

SERVICE AGREEMENT

BETWEEN

CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

AND

FOR

MIXED WASTE PROCESSING SERVICES

PRELIMINARY REVIEW DRAFT

MARCH 2024

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**SERVICE AGREEMENT
BETWEEN
CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
AND
_____**
**FOR
MIXED WASTE PROCESSING 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 **Mixed Materials Processing 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, Composting, 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 Mixed Waste Processing 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 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 Process and Divert;

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, privilege and obligation to perform the following activities related to Franchised Materials generated within the Service Area: to Process Mixed Materials and Transport and Dispose of Mixed Waste Processing Residue . 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: Overall system cost will be considered when evaluating proposals. If the Mixed Waste Processing Facility proposed is less than twenty-five (25)-miles from the Authority's Service Area boundary, then proposers may rely on Mixed Materials being delivered directly to the Mixed Waste Processing Facility by the Franchised Collector provided the Mixed Waste Processing Facility is able to accept direct deliveries. However, if the Mixed Waste Processing Facility proposed is more than twenty-five (25) -miles from the Authority's Service Area boundary, then proposers are encouraged, but are not required to offer a Transfer solution as part of their proposal and proposers should not rely on the Authority providing a Transfer option.}:

- A. Reserved.
- B. Reserved.
- C. Reserved.
- D. Transporting and Disposing of Mixed Waste Processing Residue at a permitted Disposal Site.

{Note to Proposer: Residue from Mixed Waste Processing will either be transported to 1) the Authority's Designated Disposal Facility or 2) an alternate Disposal facility selected by the proposer. The Agreement Draft is written to include Mixed Waste Processing Residue Transport and Disposal. Proposer should indicate the Disposal and Transportation cost components of the tip fee if the proposer is responsible for Residue Disposal.

- E. Reserved.
- F. Reserved.
- G. Processing Mixed Materials.
- 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. 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 material being collected for Diversion is otherwise Accepted 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, 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 under 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, exclusive of any Approved Affiliates and/or Subcontractors, 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. Transferring Recyclable Material, Commingled Organics, Commercial Food Scraps, Solid Waste, or Mixed Materials. The Contractor shall not engage in the Transfer of any Recyclable Material, Commingled Organics, Commercial Food Scraps, Solid Waste, or Mixed Materials. The Contractor acknowledges that this service(s) is being provided under a separate agreement(s) between the Authority and other Contractor(s). {Note to Proposer: To be updated during negotiation upon successful completion of Franchised Collector agreement. Proposer may propose Transfer of Mixed Materials per note at top of Section 2.1.}
 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 Processing of Recyclable Materials. The Contractor acknowledges that this service(s) 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. The Contractor acknowledges that this

service is managed under a separate agreement between the Authority and the Transfer Contractor/Composting Contractor.

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.
9. Reserved.
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 Services.
 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 sixty-thousand dollars (\$60,000) 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 Processing and Diversion of Franchised Materials 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 Fees 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 14.14.

- 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, the Contractor (other than due to Uncontrollable Circumstance) 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 Mixed Materials Delivered to the Contractor during the Term of the Agreement. The Parties acknowledge that the quantity and composition of Mixed Materials will be impacted during the Term of the Agreement based on a number of unpredictable factors such as, but not limited to, those factors listed below.

- A. The state of the economy.
- B. The number of residents and the number and type of businesses.
- C. Participation level of residents and businesses in various 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 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 Processing, and Diverting of all Mixed Materials 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, Transfer Contractor, Disposal Contractor, Recyclables Contractor, Organics Contractor, or Reuse 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 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 and Option to Extend

The Term of this Agreement shall commence March 1, 2027 (“Commencement Date”) and continue in full force for a period of ten (10) years {term is subject to +/- five (5) years and will be finalized during negotiation}, through and including June 30, 2037, unless the Agreement is extended in accordance with this Section or terminated pursuant to Article 14. During the Implementation Period, the Contractor shall perform all activities necessary to prepare itself to start providing the services required by this Agreement on the Commencement Date.

At the Authority’s sole discretion, without negotiation, and with no change in compensation other than as provided for in Article 10, the Term of this Agreement may be extended by written notice of the Authority’s Executive Director, without need of written amendment, for up to ____ () months {Note to Proposer: to be negotiated.} in one or more periods specified by the Authority’s Executive Director. If the Authority elects to exercise this option to extend the Term, its Executive Director shall give written notice of its election to the Contractor, specifying the number of months by which it wishes to extend the Term, no less than one hundred eighty (180) Days prior to the expiration date then existing under this Agreement.

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

ARTICLE 5 MATERIAL ACCEPTANCE AND MIXED WASTE PROCESSING SCOPE OF SERVICES

This Article 5 describes the general requirements for the Contractor’s obligation to Accept and Process 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. {Note to Proposer: This Article 5 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 5 may be moved to Exhibit B: Scope of Work.}

5.1 Overview of Scope of Services

- A. **Load Classification.** {Note to Proposer: This section will be updated following successful negotiations and discussions with the selected contractor(s). The obligation will appear here, and the process may be moved to an exhibit.} 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 Mixed Waste Processing 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.

B. Reserved.

- C. **Capacity.** The Contractor warrants that, as of the Commencement Date, it has sufficient Processing Facility capacity at the Approved Mixed Waste Processing Facility to receive the Authority's Mixed Materials through the Term and that it shall maintain that Mixed Waste Processing Facility capacity through the Term (including any extension).
- D. **Responsibility for Materials.** Once the Franchised Collector Delivers Mixed Materials to the Approved Facility(ies) and such materials are Accepted by the Contractor, ownership and the right to possession of the Mixed Materials will transfer directly from the Franchised Collector or other Person designated to Deliver Mixed Materials 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 Mixed Waste Processing 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 Mixed Waste Processing 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 Mixed Waste Processing Facility, the Contractor shall be entitled to pursue whatever remedies, if any, the Contractor may have against Person(s) bringing that Unpermitted Waste to the Approved Facility.

If the Contractor identifies Unpermitted Waste Delivered to the Approved Mixed Waste Processing 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 Mixed Materials.** The Contractor shall be responsible for minimizing Contamination of Mixed Materials Delivered to the to the Approved Mixed Waste Processing Facilities through its own operational practices.

5.3 Reserved

5.4 Mixed Waste Processing

- A. **Allowable Mixed Materials.** If Mixed Waste Processing is implemented during the Term, the Authority may direct the Franchised Collector to Deliver certain Mixed Materials, Collected by the Franchised Collector as Solid Waste, to Contractor's Approved Mixed Waste Processing Facility. Contractor shall Accept all the Authority's Mixed Materials Delivered by the Franchised Collector at the direction of the Authority and shall Process and Compost all Mixed Materials to maximize Recovery, Recycling and Diversion of all materials listed in Exhibit C. The Contractor shall also Recover from the Authority's Mixed Materials additional types of Recovered Materials described in Exhibit G for no additional charge, unless otherwise agreed to by the Authority. The Contractor shall be expressly precluded from requesting any Special Tipping Fee Review, as described in Section 10.4 or 10.5, for any materials Contractor was previously Recovering and Diverting as described in Contractor's Proposal, even if the addition of the subject material is covered under what might otherwise be considered an eligible item under Section 10.4.A.

