

**NON-EXCLUSIVE FRANCHISE AGREEMENT**

**BETWEEN**

**THE COUNTY OF SANTA CRUZ**

**AND**

Lewis Tree Service, Inc.

**FOR ROLL-OFF COLLECTION SERVICES**

This non-exclusive franchise agreement (Agreement) is made and entered into this 4<sup>th</sup> day of January, 2018, by and between the County of Santa Cruz County, (County) and Lewis Tree Service, Inc. (hereinafter referred to as the Contractor).

**RECITALS**

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

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

**WHEREAS**, AB 939 authorizes and requires local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and,

**WHEREAS**, the State of California ("State") has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have 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 the Act, directed the responsible State agency and all local agencies, to promote Diversion at the Designated Disposal Site and to maximize the use of feasible Solid Waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of Solid Waste that must be Disposed of; and,

**WHEREAS**, the County is obligated to protect the public health and safety of the residents of the unincorporated areas of the County and has determined that arrangements by waste haulers for the collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and,

**WHEREAS**, the Act requires local agencies to divert fifty percent (50%) of Discarded Materials from

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**NON-EXCLUSIVE FRANCHISE AGREEMENT**

**BETWEEN**

**THE COUNTY OF SANTA CRUZ**

**AND**

Lewis Tree Service, Inc.

**FOR**

**ROLL-OFF COLLECTION SERVICES**

January 4, 2018

landfills; and,

**WHEREAS**, the County Board of Supervisors established goals of achieving seventy-five percent (75%) diversion by 2010 and toward zero waste status for the future on August 2, 2006; and

**WHEREAS**, the County finds that reusing, Recycling, and Composting Recyclable Materials, Organic Materials, and Construction and Demolition Debris (C&D) and beneficial use or Composting of Organic Materials is essential to further the County's efforts to reduce Solid Waste Disposal and comply with the Act and the County's zero waste goals; and

**WHEREAS**, the County requires all haulers providing Roll-Off Collection services for Permitted Materials in the County to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation, achieve its diversion goals, and to minimize the potential for adverse effects it may have on the local environment; and

**WHEREAS**, the County Board of Supervisors has determined through an application process that the Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide for the Roll-Off Container Collection of Permitted Materials within the corporate limits of the County and the Transportation of such material to appropriate places of Recycling, Processing, and/or Disposal, and can provide insurance consistent with the County's requirements. The County Board of Supervisors desires that Contractor be engaged to perform such services on the basis set forth in this Agreement; and

**WHEREAS**, Chapter 7.20 of the County Code requires among other things that a commercial collector or transporter of solid waste be properly licensed or franchised to do so by the County of Santa Cruz, and

**WHEREAS**, Contractor intends to use the County's streets, other public rights-of way, and infrastructure to provide Roll-Off Collection services to the County's residents and businesses; and

**WHEREAS**, the County intends to receive just and reasonable fees from the Contractor for County's administration of the Agreement and for Contractor's use of the County streets, other public rights-of-way, and infrastructure which the County may lawfully impose and the companies are obligated to pay; and,

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

## **ARTICLE 1 DEFINITIONS**

---

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

**"Act"** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

**"Agreement"** means this Agreement between the County and Contractor for Roll-Off Container

Collection, Processing, and Disposal of Permitted Materials including all exhibits, and any future amendments hereto.

**“Applicable Law”** means all federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over the Roll-Off Container Collection, Transportation, Recycling, Processing, and Disposal of Permitted Materials that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

**“Approved C&D Processing Site”** means the C&D processing site at Buena Vista Landfill at 1231 Buena Vista Drive, Watsonville, CA 95076, which was selected by Contractor and approved by the County. Change in facility designation shall require written authorization of County.

**“Approved Disposal Site”** means any Disposal site selected by the Contractor or its Subcontractor(s) and approved by the County for Disposal of residue from an Approved Processing Site(s) that is not the Designated Disposal Site. Approved Disposal Site(s) are listed in Exhibit D. Change in facility designation shall require written authorization of County.

**“Approved Organics Processing Site”** means the processing site specified in Exhibit D, which was selected by Contractor and approved by the County. Change in facility designation shall require written authorization of County.

