processing Facility, or Composting Facility to an Approved or Designated Anaerobic Digestion Facility, Recyclable Materials Processing Facility, Composting Facility, Disposal Facility or Disposal Site.

“Transport” (or other variations thereof) means the conveyance of Franchised Materials Collected by the Franchised Collector, Residue from Mixed Waste Processing, or Reusable items or other materials collected by the Reuse Contractor as part of the Reuse and Cleanup Days Program from the point of Collection to an Approved or Designated Facility or from an Approved or Designated Facility to another Approved or Designated Facility or Disposal Site.

“Uncontrollable Circumstance” means:

- A. An act of nature, hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage, tsunami, or similar occurrence (but not including reasonably anticipated weather conditions in the Service Area), acts of terrorism, extortion, war, blockade or insurrection, riot or civil disturbance, and other similar catastrophic events that are beyond the control of and not the

Authority/{Insert Contractor Name}

EXHIBIT A: DEFINED TERMS

fault of the Party. Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees, directed at or initiated by Contractor, or an Affiliate, contractor, or supplier of Contractor, is not an Uncontrollable Circumstance.

- B. A Change in Law (as defined herein).

"Universal Materials" or "U-Materials" means all materials as defined in 22 CCR Subsections 66273.1 through 66273.9. Universal Materials include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Materials.

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

- A. All materials that the Approved Facilities or Designated Facilities are not permitted to accept.
- B. Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be Hazardous Materials if it contains more than one percent (1%) asbestos.
- C. Ash residue from the incineration of solid wastes, including Solid Waste, infectious waste described in Item (8) below, wood waste, sludge not meeting at a minimum Class B standard as defined by Title 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or Disposal of Sewage Sludge) and agricultural wastes.
- D. Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances that remain after the shredding of automobiles.
- E. Dead animals larger than one hundred (100) pounds.
- F. Hazardous Substances and Hazardous Waste.
- G. Industrial solid or semi-solid wastes that pose a danger to the operation of the Approved Facilities or Designated Facilities, including cement kiln dust, or process residues.
- H. Medical Materials including infectious wastes that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases.
- I. Liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e., unclassified sludge less than B), and those liquid wastes that may be Hazardous Wastes.
- J. Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or Federal regulation.

EXHIBIT A: DEFINED TERMS

- K. Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e., unclassified sludge less than “B”).
- L. Designated Waste if not permitted at the Approved Facilities or Designated Facilities under Applicable Law and Permits.
- M. Single Loads with an excessive level of Contaminants based on visual inspection.

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

“Used Motor Oil and Filter” means motor oil and the subsequent oil filter that has been used in a vehicle.

“Used Oil Recovery Kit” means a kit containing: one (1) reusable plastic jug of at least one (1) gallon capacity with a watertight screw-on top to contain Used Motor Oil or used cooking oil; one (1) plastic Disposable resealable bag of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other informational media approved by the Authority intended to educate Customers about the Used Motor Oil and Filter or used cooking oil Collection program and the benefits resulting from the proper handling of Used Motor Oil and Filters and used cooking oil. The Used Oil Recovery Kit is to be provided to Customers by Contractor to recover Used Motor Oil and Filters and used cooking oil from Single-Family and Multi-Family residents.

“Wholesale Food Vendor” means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 18982(a)(76).

“Working Days” means Days on which the Contractor is required to provide Transfer, Commercial Food Scraps Pre-Processing, and Transport services pursuant to Section 8.3 of this Agreement.

“Yard Trimmings” means grass, lawn clippings, shrubs, plants, weeds, branches, and other forms of organic materials generated from landscapes, yards, or gardens.

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EXHIBIT B:
SCOPE OF WORK

EXHIBIT C:
LIST OF ALLOWABLE RECYCLABLE MATERIALS,
COMMINGLED ORGANICS, AND COMMERCIAL FOOD
SCRAPS

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EXHIBIT C: ALLOWABLE MATERIALS

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

1. Allowable Recyclable Materials

Allowable Recyclable Materials are the materials listed in this Exhibit C.1 that may be replaced by a list posted by the Authority's Executive Director in their sole discretion from time to time and provided to the Contractor.