Additionally, if existing Extended Producer Responsibility Programs (including but not limited to, AB 1201, SB 1383, SB 54, and SB 343) or new Extended Producer Responsibility Programs, as further described in Section 7.5, require additional materials be Diverted that are not otherwise identified in Exhibit C and Exhibit G, and the Authority incorporates such materials into the Authority's Collection program and updates Exhibit C, as appropriate, Contractor shall Accept, Process, Compost, Recover, and Divert those materials. The Authority may also request the Contractor participate in another type of program to receive the subject material for Processing, Composting, Recovery, and Diversion that would constitute a change in scope, as described in Section 2.4, although the Authority is under no obligation to do so. Notwithstanding the provisions of Section 10.4.A.4, any and all such changes described in this Section 5.4.A related to Extended Producer Responsibility Programs shall be treated as a change in scope pursuant to Sections 2.4, 10.4.A.1, and 10.5 and shall not be considered a Change in Law.

Further, the Contractor shall be expressly precluded from requesting a Special Tipping Fee Review, as described in Section 10.4, to the extent any such item or program covered under an Extended Producer Responsibility Program that compensates the Contractor for the

Processing, Composting, Recovery and/or Diversion of such materials, in whole or in part. The Authority reserves the right to trigger a Special Tipping Fee Review or direct the Contractor to otherwise remit compensation attributable to the services under this Agreement, as provided in Section 7.5.E, if the Contractor receives compensation for the Processing, Composting, Recovery, and/or Diversion of any such item from the Authority's Service Area under an Extended Producer Responsibility Program.

Further, to the extent that that either Party becomes aware that Exhibit C might need to be modified as a result of an Extended Producer Responsibility Program, that Party shall notify the other Party within five (5) Days of being made aware of such change. Upon the Authority's request, and to the extent the Authority desires to incorporate any new materials into the Authority's Collection Program, the Parties may meet and confer to discuss the timeline and process for the Authority to implement such changes to the Collection Program and for Contractor to make necessary adaptations to its processing method to ensure Recovery and Diversion of the subject materials. The Authority's Executive Director shall update Exhibit C, as appropriate, and the Contractor shall implement any required changes to its Processing and Composting methods on a timeline mutually agreed to by the Contractor and the Authority or before any required deadlines identified in the Extended Producer Responsibility Program, whichever is sooner. Contractor shall maintain records in accordance with Article 12 and Exhibit D. Pursuant to Section 14.3, Contractor shall bear full responsibility for complying with all Applicable Law and the provisions of this Agreement.

B. Processing and Composting Method. The Contractor shall Accept all Mixed Materials at the Approved Mixed Waste Processing Facility and shall Process and Compost such material in accordance with Contractor's Proposal as detailed in Exhibit G. Contractor shall operate the Approved Mixed Waste Processing Facility in accordance with Applicable Law and all standards of performance described in Article 8. Contractor shall meet the following minimum Processing and Composting standards at the Approved Composting Facility:

1. Processing. {Note to Proposer: The following may be revised to include Processing details specified in Contractor's proposal.}
2. Composting. {Note to Proposer: The following may be revised to include Composting details specified in Contractor's proposal.}
 - a. Composting preparation activities shall include, at a minimum, inspection and removal of Hazardous Waste; removal of plastic bags; and, other necessary mechanical preparation(s).
 - b. Composting shall be accomplished using recognized Composting methods that have been demonstrated to consistently produce a stable, mature Compost product suitable for general purpose use, similar to the U.S. Composting Council's Class 1 rating.
 - c. Post-Composting Processing activities shall include screening to remove plastics and other contaminants from the Compost Product.
 - d. Finished Compost Products shall meet environmental health standards in accordance with Applicable Law including, but not limited to, the physical contamination limits of 14 CCR Section 17868.3.1. Upon the Authority's request,

the Contractor shall make available any sampling reports and supporting documentation necessary to demonstrate compliance with this Section.

- C. **Residue Allocation and Disposal.** {Note to Proposer: Proposer must comply with Section 12.6 and shall also describe how they will implement and monitor allocation methodology in their proposal.} Contractor shall use the method described in Section 12.6 for tracking and allocating Mixed Materials Residue and as further described in the Contractor’s Proposal, adjusted or modified by mutual agreement between the Contractor and the Authority, and approved by the Authority in Exhibit [redacted]. Contractor’s Residue allocation methodology shall allow Contractor to accurately allocate the Authority’s share of the total Residue generated from the Processing and Composting of Mixed Materials at the Approved Mixed Waste Processing Facility. Contractor shall report Residue from both Mixed Materials Processing and Composting to the Authority monthly in accordance with Section 12.6 and Exhibit D. Contractor shall not change the Residue level calculation method without prior written approval from the Authority.

Residue from the Contractor’s Processing and Composting of Mixed Materials shall be Transported and Disposed at the permitted Disposal facility by the Contractor at the Contractor’s sole expense. The Contractor shall be fully responsible for the safe Disposal of all such Residue in accordance with Applicable Law. Residue delivered for Disposal shall not contain any Excluded Waste. Contractor shall maintain records and submit reports related to the permitted Disposal facility, in accordance with Exhibit D.

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

5.5 Reserved

5.6 Reserved

5.7 Reserved

5.8 Right to Expand or Reduce Scope

{Note to Proposer: Transfer services may or may not be incorporated into the Contractor’s proposal depending on the location of the proposed Facility in relation to the Authority’s Service Area boundary, and whether Transfer services are required at the proposed Facility or direct Deliveries by the Franchised Collector to the proposed Processing Facility are allowed or prohibited. This section will be updated during negotiations to only include applicable adjustments to services relative to proposer’s proposal}

- A. **Transfer Services.** The Authority may direct Contractor to modify the method of Accepting Mixed Materials for Mixed Waste Processing at the Contractor’s Approved Mixed Waste Processing Facility. If the Contractor is so directed pursuant to Section 5.8.A.1, then Contractors Tipping Fees shall be adjusted, as applicable, prior to the Commencement Date; if the Contractor is so directed by the Authority pursuant to Section 5.8.A.2, then Sections 2.4 and 10.5 shall apply.

Contractor acknowledges and understands the Authority’s Request for Proposals (RFP) for post-Collection services was designed to incorporate a variety of options for different services to maximize the cost-effectiveness and service-related benefits to the Authority, its Member

Agencies, and Subscribers. The Contractor also acknowledges and understands that the RFP for Collection services will not be released until after all the post-Collection service agreements are executed, inclusive of this Agreement, and that the location of the Franchised Collector's Maintenance Yard where the Franchised Collector's routes will begin and end will be determined as part of that process. The Contractor further acknowledges that the termination date of the Franchised Collector's Agreement and the Authority's other service agreements may not coincide with the termination date of this Agreement. Therefore, in consideration of the Authority's granting of certain rights to the Contractor under this Agreement and the Authority's desire to offer its Member Agencies and Subscribers the greatest value for services rendered throughout the Term of this Agreement, the Contractor acknowledges and agrees the Authority reserves the following rights:

1. Prior to the date that is thirty (30) Days after the Authority executes the agreement with the Franchised Collector, the Authority may, in its sole discretion, do any of the following:
 - a. Remove services related to the Transfer of Mixed Materials from services provided by Contractor under this Agreement, including all compensation for such services, and instead require the Contractor Accept Deliveries of the Authority's Mixed Materials from the Franchised Collector.
 - b. Replace Transfer services for Mixed Materials provided by the Contractor with Transfer services for Mixed Materials the same services to be provided by the Authority's Transfer Contractor, including the removal of all compensation for such services.
 - c. Add a requirement for the Contractor to Accept Deliveries of Mixed Materials from the Authority's Transfer Contractor rather than the Franchised Collector.
2. Following the date that is thirty (30) Days after the Authority executes the agreement with the Franchised Collector, the Authority may, in its sole discretion, do any of the following:
 - a. Remove services related to the Transfer of Mixed Materials from services provided by Contractor under this Agreement, including all compensation for such services, and instead require the Contractor Accept Deliveries of the Authority's Mixed Materials from the Franchised Collector.
 - b. Replace Transfer services for Mixed Materials provided by the Contractor with Transfer services for Mixed Materials the same services to be provided by the Authority's Transfer Contractor, including the removal of all compensation for such services.
 - c. Add a requirement for the Contractor to Accept Deliveries of Mixed Materials from the Authority's Transfer Contractor rather than the Franchised Collector.

B. Reserved.

5.9 Facility Operations

The Contractor shall provide Processing and Composting services at the Approved Mixed Waste Processing 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 Approved Mixed Waste Processing Facility including all buildings, scales, roads, utilities, equipment, and other Facility requirements.
- B. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations and maintenance.
- C. Operating and maintaining the scale house and scale system and weighing all inbound Mixed Materials and outbound Residue, and Recovered Organic Materials and Recyclables 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 Mixed Waste Processing Facility users, visitors, and employees.
- E. Accepting Mixed Materials Delivered by Franchised Collector from the Service Area.
- F. Safely managing the Mixed Materials Accepted at the Approved Mixed Waste Processing Facility, including, but not limited to, meeting requirements of Section 5.2.
- G. Reserved.
- 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. Reserved.
- J. Reserved.
- K. Reserved.
- L. Reserved.
- M. Reserved.
- N. Reserved.
- O. Reserved.

ARTICLE 6

RESIDUE DISPOSAL SCOPE OF SERVICES

6.1 Reserved

6.2 Residue Disposal

- A. The Contractor shall be solely responsible for the Transport of all Mixed Waste Processing Residue from the Approved Mixed Waste Processing Facility and shall safely and lawfully Dispose of Residue at a permitted Disposal Site. Residue Transportation and Disposal Site tipping fees are at the sole expense of the Contractor. The Authority reserves the right to

redirect Residue pursuant to Section 5.8. {Note to Proposer: Upon successful completion of the Franchised Collector agreement, Authority may direct Contractor to use a Designated Disposal Facility and/or a Transfer Facility for Residue Disposal; however, Proposer should propose assuming the above text.}

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.

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 Mixed Waste Processing. 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 Mixed Materials delivered by the Franchised Collector multiplied by the Tipping Fee for Mixed Materials in the subject calendar month. Tipping Fees for Mixed Waste 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 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 ___. 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 Processing and Composting 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 an 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 an 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 an 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 Processing requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Processing requirements shall be addressed as a change in scope in accordance with Section 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 Mixed Waste Processing 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 a drop-off program(s) at the Approved Mixed Waste Processing, 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 Authority Extended Producer Responsibility Program requests and/or requirements 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 costs associated with such participation. Additionally, the Contractor shall be expressly precluded from requesting any Special Tipping Fee Review, as described in this Section, for any materials Contractor represented as already being Recovered and or Diverted, as described in Exhibit G, even if 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. The Contractor's annual Recyclable Materials Characterization Study, specified in Section 7.6, is not subject to this section and shall be conducted in accordance with Section 7.6 and Exhibit N.

7.7 Reserved

7.8 Reserved

7.9 Materials Characterization

{Note to Proposer: The Authority may require a Characterization Study and/or Recovery rate testing for the Mixed Waste Processing Facility, subject to negotiations.}

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, 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 Mixed Materials Prohibited

Mixed Materials may not be Disposed in lieu of Mixed Waste Processing except as otherwise provided in 8.15.F. If approved by the Executive Director, Contractor may Dispose, 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 Working Days and Hours of Operation

- A. **Reserved**
- B. **Reserved**
- C. **Approved Mixed Waste Processing Facility.** The Contractor shall operate the Approved Mixed Waste Processing Facility for the receipt of the Authority's Mixed Materials in accordance with the days and hours of operation set forth below. At a minimum, the Contractor shall Accept Mixed Materials Monday through Friday from _____ a.m. to _____ p.m. and _____ a.m. to _____ p.m. on Saturdays. The Contractor may not change the specific times or reduce the total number of hours during which the Contractor Accepts the Authority's Mixed Materials 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.
- D. **Holiday Schedule.** The Contractor may request approval from the Authority to not Accept and 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.

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 Facility. Contractor shall ensure that Alternate Facilities comply with all provisions of this Agreement and Applicable Law.
- B. **Alternate Facility Arrangements.** The Contractor's arrangements with Approved Alternate Facilities must ensure that Contractor can Accept and Process Mixed Materials at 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 Mixed Materials on a continuous basis for no less than thirty (30) Days. Should Contractor's use of the Approved Alternate Facility exceed thirty (30) Days, the Authority may require the Contractor to provide additional reasonable assurances of the Approved Alternate Facility's ability to Accept Mixed Materials 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 Mixed Materials for reasons other than Uncontrollable Circumstances, following Authority approval given in the Authority's sole discretion, Contractor shall:
1. Perform services at another Mixed Waste Processing Facility owned by it or an Affiliate at a price not to exceed the Tipping Fee established pursuant to Article 10 and Exhibit E. Contractor shall be solely responsible for any additional Transportation costs incurred by the Franchised Collector in Delivering the Authority's Mixed Materials to the other Processing Facility.
 2. Arrange for the Authority's Mixed Materials to be Processed at another Mixed Waste Processing Facility not owned by it or an Affiliate, in which case Contractor shall pay any difference in the fees charged at that Mixed Waste Processing 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 Mixed Materials at the Approved Mixed Waste Processing 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, less additional Transport costs if the distance to the Approved Alternate Facility is greater than the distance to the Approved Processing Facility. 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 Mixed Waste Processing 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 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 Mixed Waste Processing Facility required for vehicles Delivering the Authority's Mixed Materials to safely and efficiently access and use the Approved Mixed Waste Processing Facility. The Contractor shall direct on-site traffic to appropriate unloading areas and provide a safe working environment for Facility Users, visitors, and employees. The Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas. The Contractor shall maintain all signs at the Approved Mixed Waste Processing Facility in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of Persons using the Approved Mixed Waste Processing Facility and to facilitate safe and efficient traffic flow at the Approved Mixed Waste Processing 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 Mixed Materials) to the Approved Mixed Waste Processing 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 Mixed Waste Processing Facility property to the vehicle leaving the Approved Mixed Waste Processing Facility property. The Contractor shall operate the Approved Mixed Waste Processing Facility so that all Franchised Collector vehicles are processed, unloaded, and exited from the Approved Mixed Waste Processing 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 Mixed Waste Processing 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 Mixed Waste Processing 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 Mixed Waste Processing Facility. The Contractor shall maintain at least two State-certified motor vehicle scales at each Approved Mixed Waste Processing Facility in accordance with Applicable Law. The Contractor shall provide documentary evidence of such certification within ninety (90) Days after the Commencement Date and within ten (10) Business Days after 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 and outbound Collection vehicles Delivering Mixed Materials. 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 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 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 Mixed Waste Processing Facility is inoperable, being tested, or otherwise unavailable, the Contractor shall use reasonable business efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired. The Contractor shall arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, the Contractor shall immediately obtain a temporary substitute scale(s).
- D. **Estimates.** Pending substitution of portable scales or during power outages, the Contractor shall estimate the Tonnage of the Mixed Materials Delivered to and Accepted at the Approved Mixed Waste Processing Facility by utilizing the arithmetic average of each vehicle's recorded Tons of that specific type of Mixed Materials Delivered on its preceding three (3) Deliveries, on the same day of the week, to the Approved Mixed Waste Processing 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 Mixed Materials to the Approved Mixed Waste Processing Facility.