**“Approved Processing Site(s)”** means the Approved C&D Processing Site, Designated Disposal Site, Approved Disposal Site, Approved Organics Processing Site, and/or Approved Recyclables Processing Site.

**“Approved Processor”** means the operator of an Approved Processing Site.

**“Approved Recyclables Processing Site”** means the processing site specified in Exhibit D, which was selected by Contractor and approved by the County. Change in facility designation shall require written authorization of County.

**“Bin”** means a container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels, that is typically serviced by a front end-loading Collection vehicle.

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

**“Cart”** means a plastic container with a hinged lid and wheels that is typically serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20-, 35-, 64-, or 96 gallons (or similar volumes).

**“C&D”** means Construction and Demolition Debris.

**“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, or written change in



administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or

b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County or of 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.

**“Collection Franchise Agreement”** refers to the Agreement to collect Solid Waste, Recyclable Materials, and Organic Materials in the County.

**“Container(s)”** means Carts or Bins.

**“County”** means the County of Santa Cruz, California and all the territory lying within the boundaries of the County as presently existing or as such boundaries may be modified during the Term.

**“County Code”** means the Santa Cruz County Code, as the same may be amended, supplemented, or modified from time to time.

**“County Facility”** means any building, park, beach access, rights of way or other site owned, leased, or used regularly and significantly by employees or contractors of the County.

**“Collect”** or **“Collection”** means the act of Collecting Permitted Materials and other material at the place of generation in the County.

**“Commercial”** shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

**“Compactor”** means a mechanical apparatus that compresses materials into a container, which container may be detachable. For the purposes of this Agreement, Compactors shall include only Compactors with container capacities of ten (10) to fifty (50) cubic yards that are serviced by Roll-Off Collection Trucks.

**“Compost”** or **“Composting”** includes a controlled biological decomposition of Organic Materials yielding 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 the Solid Waste stream, or which are separated at a centralized facility.

**“Construction and Demolition Debris (C&D)”** means materials resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22 Section 66261.3. This term includes any and all materials accepted at the Buena Vista Landfill for C&D Recycling. Construction and Demolition Debris excludes putrescible wastes.

**"Contractor"** means Lewis Tree Service, Inc. (insert contractor's name), a corporation (insert corporation, sole proprietorship, partnership as appropriate) organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies, and Subcontractors.

**"Contractor Party(ies)"** shall mean Contractor, officers, directors, management employees, or fiscal employees (where "management employee" means any employee with direct or indirect responsibility for direction and control over the Contractor's activities under this Agreement and "fiscal employee" means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

**"Criminal Activity"** means those activities described in Section 12.12.1.

**"Customer"** means the Person whom Contractor submits billing invoice to and collects payment from for Collection services provided.

**"Designated Disposal Site"** means the County-owned Buena Vista Landfill at 1231 Buena Vista Drive, Watsonville, CA 95076, which is the Designated Disposal Site chosen by the County. Change in facility designation shall require written authorization of the County.

**"Designated Waste"** means non-Hazardous Wastes that may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II disposal sites or Class III disposal sites pursuant to a variance issued by the California Department of Health Services.

**"Discarded Materials"** means Solid Waste, Recyclable Materials, Organic Materials, or C&D placed by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to the County Code.

**"Disposal or Dispose (or variation thereof)"** means the final disposition of Solid Waste at an Approved Disposal Site.

**"Diversion"** means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling, and Composting.

**"Drop Box"** means an open-top container with capacity from ten (10) to fifty (50) cubic yards that is used for Collection of Permitted Materials and that is serviced by a Roll-Off Collection Truck. A Drop Box, which is also known as a roll-off box and/or debris box, is a type of Roll-Off Container.

**"Effective Date"** means the date set forth in the introductory paragraph of this Agreement.

**"Federal"** means belonging to or pertaining to the national general government of the United States.

**"Food Scraps"** means those discarded materials that will decompose and/or putrefy including (i) all kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs, (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

**“Franchise Fee”** means the fee paid by Contractor to County for the privilege to hold the non-exclusive rights granted by this Agreement.