A. Paper:

1. kraft paper, all forms (with or without plastic component)
2. molded fiber packaging (without plastic component)
3. cardboard (with or without plastic component)
4. paperboard, all forms (with or without plastic component)
5. white paper, all forms (with or without plastic component)
6. other/mixed paper, all forms (with or without plastic component)
7. small paper (no side greater than 2", with or without plastic component)

B. Metal:

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

C. Glass:

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

D. Plastic:

1. PET (#1):
 - a. bottles, jugs, and jars (clear/natural)
 - b. bottles, jugs, and jars (pigmented/color)

EXHIBIT C: ALLOWABLE MATERIALS

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

2. Allowable Commingled Organics

Allowable Commingled Organics are the materials listed in this Exhibit C.2 that may be replaced by a list posted by the Authority's Executive Director in their sole discretion from time to time and provided to the Contractor.

A. Food Scraps:

- 1. All kitchen and table food
- 2. Animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs
- 3. Fruit waste, grain waste, dairy waste, meat, and fish waste
- 4. Vegetable trimmings and houseplant trimmings
- 5. Other organic waste common to the occupancy of residential dwellings and some commercial kitchen operations.

B. Food Soiled Paper. Allowable Food Soiled Paper includes paper material that is Compostable, has come into contact with Food Scraps or liquids, is not coated or lined with any non-paper material ("uncoated"), and is not made of synthetic materials ("non-synthetic"), including:

- 1. Other/mixed paper, all forms (without plastic component), such as:
 - a. paper plates
 - b. paper coffee cups
 - c. napkins
 - d. paper towels
 - e. paper lunch bags

EXHIBIT C: ALLOWABLE MATERIALS

- f. coffee filters
 - g. paper straws
 - h. paper egg cartons
 - 2. Pizza boxes / food-soiled cardboard
 - 3. Small paper and fiber (no side greater than 2", without plastic component)
 - C. **Yard Trimmings:**
 - 1. Grass
 - 2. Lawn clippings
 - 3. Shrubs
 - 4. Plants
 - 5. Weeds
 - 6. Branches
 - 7. Other forms of organic materials generated from landscapes, yards, or gardens
 - D. **Other.:**
 - 1. Untreated wood, all forms (without plastic component)
 - 2. Compostable Plastic bags that meet the Biodegradable Products Institute (BPI) standards for certification.
- ### **3. Allowable Commercial Food Scraps**
- Allowable Commercial Food Scraps are the materials listed in this Exhibit C.3 that may be replaced by a list posted by the Authority's Executive Director in their sole discretion from time to time and provided to the Contractor.
- A. **Commercial Food Scraps.** Allowable Commercial Food Scraps includes, at a minimum, the following materials, or as otherwise required by the Designated Anaerobic Digestion Facility pursuant to Section 6.1.
 - B. **Compostable Plastics.** Allowable Compostable Plastics shall include Compostable bags that meet the Biodegradable Products Institute (BPI) standards for certification.

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EXHIBIT D:
REPORTING REQUIREMENTS

EXHIBIT D: REPORTING REQUIREMENTS

1. General

{Note to Proposer: If Commercial Food Scraps Pre-Processing Services are included, then additional reporting requirements will be added}

Contractor shall prepare and submit monthly, quarterly, and annual reports to the Authority as provided below. Contactor may propose report formats that are responsive to the objectives and audience for each report. With written direction from the Executive Director, the reports to be maintained and provided by the Contractor may be adjusted in number, format, frequency, and content. At the Authority's request, the Contractor shall use standardized reporting forms provided by the Authority or an electronic reporting system specified by the Authority. Each report shall:

- Present the required data separately for each Member Agency and in total for the Service Area.
- Include a certification statement by the responsible Contractor official that, under penalty of perjury, the report being submitted is true and correct to the best knowledge of the responsible official after their reasonable inquiry.