- E. **Testing.** The Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months or upon Authority request.
- F. **Weighing Standards and Procedures.** At the Approved Mixed Waste Processing Facility, the Contractor shall weigh and record inbound weights of all Franchised Collector vehicles Delivering Mixed Materials when the vehicles arrive at the Approved Mixed Waste Processing Facility, and weigh and record outbound weights of Franchised Collector vehicles for which the Contractor does not maintain tare weight information. The Contractor shall provide each driver a receipt showing the date, time, and quantity of materials that the vehicle Delivered to the Approved Facility.
- G. **Records.** The Contractor shall maintain computerized scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials Delivered, type of material, company/hauler identification, and classification, type, weight, and destination of material (where the destination of materials shall be the market location to where materials are Transported from the Approved 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 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 Reserved

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 Mixed Waste Processing Facility 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 Processing 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 Mixed Waste Processing Facility and provide all services required by this Agreement. The Contractor shall place the equipment in the charge of competent operators. The Contractor shall repair and maintain all equipment at its own cost and expense.

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 and Delivery of Mixed Materials, including directions to unload vehicles in designated areas, accommodating operations and maintenance activities, and complying with Unpermitted Waste exclusion programs.

8.14 Marketing

- A. **Market Arrangements.** The Contractor shall maintain long-term relationships with materials brokers, develop relationships with new materials brokers, continually monitor market conditions, and have the ability to anticipate and react to severe market demand and fluctuations in materials' quantity, composition, and pricing. The Contractor shall use both domestic and foreign / local and regional markets to maintain continued material movement and obtain the highest and best use, as described in subsection C below, for the market value.
- B. **Recovered Materials Marketed.** The Contractor shall market Recovered Materials in the categories and grades listed in Exhibit O. If the Contractor desires any modifications to the

Recovered Material categories or grades in Exhibit O during the Term of the Agreement, the Contractor shall request approval from the Authority and such approval shall be obtained from the Authority before changes are implemented. {Note to Proposer: Specific details regarding Recovered Materials marketing to be added based on proposer's Operations Plan and contract negotiations.}

- C. **Highest and Best Use.** The Contractor's marketing strategy shall include the promotion of the highest and best use of materials for waste reduction, prevention, reuse, refill, repair, recovery, and Recycling and Composting, as established by Applicable Law and Extended Producer Responsibility Programs. Where commercially reasonable, the marketing strategy should include the use of local, regional, and domestic markets, in this preferential order, for Recovered Materials for Recycling.
- D. **Responsible End Markets.** The Contractor shall ensure the Authority's Recovered Materials are Delivered to and Recycled at Responsible End Markets and shall maintain all records necessary to demonstrate compliance with this Section and Applicable Law. The Contractor shall provide records to the Authority demonstrating compliance with this Section in accordance with Article 12 and Exhibit D.
- E. **Recordkeeping.** The Contractor shall maintain complete and accurate marketing records in accordance with Article 12 including, but not limited to, Tonnage of material marketed, price, revenue received, purchaser name, physical address of the final destination of marketed Recovered Materials, and the specified end-use of marketed Recovered Materials.
- F. **Marketability of Recovered Materials.**

- 1. General. The Authority acknowledges that the Contractor is required to: i) engage in marketing Recovered Materials on the open market, which may include participating in markets that the Contractor has little influence over; ii) store such Recovered Materials prior to marketing in accordance with its facility permits; and, iii) ensure public health and safety. Except as otherwise provided in Section 8.14.F.2, the Contractor shall market such Recovered Materials under most market conditions, including periods of severe depression and even negative value, to ensure that Recovered Materials are recycled into the productive economy.

In addition to the circumstances that might arise as described in Sections 8.14.F.2 and 8.14.F.3, if the Contractor encounters general market challenges including, but not limited to, significant changes in pricing, market availability, or quality standards for any Recovered Materials marketed under this Agreement, Contractor shall notify the Authority in writing within five (5) Business Days of the nature of the market challenge and the Contractor's plans for addressing the challenge. Contractor shall provide the Authority with updates on the market challenges at least every twenty (20) Business Days thereafter until the Contractor determines, and the Authority agrees, that the concern has been resolved. However, in the event of a significant change in price or lack of market demand as specified in Section 8.14.F.2 and 8.14.F.3, the Contractor shall follow the noticing procedures set forth in 8.14.F.4.

- 2. Lack of Market Demand. In the event the market challenge results in a sustained lack of market demand for any Recovered Materials marketed under this Agreement, and subject to the notice requirements described in Section 8.14.F.4 Contractor may request permission from the Authority to use alternative marketing arrangements or temporarily Dispose of specific Recovered Material(s) impacted, as set forth below. A

Authority/{Insert Contractor Name}

lack of market demand shall mean that the Contractor cannot reasonably find a market for the productive use of the subject Recovered Material(s) that ensures the recovered Material is Recycled and Diverted at any value, positive or negative.

3. Significant Change in Price. If the market challenge results in a significant change in pricing for any materials Recovered under this Agreement, the Contractor may request temporary relief from the Authority as set forth below. A significant change in pricing shall mean a reduction in market value such that the market cost, on a per ton basis, to send the subject Recovered Materials to a non-Disposal market, including Transportation costs, exceeds one hundred fifty percent (150%) of the Contractor's then-current costs for Transportation and Disposal of Franchised Materials under this Agreement or the sum of the Authority's then-current Transfer and Disposal costs under the Authority's other related Agreements, whichever is more. Processing costs, which are described in and subject to the adjustment provisions of Article 10, shall be excluded from this calculation (except for Transportation costs as set forth in the preceding sentence).
4. Duty to Provide Notice. Within one (1) Business Day of Contractor's first knowledge of an emerging lack of a market(s) in accordance with Section 8.14.F.2, or within five (5) Business Days of Contractor's first knowledge of a significant change in pricing in accordance with Section 8.14.F.3, the Contractor shall notify the Authority via telephone and email with a formal signed written notice from the Contractor to the Authority to follow. Such notice shall include the Contractor's best estimate of the time when its remaining capacity to store the specific Recovered Material(s) impacted under the terms of its facility permits (the "Storage Capacity") will expire. The Contractor and the Authority shall meet and confer at the earliest, mutually-convenient opportunity to discuss the market conditions and the Contractor's assertion of a lack of market demand for the specific Recovered Material(s) impacted. The Contractor shall be required to provide the Authority with additional information on Contractor's Storage Capacity including the proportion of occupied by the specific Recovered Material(s) impacted relative to Contractor's other material storage, and Contractor's projected remaining capacity for the specific Recovered Material(s) impacted.