**“Generator”** means any Person whose act or process produces Permitted Materials, or whose act first causes Permitted Materials to become subject to regulation.

**“Green Waste Material”** means any materials generated from the maintenance or alteration of public, commercial, or residential landscapes that will decompose and/or putrefy including, but not limited to, yard clippings, grass, leaves, shrub/tree trimmings or prunings (less than 4" in diameter), brush, flowers, weeds, dead plants, small pieces of unpainted and untreated wood, and other types of organic waste. For the purposes of this Agreement, such materials shall be Source Separated and placed by a Generator in a receptacle and/or at a location that is designated for Collection. Green Waste Material is a subset of Organic Materials.

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

**“Holidays”** are defined as New Year’s Day, Thanksgiving Day, and Christmas Day.

**“Infectious Waste”** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments, as defined in Health and Safety Code Section 25117.5.

**“Liquidated Damages”** means the amounts due by Contractor to County for failure to meet specific quantifiable standards of performance as described in Section 11.4 and Exhibit A.

**“Non-Exclusive Franchise Agreement”** means, with the exception of this Agreement, any other contract(s) to Collect Roll-Off Containers between the County and Contractor for Roll-Off Container Collection, Processing, and Disposal of Permitted Materials by other franchisees including all exhibits, and any future amendments hereto

**“Organic Materials”** means those discarded materials that will decompose and/or putrefy including Green Waste Material and Food Scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scraps, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be Organic Materials, unless such material is Source Separated from Solid Waste, Recyclable Materials, C&D, or other materials.

**“Parent Company”** refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.

**“Party or Parties”** refers to the County and Contractor, individually or together.

**“Permitted Materials”** refers to Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and, Source Separated and mixed Food Scraps.

**“Person(s)”** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Santa Cruz, and special purpose districts.

**“Premises”** means any land or building in the County where Permitted Materials are generated or accumulated.

**“Processing”** means to prepare, treat, or convert through some special method.

**“Putrescible Waste”** means Solid Wastes originated from living organisms and their metabolic waste products and from petroleum, which contains naturally produced organic compounds and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

**“Rates”** means the charges and fees Contractor bills and collects from each Customer receiving service pursuant to this Agreement.

**“Recyclable Materials”** means those Discarded Materials that the County Code permits, directs and/or requires Generators to set out in Recyclables Materials containers for Collection for the purpose of Recycling. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Materials. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, soap boxes, cereal and other similar food boxes); chipboard; cardboard; paper milk cartons; glass containers of any color (including glass bottles and jars all colors); aluminum cans; fabric softener containers; steel, tin or bi-metal cans; plastic containers (clear or green plastic soda and water bottles, plastic containers and bottles and plastic bags with no. 1, 2 or 3 on the bottom); and food containers from potato salad, pasta salad, whipped cream, etc.

**“Recycle or Recycling”** means the process of Collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying Solid Waste.

**“Residential”** shall mean of, from, or pertaining to a single-family Premises, multi-plex, or multi-family Premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

**“Roll-Off Container”** means a Drop Box or Compactor used for Collection of Permitted Materials and serviced by a Roll-off Collection Truck. Roll-Off Containers shall also include Trailers. Roll-Off Containers with capacities of less than ten (10) cubic yards are excluded from the scope of this Agreement.

**“Roll-Off Collection Truck”** means a Collection vehicle with a mechanical device such as a winch that pulls or loads a Roll-Off Container onto the truck bed or attached trailer and separately transports each

Roll-Off Container to an Approved Processing Site.

**"Self-Hauled Waste"** means Solid Waste collected and hauled by Self-Haulers.

**"Self-Hauler"** means any person not engaged commercially in waste haulage that collects and hauls Solid Waste generated from residential, commercial or industrial activities conducted solely by such person.

**"Solid Waste"** means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder and those Discarded Materials that the County Code requires Generators within the County to set out for Collection. Excluded from the definition of Solid Waste are C&D, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

**"Source Separated"** means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Processing, Composting, recovery, or reuse.