Records shall be maintained in forms and by methods that facilitate flexible use of the data contained in them to structure reports as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- Ensure that the Authority only compensates the Contractor for Transfer and Transport (and Pre-Processing of Commercial Food Scraps) of Franchised Materials (originating in the Authority's service area).
- Ensure that the Authority only compensates Designated Facilities for receipt of Franchised Materials.
- Verify that the Authority's Franchised Materials are Transported to the Designated Facilities, according to the material type.
- Determine and set Per-Ton Rates and evaluate the financial efficacy of operations.
- Allocate Collection, Transfer, Processing, Composting, and Disposal costs to each Member Agency.
- Evaluate past and expected progress towards achieving the Authority's Diversion goals and objectives.
- Provide information needed by the Authority for the purpose of determining compliance with and fulfilling its State reporting requirements pursuant to AB 341, AB1201, AB 1826, SB 54, SB 343, SB 1383, and all Applicable Law
- Provide concise and comprehensive operational information, Tonnage, sector, and program information and metrics for use in fulfilling reporting requirements under Applicable Law.
- Determine needs for adjustment to programs and/or operations.
- Coordinate operational and logistical matters by and between the Contractor and the Authority's Franchised Collector, Reuse Contractor, Recyclables Contractor, Organics Contractor, Disposal Contractor, and/or Mixed Waste Contractor, as applicable.

EXHIBIT D: REPORTING REQUIREMENTS

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

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

Executive Director
Central Contra Costa Solid Waste Authority
1850 Mt. Diablo Blvd., Suite 320
Walnut Creek, CA 94596

2. Monthly Reports

The Contractor shall submit the monthly reports within ten (10) Days after the end of the reporting month. The monthly tonnage reports shall be presented by the Contractor to show the information described below for each month. In addition, each monthly report shall show the monthly data for the past twelve (12) months and the most recently completed four (4) calendar quarters, and totals for the twelve (12) months and each calendar quarter represented. Except when noted below, all tonnages requested are to be net weights of the payload contents of the Collection vehicle or Transfer Vehicle.

All reports shall include, at a minimum, the following information for the Approved Transfer Facility, the Approved Alternate Facility, and the Designated Facility(ies) as appropriate, separated by material type:

A. Tonnage Report

1. Inbound Tons to the Approved Transfer Facility(ies).
 - a. Franchised Material Loads. Inbound Weight Ticket (Receipt) Data
 - i. Actual Tonnage of each inbound Load of Franchised Material Delivered by the Franchised Collector to the Approved Transfer Facility. The Contractor shall submit this data in Excel or a similar format approved by the Authority that allows the data to be summed, divided, etc. and supporting documentation in the form of weight tickets may be requested by the Authority at any time. Data for each Load shall include, at a minimum:
 - Weight ticket number
 - Date Delivered
 - Time Delivered
 - Vehicle identification number
 - Vehicle type (route vehicle or roll-off)
 - Franchised Material type
 - Route number (as applicable, provided by the Franchised Collector)
 - Gross weight
 - Tare weight

EXHIBIT D: REPORTING REQUIREMENTS

- Net weight
 - ii. For all Inbound Tons reported under Exhibit D, Section 2.A.1.a.i, the Contractor shall:
 - Include the percentage allocation of Franchised Materials to each Member Agency and Sector of origin by route (and material type if not otherwise denoted in the route number), as provided by the Franchised Collector, and the date the allocation data was provided by the Franchised Collector. If the allocation has not changed since the prior month, the Contractor shall provide a statement indicating such.
 - Apply those percentage allocations to all Inbound Franchised Material Tons Delivered by route Vehicles by both Member Agency and Sector of origin (Commercial, Single-Family, Multi-Family) during the reporting period.
 - b. Total Inbound Tons to the Approved Transfer Facility. Total Tons of all material Delivered by all Facility Users to the Approved Transfer Facility by material type, Facility User type (e.g. Franchised Materials Delivered by the Franchised Collector, other franchised haulers, and/or unfranchised/Self-Haul materials) and jurisdiction of origin, including the relative percentages of all materials by Facility User type, during the reporting period. The Authority's Member Agencies shall be allocated in this report, pursuant to Section 2.A.1.a.i above, as separate jurisdictions rather than reported as a single origin.
 - c. Approved Alternate Facilities. If the Contractor uses any Approved Alternate Transfer Facility, then the Tonnage data required in Section 2.A.1.a and Section 2.A.1.b shall also be provided individually for the Alternate Facility and aggregated to represent all the Franchised Materials during the reporting period.
2. Outbound Transfer Loads:
- a. Transfer Loads – Outbound Weight Ticket (Receipt) Data
 - i. Actual Tonnage of each outbound Transfer vehicle Load that the Contractor Transports to a Designated Facility. For Designated Facilities to which Contractor Transports Franchised Materials that have been commingled with other materials, Contractor shall provide all outbound weight ticket data prior to any allocations. Contractor shall submit this data in Excel or a similar format approved by the Authority that allows the data to be summed, divided, etc. and supporting documentation in the form of weight tickets may be requested by the Authority at any time. Data for each Load shall include, at a minimum:
 - Weight ticket number
 - Transfer vehicle Transport date