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

5. Authority Determination. The Executive Director shall make a reasonable finding that a market demand either does or does not exist or that a significant change in pricing has or has not occurred for the impacted Recovered Material(s), based on the information presented and any other information available, within twenty (20)

Business Days after the Parties meet and confer in accordance with Section 8.14.F.4 or before the date when no Storage Capacity remains, whichever comes first.

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

- a. **Determination of Lack of Market Demand.** If the Authority reasonably determines that a market demand does not exist, the Authority may, but is under no obligation to, attempt to identify a productive, non-Disposal outlet for the subject Recovered Material(s). If the Authority identifies such an outlet, and such outlet does not exceed the pricing limitation described in Section 8.14.F.3, the Contractor shall deliver the subject Recovered Material(s) to that outlet. If the Authority is unable to identify such an outlet, the Authority may authorize the Contractor to temporarily Dispose of the subject Recovered Material(s) in accordance with Section 8.14.F.6.

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

- b. **Determination of Significant Price Change.** If the Authority reasonably determines that a significant change in pricing has occurred, the Authority may either: 1) authorize the Contractor to send the specific impacted Recovered Material(s) to market at the reduced value and agree to compensate the Contractor for the amount, including Transportation costs, that exceeds one hundred and fifty percent (150%) of the greater of the two (2) options identified in 8.14.F.3.; or 2) attempt to identify an alternate, productive, non-Disposal outlet for the specific Recovered Material(s) at a value, including Transportation costs, less than one hundred and fifty percent (150%) of the Disposal Tipping Fee. The Contractor shall follow the Authority's direction if either of those options is selected by the Authority.

If the Authority is unable to so identify an outlet and is unwilling to compensate Contractor for the significant change in price, the Authority shall authorize the Contractor to temporarily Dispose of the subject Recovered Material(s) in accordance with Section 8.14.F.6.

6. Disposal Approval. Subject to the determination and conditions specified in Sections 8.14.F.5.a and 8.14.F.5.b, the Authority may authorize the Contractor to temporarily Dispose of specified Recovered Material(s) impacted by the lack of market demand or significant change in price. In such case, Contractor and the Authority shall review the status of the markets at a frequency established by the Authority until such time as the acceptable pricing and market demand return or the Authority reasonably determines that the review process may be discontinued. Notwithstanding any other

provision of this Section, Contractor shall not Dispose of any Recovered Materials prior to receiving written authorization from the Authority to do so and, as necessary and appropriate under the circumstances, the Authority may also require the Contractor to secure authorization from CalRecycle and/or other relevant regulatory entities.

In the event that the Authority authorizes Disposal of materials under this Agreement related to the provisions of this section, the Contractor may only Dispose of materials originating from the Authority in the same proportion as it Disposes of materials from other jurisdictions using the same facility. For example, if the Authority's materials represent thirty-three percent (33%) of the materials processed at the facility, Contractor may only Dispose of one (1) ton of Authority materials for every two (2) tons of other users' materials that Contractor Disposes. This provision is intended to ensure that the Authority is treated the same as all other users of the facility in this regard.

- G. **Marketing Plan.** Upon the Executive Director's request, the Contractor shall provide a summary of Contractor's marketing plan for each Recovered Material, and recent average commodity values for Recovered Materials end markets. If requested by the Executive Director, the Contractor shall provide the Executive Director with a list of broker/buyers used by the Contractor during the preceding twelve (12) months. If the Contractor becomes aware that a broker or buyer has illegally handled or Disposed of Recovered Material originating from the Authority's Service Area or elsewhere, the Contractor shall immediately inform the Executive Director and terminate its contract or working relationship with such party. Contractor shall maintain complete, accurate, and detailed marketing records, including Tonnage of Recovered Materials marketed, price, revenue received, name of purchaser, and end use in accordance with Article 12.

8.15 Diversion and Material Recovery Standards

- A. **Mixed Materials Recovery.** Contractor shall Process all Mixed Materials Accepted in a manner that prioritizes the Recovery of Recyclable Materials and Organic Materials from Mixed Materials, minimizing Residue and maximizing Diversion; further, Contractor shall Compost all Organic Materials Recovered from Processing Mixed Materials and Contractor shall prioritize the Recovery of Organic Materials, while minimizing Residue and maximizing Diversion. Contractor's Processing of Mixed Materials shall not result in the final deposition of Organic Waste at a Landfill or use of Organic Waste as ADC or AIC. After Processing and Composting, Contractor may Dispose as Residue, or repurpose for Beneficial Reuse, any materials that do not have a higher or better use, to the extent allowed by State and local law, in accordance with Contractor's obligations under Section 8.14 and Section 8.15.A.2 unless otherwise expressly provided in Section 8.14.F.6.

In accordance the Contractor's obligations to market Recovered Material consistent with the preferential order described in Section 8.14.C, the Contractor shall Process all Mixed Materials Accepted such that the Recovered Recyclable Material is of sufficient quality to market; further, Composted Organic Materials Recovered from the Mixed Materials shall produce Compost Products that are of sufficient quality to attract the highest local market prices similar to market prices for Compost Products produced by similar Composting facilities that Compost similar organic materials. The Contractor's operation of the Approved Mixed Waste Processing Facility must consistently produce Compost Products that achieve Residue and contamination standards that meet or exceed the requirements of Exhibit O and

attract the highest current market price for the specified Compost Product from agricultural growers or other interested parties. Exhibit O presents the Compost Products and quality standards to be achieved by the Contractor.

Quarterly, Contractor shall determine and report to the State the percentage of Organic Waste contained in materials Disposed, as required under 14 CCR Section 17867(a)(16) and 17896.44.1. In accordance with Exhibit D, Contractor shall submit a copy of such reports to the Executive Director.

Contractor shall allow the Executive Director, or their designee, with or without prior notice, to observe Composting operations and periodically sample finished Compost and Residue generated during Composting to ensure compliance with this Section.

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 within thirty (30) Days after the date the Contractor receives payment of Tipping Fees from the Authority. All payments shall be paid by check or electronic payment method accepted by the Authority. 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.

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; 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 valued at one percent (1%) or more of Contractor's prior year annual revenues under this Agreement, in addition to compensating the Authority, for lost payments and applicable delinquency penalties, Contractor shall reimburse the Authority's cost of the review.

9.6 Reserved

9.7 Reserved

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: The Mixed Waste Processing Tipping Fee will be negotiated to include the cost of Residue Disposal and Transport of Residue to either the Designated Disposal Facility or an alternate Disposal facility selected by the proposer in an amount up to the allowable Residue percentage per Ton Processed consistent with proposer's proposal.}

1. **Mixed Waste Processing Tipping Fee.** The Mixed Waste Processing 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 Mixed Waste Processing Tipping Fee shall be Contractor's compensation for the direct services provided under Sections 5.4 and all other obligations and services of Contractor under this Agreement.
- a. Mixed Waste Processing Tipping component: \$XX.XX per Ton.
 - b. Mixed Waste Processing 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 Mixed Waste Processing Tipping Fee.** The adjusted Mixed Waste Processing 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.b.
- a. **Mixed Waste Processing Tipping Component.** The adjusted Mixed Waste Processing Tipping component shall be calculated as follows:

adjusted component = current component x (1 + Annual Percentage Change in the CPI-U)
 - b. **Mixed Waste Processing Pass-Through Tipping Component.** The Mixed Waste Processing 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.