**"State"** means the State of California.

**"Subcontractor"** means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor's fulfillment of its obligations under this Agreement.

**"Term"** means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

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

**"Tonnage"** means the total weight in Tons Collected, Recycled, Composted, Diverted, or Disposed of, as the context requires.

**"Trailer"** means any unpowered vehicle which is designed to be detached from another, powered, vehicle and is used for the purposes of holding and/or transporting Discarded Materials.

**"Transportation"** means the act of Transporting or state of being Transported.

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

- (1) all materials that the Designated Disposal Site are not permitted to accept, *excluding* white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, Recycles, or Disposes;
- (2) 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;

- (3) 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 standards 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;
- (4) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances, which remain after the shredding of automobiles;
- (5) Dead animals larger than one hundred (100) pounds;
- (6) Hazardous Materials;
- (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Designated Disposal Site, including cement kiln dust, or Process residues;
- (8) 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, where "Infectious Waste" means biomedical waste 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 in the California Health and Safety Code Section 25117.5;
- (9) 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;
- (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State 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;
- (11) 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"); and/or
- (12) Designated Waste if not permitted at the Designated Disposal Site under Applicable Law, including Permits.

This definition will be promptly amended to reflect any applicable changes in permits or Applicable Law.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR**

---

### **2.1 REPRESENTATIONS AND WARRANTIES**

The Contractor, by execution of this Agreement, represents and warrants the following to the County,

for the purpose of inducing County to enter into this Agreement and to consummate the transactions contemplated hereby:

A. **Corporate Status.** Contractor is duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the County and State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. **Authorization.** Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Council of Contractor (or the shareholders, if necessary), sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the corporate secretary's certificate in Exhibit B confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

C. **Agreement Will Not Cause Breach.** To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or, (iii) any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

D. **No Litigation.** To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

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

E. **No Adverse Judicial Decisions.** To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

F. **No Legal Prohibition.** To the best of Contractor's knowledge after reasonable investigation, there is no Applicable Law in effect on the date Contractor signed this Agreement that would prohibit the Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.

G. **Contractor's Statements.** The Contractor's Application and any other supplementary information submitted to the County, which the County has relied on in entering this Agreement, do

not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

H. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

I. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, Recycle, Process, and Dispose Permitted Materials generated in the County. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

### **ARTICLE 3 TERM OF AGREEMENT**

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#### **3.1 EFFECTIVE DATE**

Contractor may provide the Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal services authorized by this Agreement commencing on the Effective Date of January 1, 2018.

#### **3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

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

A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date.

B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishings of Insurance.** Contractor has furnished evidence of the insurance required by Article 10 that is satisfactory to the County.

D. **Effectiveness of County Board of Supervisors Action.** The County's Board of Supervisors action approving this Agreement shall have become effective and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

#### **3.3 INITIAL TERM**

The initial Term of this Agreement shall commence on the Effective Date and continue in full force for one (1) year, until December 31, 2018. The Term may be extended pursuant to Section 3.4 or



terminated early in accordance with Section 11.2.

### **3.4 AUTOMATIC EXTENSION UNLESS TERMINATED**

This Agreement shall be automatically extended on its date of expiration for an additional term of one (1) year, unless: 1) either Party gives notice to the other of its intent to terminate the Agreement; or, 2) the Agreement is otherwise terminated pursuant to the requirements of Section 11.2. If either Party wishes to terminate the Agreement, it shall give written notice to the other Party at least ninety (90) calendar days prior to expiration.

## **ARTICLE 4 SCOPE OF AGREEMENT**

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### **4.1 SCOPE OF AGREEMENT**

This Agreement, granted to the Contractor, authorizes Contractor to Collect, Transport, Recycle, Process, Compost, and Dispose of Permitted Materials placed by Generators in Roll-Off Containers for Collection, provided that the Customer has voluntarily arranged for Contractor to provide Collection services.