EXHIBIT D: REPORTING REQUIREMENTS

- Transfer vehicle Transport time
 - Vehicle identification number
 - Material type
 - Designated origin (may be a placeholder subject to Section 2.A.2.a.i)
 - Designated Facility or other destination facility (for non-Franchised Materials)
 - Gross weight
 - Tare weight
 - Net weight
- ii. For all Outbound Tons reported under this Section 2.A.2.a.i, the Contractor shall:
- Include the percentage allocation for each material type for Franchised Materials and non-Franchised Materials, as originally calculated pursuant to Section 2.A.1.b above.
 - Apply those percentage allocations to all Outbound Tons for each material type for Franchised Tons (by both Member Agency and Sector of origin) and non-Franchised Materials.
- b. Transferred Loads – Reports to Destination Facilities
- i. The monthly report provided by the Contractor to each receiving facility shall allocate the outbound Tons Delivered to destination facilities by material type and jurisdiction of origin. This report shall allocate tons between Franchised Materials and non-Franchised Materials as calculated in Section 2.A.2.a.ii above and Franchised Materials shall be identified by Member Agency and Sector of origin. This allocation shall be consistent with Section 2.A.1.a.ii, Section 2.A.1.b, Section 2.A.1.c (as applicable), and Section 2.A.2.a.ii above.
3. Outbound Residue from the Designated Mixed Waste Processing Facility. In the event that the Authority directs the Contractor to Transport all or a portion of the Authority's Franchised Solid Waste/Mixed Materials to a Designated Mixed Waste Processing Facility, the Contractor will Transport an amount of Residue from that facility to the Designated Disposal Facility, as directed by the Authority. The Contractor will Transport this Residue to the Designated Disposal Facility on a backhaul after Delivering Mixed Materials to the Designated Mixed Waste Processing Facility to be Processed. Each month the Authority will inform the Contractor of the tons of Residue to be backhauled from the Designated Mixed Waste Processing Facility to the Designated Disposal Facility.
- a. Backhauled Mixed Waste Processing Residue – Outbound Weight Ticket (Receipt) Data

EXHIBIT D: REPORTING REQUIREMENTS

Contractor shall report on the actual Tonnage of each outbound Transfer Vehicle Load of residue that the Contractor Transports from the Designated Mixed Waste Processing Facility to the Designated Disposal Facility. The Contractor shall submit this data in Excel or a similar format approved by the Authority that allows the data to be summed, divided, etc. Data for each Load shall include, at a minimum:

- Weight ticket number
 - Backhaul Date
 - Backhaul Time
 - Vehicle identification number
 - Designated Disposal Facility
 - Gross weight
 - Tare weight
 - Net weight
- i. For all Tons of backhauled Mixed Waste Processing Residue reported under this Section 2.A.3.a.i, the Contractor shall:
- Include the percentage allocation by Transfer Loads by Member Agency and Sector of origin, as applicable, as directed by the Authority.
 - Apply those percentage allocations to all Transfer Load Tons of Mixed Waste Processing Residue.
 - Provide a monthly report to the Designated Disposal Facility that allocates the Tons of Residue Delivered to the Designated Disposal Facility for Disposal by Member Agency jurisdiction of origin.