- B. **Authority Review of Application.** The Executive Director shall review 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

Authority/{Insert Contractor Name}

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. Reserved.
 6. Reserved.
 7. Reserved.
- 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 above.
 2. Change in Facility Conditions. Increases in the cost of providing all services and performing all obligations under this Agreement that may be impacted by change in operating conditions of an Approved 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 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. Reserved.

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 revenue 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

{Note to Proposers: This Article 12 will be updated following successful negotiations with the selected contractor(s) and sections of this Article 12 may be moved to Exhibit D: Reporting and Recordkeeping.}

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 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 and Franchise Materials may be commingled with other materials at the Designated Transfer Facility prior to arriving at the Approved Mixed Waste Processing Facility. The Contractor further acknowledges that its Approved Mixed Waste Processing 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 Mixed Waste Processing 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 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 Mixed Waste Processed at the Mixed Waste Processing 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 Mixed Waste Processing Facility and requires the following from its Franchised Collector:

{Note to Proposer: If Mixed Materials are proposed to be delivered directly by the Franchise Collector, the following two (2) paragraphs would apply.}

- 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 Mixed Waste Processing Facility. The data provided by the Franchised Collector must reconcile to inbound weight data, by material type, provided by the Transfer 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 Mixed Materials 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 Mixed Materials 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 Transfer Contractor’s Transfer Facility, where Loads of Mixed Materials) 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.

{Note to Proposer: If Mixed Materials are proposed to be Transferred prior to arriving at the Mixed Waste Processing Facility, the following two (2) paragraphs would apply.}

- The Transfer Contractor, as part of their Transfer Agreement(s) and obligations under AB 901, must 1) accurately track and timely report to the Authority, all inbound Mixed Materials tonnage data by jurisdiction of origin received at the Transfer Contractor’s Transfer Facility, and 2) all outbound mixed materials tonnage data Transferred from the Transfer Contractor’s Transfer Facility to Contractor’s Approved Mixed Waste Processing Facility by jurisdiction of origin, inclusive of the Authority’s Mixed Materials by jurisdiction of origin. This data must reconcile to inbound and outbound weight data. The Authority reserved the right at any time to review the Transfer Contractor’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 data provided by the Transfer Contractor for each Load of mixed materials 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 pre-processed Mixed Materials (if Mixed Waste Processing includes more than one facility) and Residue 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 Mixed Waste Processing Facility, where Loads of mixed materials Delivered by the Transfer Contractor 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, their 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 Mixed 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) per pollution condition covering liability arising from the release of pollution at the Approved Mixed Waste Processing 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 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 the 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.**
 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 \$850,000}

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 Mixed Waste Processing Standards.** The Contractor materially contributes to a failure or fails to achieve the Mixed Waste 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.
- 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 sure 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 Processing and 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 (1) 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 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

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 in the amount specified below to the Authority and shall pay for the Authority's 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 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 dollars (\$75,000) 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 Mixed Waste Processing 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 mixed waste processing 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, in addition to the Performance Review described in Section 11.2 of 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, Transfer Contractor, Reuse Contractor, and Disposal 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 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

CONTRACTOR

By: _____
Board Chairperson

By: _____
{TITLE}

Printed name

Printed name

Approved as to Form:

Approved as to Form:

By: _____
Authority Legal Counsel

By: _____
Contractor Legal Counsel

Printed name

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 that 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.

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

“Agreement” means this Agreement for {insert final scope of services} services between the 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.

“Alternative Daily Cover (ADC)” means cover material used at a Disposal Site, other than at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control blowing Litter, fires, odor, scavenging, and vectors; or, means materials used as soil amendments for erosion control and landscaping.

“Alternative Intermediate Cover (AIC)” means CalRecycle-approved materials other than soil used at a landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred and eighty (180) Days. Generally, these materials must be processed so that they do not allow gaps in the face surface that would provide breeding grounds for insects and vermin.

“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,

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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.

“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 {Insert description of the facility purpose} in the event the Approved {Insert description of the facility purpose} Facility is unavailable.

“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 Mixed Waste Processing Facility” means the {Insert Facility Name} at {Insert Address, City, State}, which is owned and operated by {Insert Owner/Operator’s Name}. The Approved Mixed Waste Processing Facility shall serve as the primary Processing Facility for Mixed Materials under this Agreement. {Note to Proposers: This facility may include a single facility with Processing and Composting operations that are co-located or two separate facilities, and Residue backhaul will be determined upon receipt of proposals and negotiations.}

“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.

“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.

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

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“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 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.

“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

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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 of this Agreement 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**. Commingled Organics does not include Unpermitted Waste, Excluded Waste, or other Franchised Materials. Commingled Organics 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.

“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.

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

“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.

“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/Transfer Contractor vehicles at the entrance of Approved or Designated Facility(ies) during Facility receiving hours for the purposes of Acceptance.

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

“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 alternative facility(ies).

“Designated Disposal 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 Disposal Facility shall also include the Disposal Contractor’s approved alternative 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, Designated Pre-Processing Facility, and Designated Transfer 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 Services, if implemented during the Term, this Designated Facilities definition shall also include the Designated Mixed Waste Processing Facility.

“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}. For the purpose of this Agreement, the Designated Transfer Facility shall also include the Transfer Contractor’s approved alternate facility(ies).

“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.

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“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/Composting 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.

“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

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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 Collector, the Reuse Contractor, the Transfer 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).

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“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.

“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 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

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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.

“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).

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“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 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 Approved Mixed Waste Processing Facility(ies). Mixed

EXHIBIT A: DEFINED TERMS

Waste Processing may include any combination of Processing and/or Composting at an Approved Mixed Waste Processing Facility(ies).

“Mulch” means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
- B. Was produced at one (1) or more of the following types of Facilities:
 - 1. A Compostable material handling operation or facility, as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under 14 CCR, Division 7, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10).
 - 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12.
 - 3. A Solid Waste landfill as defined in California Public Resources Code Section 40195.1 that is permitted under 27 CCR, Division 2.

“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.

“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.

EXHIBIT A: DEFINED TERMS

“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.

“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 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.

EXHIBIT A: DEFINED TERMS

“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.

“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.

“Responsible End Markets” shall have the same meaning as in SB 54, as it may be as amended, supplemented, superseded, and replaced from time to time.

“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.

“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

EXHIBIT A: DEFINED TERMS

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

“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, as presented in the map attached as Exhibit B. 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.

EXHIBIT A: DEFINED TERMS

“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.

“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

EXHIBIT A: DEFINED TERMS

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, including extension periods if granted, 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:

- 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

Authority/{Insert Contractor Name}

EXHIBIT A: DEFINED TERMS

“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.