The Contractor shall be responsible for the following services:

- A. Collecting Permitted Materials placed by Customers in Roll-Off Containers for permanent or temporary Collection of Solid Waste, Recyclable Materials, Organic Materials, or C&D materials as requested by Customer consistent with Section 5.3.
- B. Documenting the types of materials to be included in the Roll-Off Container(s) upon taking the Customer's request and notifying Customer of the availability of Recyclable Materials, Organic Materials, and/or C&D services upon Customer request of Solid Waste Collection services provided under this Agreement.
- C. Providing each Customer, upon delivery of Roll-Off Container, a printed list that specifies the Permitted Materials allowed in the Roll-Off Container and Unpermitted Waste that cannot be placed in the Roll-Off Container (i.e., Hazardous Wastes). Such list shall be reviewed and approved by the County Contract Manager.
- D. Providing Customers with public education and outreach materials that includes a comprehensive list of the Recyclable Materials, Organic Materials, and C&D services available through Contractor as required by Section 5.7.
- E. Transporting Collected Solid Waste to the Designated Disposal Site and Transporting other materials to the Approved Processing Site.
- F. Furnishing all labor, supervision, vehicles, Roll-Off Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.

- G. Paying all expenses related to provision of services required by this Agreement including, but not limited to, Franchise Fees, taxes, regulatory fees, Collection costs, Transportation costs, Processing costs, Disposal costs, utilities, etc.
- H. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the County are provided timely, reliable, courteous and high-quality service at all times.
- I. Performing all services in substantial accordance with this Agreement at all times using best industry practice for comparable operations.
- J. Complying with Applicable Law.
- K. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.

## **4.2 LIMITATIONS TO SCOPE**

The scope of the Agreement shall be non-exclusive. Permitted Materials may be Collected and Transported by other Persons provided that such Persons do so in accordance with the County's Code, including but not limited to the following:

- A. **Permitted Materials Collected by Other Approved Parties.** Permitted Materials Collected by a party that has executed a Non-Exclusive Franchise Agreement with the County for Roll-Off Container Collection Services or which has been otherwise allowed or permitted to operate without a Non-Exclusive Franchise Agreement by the Director of Public Works.
- B. **Permitted Materials Collected by County's Franchisee.** Materials collected by the County's franchisee collection operation including: (1) materials Collected using equipment, such as all Carts and Bins that are nine (9) cubic yards or less, not regulated by this Agreement (2) materials Collected from County facilities, and special events and venues sponsored by the County, which may be Collected in Carts, Bins, or Roll-Off Containers by the County's franchisee collection operation or County crews.
- C. **Donated Recyclable Materials.** Recyclable Materials Generated in the County that are Source Separated and donated by the Generator to youth, civic, charitable, or other nonprofit organizations.
- D. **Materials Hauled by Owner or Occupant, or its Contractor.** Permitted Materials that are removed from any Premises and are Transported to an Approved Processing Site by (i) the Owner or Occupant of such Premises, (ii) by full-time employee of Owner or Occupant that uses the Owner's or Occupant's equipment to transport materials; or (iii) by a construction and/or demolition contractor performing construction and/or demolition work at the Premises, whose removal of the Permitted Materials is incidental to the service being performed, provided that such contractor does not use a Roll-

Off Container, and such contractor removes materials at no additional or separate fee using contractor's employees and contractor's equipment. For the purposes of this section, the term "incidental to the service being performed" shall mean that the material generated and requiring hauling is created by the activity of the contractor performing the hauling. For example, a construction contractor who remodels a kitchen can haul those materials in a fixed body truck without infringing on the scope of this Agreement. However, as an alternate example, a contractor whose sole responsibility is to clean up a site and remove materials generated by other contractors or the owner/occupant would be subject to the requirements of this Agreement. In the event of a dispute between the Contractor and County Contract Manager regarding the applicability of this section, the Director of Public Works shall make all final determinations.

E. **Other Recyclable Materials.** Private collection by any person or company that transports Recyclable Materials through use of its own vehicle(s), and receives no compensation for such Collection or Transportation.

F. **State Government Facilities.** The removal of any materials generated by public schools, cities, the County, or federal facilities (with the exception of facilities subject to 42 U.S.C. Section 6961(a)).