B. Vehicle Turnaround Times

1. Upon Authority request, or where the Franchised Collector has notified the Contractor that vehicle turnaround time was excessive at the Approved Transfer Facility or Approved Alternate Facility, the Contractor shall report actual vehicle Turnaround Time for each vehicle load delivered by Franchised Collector (determined in accordance with Section 8.8 of the Agreement). The vehicle turnaround time shall be measured as the elapsed time from the vehicle entering the Approved Transfer Facility or Approved Alternate Facility property to the vehicle leaving the property. The duration of vehicle turnaround time tracking and reporting period shall be determined by the Authority.

C. Regulatory Compliance

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

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

2. List of any Violation(s) prior reported and remedied during the reporting period.

D. Load Classification, Rejection, and Contamination

1. Total Tons of Solid Waste, Recyclable Materials, Commingled Organics, Commercial Food Scraps Delivered by the Franchised Collector, separated by route Vehicle Tons and by roll-off vehicle Tons, and Accepted by the Approved Transfer Facility or the Approved Alternate Facility, as applicable.
2. Total Tons of Unpermitted Waste Delivered by the Franchised Collector and Rejected by the Approved Transfer Facility or the Approved Alternate Facility, as applicable, in accordance with Section 5.2 and Section 8.5 of the Agreement.
3. Total Tons of Commingled Organics Delivered to and Rejected by the Approved Transfer Facility or the Approved Alternate Facility, as applicable, due to Contamination in accordance with Section 5.2 of the Agreement.
4. Total Tons of Commercial Food Scraps Delivered to and Rejected by the Approved Transfer Facility or the Approved Alternate Facility, as applicable, in accordance with Section 5.2 of the Agreement.
5. Total Tons of Recyclable Materials Delivered to and Rejected by the Approved Transfer Facility or the Approved Alternate Facility, as applicable, in accordance with Section 5.2.D of the Agreement.
6. Date, time, route number, Franchised Collector truck number, material type, and reason for Contractor rejection of any Franchised Collector Delivered Loads.
7. Photographs of Rejected load.
8. Copy of correspondence to the Franchised Collector notifying them of the Unpermitted or contaminated materials, the Franchised Collector's response, and a narrative of the Franchised Collector's remedy following the notification including the date and time of the remediation, and action(s) taken.

E. Financial Records

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

EXHIBIT D: REPORTING REQUIREMENTS

- e. Any operational records required by the Extended Producer Responsibility Program or Stewardship Organization, if any, related to the Contractor's participation in the Extended Producer Responsibility Program.

3. Quarterly Report

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

A. RDRS Reconciliation

- 1. Copies of all Recycling and Disposal Reporting System (RDRS) Quarterly Report Summaries submitted to CalRecycle during the reporting quarter and underlying supporting data.
- 2. Reconciliation of quarterly data from Section 2.A.1.a.ii, Section 2.A.1.b, Section 2.A.2.a.ii, and Section 2.A.3.a.ii with an explanation of any variance.
- 3. Note that for RDRS purposes all of the Authority's Member Agencies except for the County are part of a Regional Agency. Tons originating from the portions of Unincorporated Contra Costa County that are within the Authority's service area must be added to tons originating from the portions of Unincorporated Contra Costa County outside of the Authority's service area and reported separately from the rest of the Authority's tons for RDRS purposes.

B. Waste Evaluation Reports

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

4. Annual Report

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

- A. Documentation that Contractor paid all government fees and taxes necessary to provide services under this Agreement in accordance with Applicable Law.
- B. An Approved Transfer Facility capacity status report that identifies the remaining permitted capacity, the aggregate capacity committed to other entities through Contractor's contracts, and the available, uncommitted Approved Transfer Facility capacity.
- C. A description of any advances in environmental mitigation measures; any advanced technologies utilized in the course of business; any pilot programs which test advanced technologies; any new third-party certifications for Diversion or other Facility standards; and reports on any recent, pending, or planned changes in facility permits.
- D. A description of any issues, plans, and concerns related to the use of the Approved Transfer Facility during the past year and anticipated changes for the following year, including but not limited to, additional services provided or available, actual or anticipated need for use of

EXHIBIT D: REPORTING REQUIREMENTS

Alternate Facilities, regulatory issue or concerns, permit and regulatory violations, or changes in staffing, equipment, or operations.