“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 Contractor” means the contractor(s) to the Authority at any given time during the Term of this Agreement that is responsible for Accepting Franchised Materials for consolidation and Transferring and Transporting Franchised Materials to the Designated Facilities. The Transfer Contractor may also be the contractor(s) to the Authority at any given time during the Term of this Agreement that is responsible for performing all activities related to Pre-Processing Commercial Food Scraps at the Designated 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 Transfer Contractor within thirty (30) Days after the effectiveness of the contract with the initial Transfer Contractor and upon any change in the Designated Transfer Facility(ies) and/or Transfer Contractor.

“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, Designated 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 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.

Authority/{Insert Contractor Name}

EXHIBIT A: DEFINED TERMS

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

“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.
- 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.

Authority/{Insert Contractor Name}

EXHIBIT A: DEFINED TERMS

“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 the Mixed Waste Processing 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**

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)

Authority/{Insert Contractor Name}

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 Dwelling Units 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: This exhibit will be modified based on the negotiations process and applicable services selected. For example, 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. Contractor 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 Processing Mixed Materials originating in the Authority's Service Area.
- Ensure that the Authority only compensates Designated Facilities for receipt of Franchised Materials originating in the Authority's Service Area.
- 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, AB 1201, 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, Transfer Contractor(s), Reuse Contractor, Recyclables Contractor, Organics Contractor, and/or Disposal Contractor, as applicable.

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

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

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**.

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

A. **Mixed Waste Processing Tonnage Report**

1. Inbound Tons to the Approved Mixed Waste Processing Facility(ies).
 - a. **Mixed Materials** Loads – Inbound Weight Ticket (Receipt) Data
 - i. Actual Tonnage of each inbound Load of **Mixed Materials** Delivered by the Franchised Collection to the Approved Mixed Waste Processing 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
 - Material type
 - Gross weight
 - Tare weight
 - Net weight
 - **Route number (as applicable)**
 - **Vehicle type (transfer vehicle, route vehicle, or roll-off, as applicable)**
 - ii. For all Inbound Tons reported under this Section 2.A.1.a.ii, the Contractor shall:

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

- Include the percentage allocation of **Mixed Materials** to each Member Agency and Sector of origin, as provided by the Transfer Contractor, and the date the allocation data was provided by the Transfer Contractor. 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 **Mixed Materials** Tons by both Member Agency and Sector of origin (Commercial, Single-Family, Multi-Family).
- b. **Inbound Tons to the Approved Facility.** Total Tons of all material Delivered by all Facility Users to the Approved Facility by material type, Facility User type (e.g. **Mixed Materials** Delivered by the Franchised Collector, other transfer contractors, other franchised haulers, and/or 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.ii above as separate jurisdictions rather than reported as a single origin.
- c. **Approved Alternate Facilities.** If the Contractor uses any Approved Alternate Facility, then the Tonnage data required in this Section shall also be provided individually for the Approved Alternate Facility and aggregated to represent all the **Mixed Materials** during the reporting period.
2. **Mixed Waste Processing Report.**
- {Note to proposer: The report under this Section 2.A.2 would be duplicated if the Mixed Waste Processing services include both Processing and Composting}
- a. Total Tons of material Mixed Waste Processed during the reporting period, by material type
- b. Total Tons of **Mixed Materials** Diverted and the Diversion rate listed separately by each recovered material Commodity, calculated using the approved allocation method described in Section 5.4.C of the Agreement.
- c. Total Tons of Residue generated from Processing of all materials Delivered to the **Mixed Waste Processing Facility** and the Tons of Residue allocated to the Authority calculated using the approved Residue allocation method described in Section 5.4 of the Agreement.
- d. Tons of Recovered **Mixed Materials** Marketed (by commodity and including average commodity value for each).
3. **Outbound Residue from the Mixed Waste Processing Facility.**
- a. The Contractor shall report on the actual Tonnage of each outbound Load of Residue that the Contractor Transports from the **Mixed Waste Processing Facility** to the Contractor's selected permitted Disposal facility, in accordance with Section 5.4.C. If Contractor does not weigh outbound Loads, then

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

Contractor shall provide actual Tonnage of each outbound Load of Residue based on weight tag data, in the same format provided in Section 2.A.1.a.i.

- b. For all Tons of Residue reported under this Section A.3 during the reporting period, the Contractor shall include the percentage allocation attributable to the Authority, to each Member Agency, and Sector of origin, as applicable. Contractor shall apply those percentage allocations to all Load Tons of **Mixed Materials** Residue, as provided in 2.A.1.b.
 - c. Contractor shall provide a monthly report to the selected permitted Disposal facility operator that allocates the Tons of Residue Delivered from the **Mixed Waste Processing Facility** to the permitted Disposal facility for Disposal by Member Agency jurisdiction of origin. Contractor shall provide the Authority with a copy of such report and documentation of the report transmittal to the permitted Disposal facility operator.
4. **Marketing of Recovered Mixed Materials.**

{Note to proposer: the marketing of Recovered material monthly reporting requirements will be updated to reflect the requirements of Section 5.4 and Exhibit O of the Agreement that may based, in part, on proposer's proposal.}

B. Vehicle Turnaround Times

1. Upon Authority request, or where the **Franchised Collector** has notified the Contractor that vehicle turnaround time was excessive at an **Approved Facility** or **Approved Alternate Facility**, the Contractor shall and 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 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 at any of the **Approved Facility(ies)** or **Approved Alternate Facility(ies)** during the reporting period and the current status of Violation(s). If the Violation(s) were not remedied by the Contractor during the reporting period, the Contractor shall provide a narrative description of the steps to be taken to remedy the Violation and the associated timeline(s).
2. List of any Violation(s) prior reported and remedied during the reporting period.

D. Load Classification, Rejection, and Contamination

1. Total tons of **Mixed Materials** Delivered by the **Transfer Contractor**, separated by route **vehicle Tons** and **roll-off Vehicle Tons**, and Accepted by the **Approved Mixed Waste Processing Facility** or the **Approved Alternate Facility**, as applicable.
2. Total Tons of Unpermitted Waste Delivered by the **Franchised Collector** and Rejected by the **Approved Mixed Waste Processing Facility** or the **Approved Alternate Facility**, as applicable, in accordance with Section 5.2 and Section 8.5 of the Agreement.

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

3. Total Tons of Mixed Materials Delivered to and Rejected by the Approved Mixed Waste Processing Facility due to Contamination in accordance with Section 5.2.D of the Agreement.
4. Date, time, route number, Franchised Collector truck number, material type, and reason for Contractor rejection of any Franchised Collector Delivered Loads.
5. Photographs of Rejected load.
6. Copy of correspondence to the Franchised Collector notifying them of the Unpermitted or contaminated materials, the Franchise Collector 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.
 - e. Any operational records required by the Extended Producer Responsibility Program or Stewardship Organization, if any, related to the Contractor's participation in the Extended Producer Responsibility Program.

3. Quarterly Report

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

A. RDRS Reconciliation.

1. Copies of all Recycling and Disposal Reporting System (RDRS) Quarterly Report Summaries submitted to CalRecycle during the reporting quarter and underlying supporting data.
2. Reconciliation of quarterly data from Sections 2.A.1.a.ii, 2.A.1.b, and 2.A.1c against Sections 2.A.2.c, and 2.A.3.b of this Exhibit D 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

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

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.