- E. A certified statement of fact pertaining to whether the Approved Alternate Facility was used during the report year to provide services under this Agreement and if so, documentation of all Authority Delivered materials sent to the Approved Alternate Facility.
- F. An explanation of any recently adopted laws or regulations, or changes to laws or regulations that Contractor expects may impact this Agreement or Contractor's operations during the Agreement Term.
- G. Any State facility report Contractor submits to CalRecycle or to Contractor's Disposal Reporting System coordinator. Such State facility reports include those submitted for any of the Approved Facilities Contractor is utilizing under this Agreement. Such annual submittals shall be in accordance with Applicable Law.
- H. Annual vehicle inventory in accordance with Section 8.10.C of the Agreement.
- I. Any public education and outreach materials created and distributed, as applicable.

**EXHIBIT E:
RESERVED**

EXHIBIT F:
LIQUIDATED DAMAGES

EXHIBIT F: LIQUIDATED DAMAGES

Except as otherwise provided in Section 14.10 of the Agreement, the Authority may assess Liquidated Damages in the event Contractor fails to meet specific quantifiable standards of performance in accordance with the terms and conditions of the Agreement.

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of Liquidated Damages. The table describes the incident(s) or event(s) that trigger Liquidated Damages the thresholds by which Liquidated Damages may be assessed, and the unit measures and dollar amounts of Liquidated Damages. The dollar amounts of all Liquidated Damages listed in the table below shall be adjusted on July 1 of each year by the Annual Percentage Change in the CPI-U.

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
Performance Area No. 1: Contractor Operations		
<u>Vehicle Turnaround Guarantees</u>	Failure to meet vehicle turnaround guarantees.	\$100 per vehicle delayed
<u>Operating Hours/Days</u>	Failure to open the Approved Transfer Facility to receive Franchised Materials from the Authority's contractors during operating days and hours.	\$1000 per hour that the Approved Facility is not open to receive Authority Franchised Materials
<u>Designated Facilities</u>	Failure to Deliver Franchised Materials to a Designated Facility.	\$500 per Ton
<u>Uncovered Materials</u>	Failure to properly cover materials in vehicles, or to otherwise take reasonable actions to prevent wind-blown or other spillage from vehicles.	\$300 per incident
<u>Vehicle Leaks</u>	Failure to correct leakage of fluids from an on-road vehicle prior to using a leaking on-road vehicle within the Service Area.	\$300 per incident

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Vehicle Non-Compliance</u>	Failure to maintain all vehicles and equipment in a safe and operable condition, failure to have a vehicle properly licensed, registered and inspected, or use of any vehicle that exceeds fifteen (15) years of age.	\$500 per Day per incident
<u>Scale Operations</u>	Failure to provide substitute scales.	\$250 per hour
<u>Vehicle Weights</u>	For any on-road vehicles, exceeding the weight limitations as set forth in the California Vehicle Code.	\$100 per Load
<u>Licensed Drivers</u>	Failure to have a vehicle driver properly licensed.	\$500 per incident or \$100 per Day, whichever is greater
Performance Area No. 2: Facility-Related Services		
<u>Capacity Guarantee</u>	Failure to provide sufficient capacity needed to fulfill Contractor's obligation to the Authority, whether through the Approved Transfer Facility / or any Approved Alternate Facility.	\$1000 per Day (not to exceed \$100,000 total) and the greater of either (a) \$150 per Ton of Franchised Material the Contractor does not Accept at the Approved Facilities or an Approved Alternate Facility, or (b) the actual cost of Transfer and Transport to an alternate facility
<u>Maintaining Source Separation</u>	Failure to maintain segregation of any Recyclable Materials / Commingled Organics / Commercial Food Scraps / Solid Waste / Mixed Materials (if Mixed Waste Processing is implemented) Delivered to the Approved Transfer Facility.	\$500 per Ton of Source Separated Franchised Material Delivered to Contractor's Approved Transfer Facility that Contractor mixes with any other type of material at the Approved Transfer Facility

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Preventing Contamination</u>	Failure to separately receive, store, Transfer, or otherwise manage Recyclable Materials / Commingled Organics / Commercial Food Scraps that were Source Separated by the Generator and Delivered by the Franchised Collector with acceptable levels of Contamination in a manner that does not result in Contamination (i.e., Contractor's actions shall not result in Contamination of materials).	150% of the per Ton Tipping Fee that would have been otherwise paid to the Contractor for services for the material type that became Contaminated; provided, however, that if the Contaminated material was Delivered to the Designated Facility and a Contamination fee was charged to the Authority, then that fee shall also be charged to the Contractor
<u>Failure to Meet Regulatory Standards Standards/Excess Residue</u> Pre-Processing Only	Failure to meet the standards for SB 1383 for Incompatible Materials and/or remnant organic materials under SB 1383 for Pre-Processing of Commercial Food Scraps.	\$5,000 per Incident
<u>Residue Removal</u> Pre-Processing Only	Failure to Pre-Process Commercial Food Scraps to meet the specifications of the Designated Facility for Pre-Processed Food Scraps Delivered.	\$100 per Ton calculated on the Tons of Commercial Food Scraps that were Pre-Processed and produced excess Residue above the allowable Residue level requirements
Performance Area No. 3: Recordkeeping and Reporting		
<u>Timeliness of Report</u>	Failure to submit any report on time to the Authority (any report shall be considered late until such time as a correct and complete report is received by the Authority	\$250 per day for each day a report is late

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Record Retention and Access to Records</u>	Failure to provide or make available to the Authority and its authorized representatives reports, records, recordings, and data that are required to be generated or collected and retained by the Contractor.	\$250 per day for each day that the requested records are not available to the Authority
<u>Contractor Responsiveness</u>	Failure to provide a complete and accurate written response to the Authority's request within the timeframe specified in the Agreement or within the timeframe specified in the Authority's request (which shall be less than ten (10) Business Days for routine and customary requests and less than fifteen (15) Business Days for requests that have not previously been made) if no timeframe is specified in the Agreement.	\$250 per day for each day that the requested information is late

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Information Accuracy</u>	Contractor's failure to provide information, or providing incomplete, misleading or otherwise inaccurate information or reporting, to the Authority which is not corrected prior to the Authority's reliance on such erroneous or inaccurate information under or in regard to this Agreement, including but not limited to providing inaccurate information to another party or if the error otherwise masks Contractor's performance under this Agreement. (Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.).	\$500 per event per jurisdiction per month
Performance Area No. 4: Miscellaneous		
<u>Vehicle Purchases</u>	Failure to obtain express approval from the Authority's Executive Director on Contractor's initial or annual vehicle purchasing schedule prior to purchasing vehicles intended for use in the performance of this Agreement.	\$5,000 per vehicle
<u>Use of Subcontractors</u>	Failure to secure written approval from the Authority prior to using a Subcontractor to perform any obligations of the Agreement.	\$1,000 per incident that the Contractor fails to secure written approval from the Authority prior to using a Subcontractor

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Displaced Workers</u>	Failure to offer employment to existing employees working under the Authority's current agreements who became unemployed by reason of the change in Contractor(s).	\$5,000 per employee

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

Contractor

Authority

Initial Here: _____

Initial Here: _____

EXHIBIT G:
CONTRACTOR'S PROPOSAL

EXHIBIT H:
APPROVED AFFILIATES AND SUBCONTRACTORS

EXHIBIT I:
LABOR AGREEMENTS

EXHIBIT J:
IRAN CONTRACTING CERTIFICATION

EXHIBIT J: IRAN CONTRACTIN CERTIFICATION

CONTRACTOR'S IRAN CONTRACTING ACT CERTIFICATION

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

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

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

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

_____ (Company Name)

By: _____ (Signature)

Name: _____ (Printed Name)

Title: _____

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EXHIBIT K:
PERFORMANCE BOND

EXHIBIT L:
GUARANTY AGREEMENT

EXHIBIT L: GUARANTY AGREEMENT

THIS GUARANTY (the “Guaranty”) is given as of the ____ day of ____, 2024.