C. Reserved.

4. Annual Report

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

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

Authority/{Insert Contractor Name}

EXHIBIT D: REPORTING REQUIREMENTS

1. Tonnage of Recovered Materials marketed, by Recovered Material type;
 2. The actual prior year and estimated coming year per unit or per-ton market values and revenue received for each Recovered Material
 3. The brokers, markets, and end uses for each Recovered Material marketed, including name of broker or purchaser and physical address of the final destination of marketed Recovered Materials
 4. The specified end-use of each marketed Recovered Material
 5. Documentation that the Authority's Recovered Materials were Delivered to, and Recycled, Composted, and/or Processed at Responsible End Markets
- K. A list of all secondary Processing Facilities used during the report year to materials originating from the Authority's Service Area, if any. Such list shall include the facility's name, physical address, and the name of the owner/facility operator.
- L. Documentation of all materials originating from the Authority's Service Area sent to secondary Processing Facilities including the type of materials sent to each secondary Processing Facility and the total Tons sent to each secondary Processing Facility by material type.
- M. A written notice confirming the Approved Composting Facility will continue to Accept and remove plastic bags when Processing Commingled Organics.
- {Note to Proposers: This requirement may be amended pending proposed operations and negotiations.}
- N. In accordance with Section 8.2, a record of all compliance agreements for quarantined Organic Materials that are Disposed of, including the name of Person Delivering such material, date issued, location of final disposition, and the amount of quarantined Organic Materials that was required to be Disposed.
- O. Reserved.

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**EXHIBIT E:
RATE ADJUSTMENT METHODOLOGY**

**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.

EXHIBIT F: LIQUIDATED DAMAGES

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 Mixed Waste Processing Facility to receive Franchised Materials from the Authority's contractors during operating days and hours.	\$1,000 per hour that the Approved Facility is not open to receive Authority Franchised Material
<u>Designated Facilities Mixed Waste Processing</u>	Failure to Deliver Residue from Mixed Waste Processing to the Designated Disposal Facility or a Disposal Site.	\$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>Scale Operations</u>	Failure to provide substitute scales.	\$250 per hour
<u>Licensed Drivers</u>	Failure to have a vehicle driver properly licensed.	\$500 per incident or \$100 per Day, whichever is greater
<u>Marketing</u>	Failure to market or meet the marketing standards set forth in Section 8.14.	\$ 500 per ton
Performance Area No. 2: Facility-Related Services		
<u>Capacity Guarantee</u>	Failure to provide sufficient capacity needed to fulfill Contractor's obligation to the Authority, whether through the Approved Mixed Waste Processing Facility or any Approved Alternate Facility.	\$1,000 per Day (not to exceed \$100,000 total) and the greater of either (a) \$150 per Ton of 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

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<u>Maintaining Source Separation</u>	Failure to maintain segregation of any Mixed Materials Delivered to the Approved Mixed Waste Processing Facility.	\$500 per Ton of Source Separated Franchised Material Delivered to Contractor's Approved Processing Facility that Contractor mixes with any other type of material at the Approved Processing Facility
<u>Disposal of Materials Delivered for Processing</u>	Each individual occurrence of Disposal of Mixed Materials without Processing at the Approved Facility, as applicable.	\$500 per Ton
<u>Failure to Meet Regulatory Standards/Excess Residue from Mixed Waste Processing</u>	Failure to meet the standards for SB 1383 for Mixed Waste Processing Residue.	\$5,000 per Incident
<u>Effective Recovery Rate for Recyclable Materials</u>	Failure to meet the Effective Recovery Rate for Recyclable Materials, for any given material type, as determined by the characterization methodology.	For a shortfall of ___ % to ___ % per calendar year: \$___, per material type. For a shortfall of ___ % or greater: \$___ per calendar year, per material type.
<u>Allowable Materials</u>	Failure to accept all materials on the Allowable materials list at the Approved Facility or Approved Alternate Facility or failure to obtain Executive Director approval prior to making a change in the Allowable materials list.	\$___ per day Allowable materials not accepted and/or \$___ per incident of changing Allowable materials list.
<u>EPR Programs</u>	Failure to perform Contractor's responsibilities under Extended Producer Responsibility Programs, as applicable.	\$___ per incident or \$___ per Ton if the material is weighed
Performance Area No. 3: Recordkeeping and Reporting		

Authority/{Insert Contractor Name}

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<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
<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) if no timeframe is specified in the Agreement.	\$250 per day for each day that the requested information is late
<u>Information Accuracy</u>	Contractor's failure to provide information, or providing incomplete, misleading or otherwise inaccurate information or reporting, to the Authority under or in regard to this Agreement. (Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.)	\$500 per event per jurisdiction per month
Performance Area No. 4: Miscellaneous		

EXHIBIT F: LIQUIDATED DAMAGES

Performance Standard	Event of Non-Performance/Definition	Liquidated Damage Amount
<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
<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: _____

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**EXHIBIT G:
CONTRACTOR'S PROPOSAL**

EXHIBIT H:
APPROVED AFFILIATES AND SUBCONTRACTORS

**EXHIBIT I:
LABOR AGREEMENTS**

EXHIBIT J:
IRAN CONTRACTING CERTIFICATION

**EXHIBIT J:
IRAN CONTRACTING CERTIFICATION**

CONTRACTOR’S IRAN CONTRACTING ACT CERTIFICATION

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

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

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

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

_____ (Company Name)

By: _____ (Signature)

Name: _____ (Printed Name)

Title: _____

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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 Solid Waste Disposal, (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.5.

Authority/{Insert Contractor Name}

EXHIBIT L: GUARANTY AGREEMENT

5. 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 M:
CAPITAL REQUIREMENTS AND SPECIFICATIONS

**EXHIBIT N:
RESERVED**

EXHIBIT O:
MARKETED RECOVERED MATERIALS STANDARDS

EXHIBIT O: MARKETED RECOVERED MATERIAL STANDARDS

{Note to Proposer: This Exhibit will be modified in response to proposals received and negotiations. Please fill in proposed contamination rates for each Recovered Material commodity and include any additional Recovered Materials commodities, as applicable.}

1. Recovered Materials Standards

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

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

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

- B. **Mixed Waste Processing Product.** Mixed Materials Processed at the Approved Mixed Waste Processing Facility shall be Recovered and marketed to meet specifications that will support marketability of the Recovered product in the then-current market conditions and to meet the requirements of Sections 8.14 and 8.15 of the Agreement.

2. Marketed Recovered Materials Commodities

- A. Mixed Waste Processing Commodities.

{Note to Proposer: Please include the commodity categories/grades you propose to include for materials Recovered from the Mixed Waste Processing Facility.}

1. Metal
 - a. (Please describe): _____
 - b. (Please describe): _____
2. Plastics
 - a. (Please describe): _____
 - b. (Please describe): _____
3. Glass
 - a. (Please describe): _____
 - b. (Please describe): _____

Authority/{Insert Contractor Name}

**EXHIBIT O:
MARKETED RECOVERED MATERIAL STANDARDS**

- 4. Compost
- 5. Mulch
- 6. Soil Amendments
 - a. (Please describe): _____
 - b. (Please describe): _____
- 7. Other: _____
- 8. Other: _____

**EXHIBIT P:
LOAD CLASSIFICATION**