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

- A. {Insert Contractor Name}., hereinafter (“CONTRACTOR”) is a corporation organized under the laws of the State of _____, all of the issued and outstanding stock of which is owned indirectly _____, (Guarantor).
- B. CONTRACTOR and the Central Contra Costa Solid Waste Authority (“AUTHORITY”) have negotiated an Agreement for Recyclable Materials, Commingled Organics, Mixed Materials (if Mixed Waste Processing is implemented), and Solid Waste Transfer and Transport, and Commercial Food Scraps Pre-Processing, Transfer and Transport Services, (hereinafter “Agreement”). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the AUTHORITY entering into the Agreement, that Guarantor guaranty CONTRACTOR’S performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the AUTHORITY to enter into the Agreement.

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

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

Authority/{Insert Contractor Name}

EXHIBIT L: GUARANTY AGREEMENT

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

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

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

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

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

EXHIBIT L: GUARANTY AGREEMENT

No Waivers. No delay on the part of the AUTHORITY in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the AUTHORITY to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the AUTHORITY and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the AUTHORITY in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder, providing the Authority is the prevailing party, otherwise, in all instances in which Guarantor is the prevailing party, Guarantor shall be entitled to recover from Authority its reasonable attorney's fees and reasonable costs and expenses incurred by the Guarantor in defending this Guaranty against the AUTHORITY.
7. Governing Law: This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity, and performance. Guarantor agrees that any suit, action, and other proceeding brought by the AUTHORITY or other party to enforce this Guaranty may be brought and concluded in the courts of the State of California, in Santa Clara County or Federal District court for northern California, which shall have exclusive jurisdiction over such suit, action, or proceeding. Guarantor appoints the following person as its agents for service of process in California: CT Corporation System.
8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
9. Binding on Successors. This Guaranty shall inure to the benefit of the AUTHORITY and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.
10. Authority. Guarantor represents and warrants that it has the corporate power and the authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.
11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

EXHIBIT L: GUARANTY AGREEMENT

To the AUTHORITY: Executive Director
 Central Contra Costa Solid Waste Authority
 1850 Mt. Diablo Blvd, Suite 320
 Walnut Creek, CA 94596

with a copy to the AUTHORITY Attorney at the same address.

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

Copy to: {email}

With a copy to the CONTRACTOR:

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

EXHIBIT L: GUARANTY AGREEMENT

IN WITNESS WHEREOF, the AUTHORITY and Guarantor have executed this Agreement as of the day and year first above written.

<p>GUARANTOR:</p> <p>{Company}.</p> <p>(name of Guarantor)</p> <p>By: _____</p> <p style="padding-left: 40px;">(sign here)</p> <p>{Name}, {Title}</p> <p>By: _____</p> <p style="padding-left: 40px;">(sign here)</p> <p>{Name}, {Title}</p>	<p>CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY</p> <p>A Municipal Corporation</p> <p>_____</p> <p>{Name}, {Title}</p> <p>RECOMMENDED FOR APPROVAL:</p> <p>_____</p> <p>{Name}</p> <p>Title</p> <p>APPROVED AS TO FORM:</p> <p>AUTHORITY Attorney</p> <p>_____</p> <p>{Name}</p> <p>AUTHORITY Attorney</p>
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EXHIBIT L: GUARANTY AGREEMENT

Proper notarial acknowledgment of execution by Guarantor must be attached.

Chairman, president or vice-president and secretary, assistant secretary, CFO or assistant treasurer must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

STATE OF ____)

COUNTY OF ____)

I, _____, a Notary Public, do hereby certify that on this __ day of _____, 2020 personally appeared before me David Reed and Jeff Bennett, known to me to be the officers whose names are subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and in the capacity therein expressed.

Name: _____

My Commission Expires: _____

EXHIBIT M:
CAPITAL REQUIREMENTS AND SPECIFICATIONS

**EXHIBIT N:
RESERVED**

**EXHIBIT O:
RESERVED**

EXHIBIT P:
LOAD CLASSIFICATION