#### **4.3 COUNTY'S RIGHT TO GRANT MULTIPLE NON-EXCLUSIVE AGREEMENTS**

The County may grant to an unlimited number of additional Persons similar non-exclusive franchise agreements for Roll-Off Container Collection, Transportation, Recycling, Processing, Composting, and Disposal of Permitted Materials.

#### **4.4 EXCLUSION OF NEWLY INCORPORATED TERRITORY**

The County reserves the right to exclude territory from the scope of this Franchise that is incorporated into the corporate limits of any city within the County subsequent to the Effective Date from the scope of this Agreement.

#### **4.5 AGREEMENT CONSISTENT WITH APPLICABLE LAW**

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the County to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the County shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

#### **4.6 OWNERSHIP OF MATERIALS**

Once Permitted Materials are placed in a Roll-Off Container for Collection by Contractor, ownership and the right to possession of such materials shall transfer directly from the Customer to Contractor.

On a short-term basis not to exceed more than five (5) calendar days per year, County may obtain ownership or possession of Permitted Materials placed in the Roll-Off Container for Collection, for

purposes of waste characterization studies, upon written notice to Contractor of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that County has such ownership or possession unless such written notice has been given to Contractor.

#### **4.7 NOTIFICATION TO COUNTY OF NON-FRANCHISED HAULERS**

If Contractor can produce evidence that other Persons are Collecting Permitted Materials and do not have rights to do so as granted by non-exclusive franchise Agreement with the County or otherwise, or in a manner that is not consistent with the County's Code, Contractor shall notify the County in writing, within five (5) calendar days of Contractor witnessing such circumstances. The Contractor's notice shall include the name and telephone number of the Person or company Collecting Permitted Materials (if known), the date the Contractor witnessed the event, the location of the Roll-Off Container along with Contractor's evidence of the violation of the rights granted by this non-exclusive Agreement. The County may in its sole discretion take action in response to specific notification by Contractor. Nothing in this Agreement shall prohibit Contractor from enforcing it under this Agreement.

#### **4.8 PROVISION OF ROLL-OFF SERVICE FOR COUNTY EVENTS**

Contractor shall be responsible for providing roll-off service to the County, at no charge to the County, on an annual basis. In total, County requires twenty (20) roll-off pulls per calendar year. Contractor shall be assigned a portion of those pulls on the basis of Contractor's relative share of the total pulls performed by all Non-Exclusive Roll-off Franchisees in the prior Calendar Year. For example, if all Non-Exclusive Roll-off Franchisees performed one thousand (1,000) pulls in the prior calendar year and Contractor performed two hundred (200) of those pulls, Contractor would be assigned four (4) of the twenty (20) pulls required by the County each year. Under no circumstance shall Contractors assigned pulls be less than one (1). County will make reasonable efforts to rotate among service providers and shall provide at least ten (10) Business Days' notice of the service requirement. In the event that Contractor is unable to provide the requested service at the time required by County, Contractor may provide for that service by arranging the service with another Non-Exclusive Roll-off Franchisee. These roll-off pulls provided to the County shall not be subject to tipping fees at Designated Disposal Site.

### **ARTICLE 5 COLLECTION, PROCESSING, AND DISPOSAL SERVICES**

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#### **5.1 COLLECTION**

Contractor is hereby authorized to Collect Permitted Materials from residents and businesses in the County using Roll-Off Containers. Contractor shall Collect Permitted Materials from Customers that voluntarily subscribe to or request Roll-Off Container Collection services from Contractor. Contractor shall provide its Customers with a Roll-Off Container for Permitted Materials Collection or shall allow its Customers to provide a Roll-Off Container. Contractor shall Collect Permitted Materials from Premises as frequently as scheduled by Contractor or as mutually agreed with Customer, but not less than once a week for Solid Waste and Organic Materials. Contractor shall provide requested service to its Customers and shall charge Customers for service at Rates mutually agreed by Customer and Contractor.

Contractor shall Transport Solid Waste Collected pursuant to this Agreement to the Designated Disposal Site and other materials to an Approved Processing Site that has been selected by the Contractor and approved by the County. The Approved Processing Site(s) must be able to demonstrate Diversion rates in accordance with Sections 4.1 and 5.3.

Contractor may enter into contracts with Customers for Collection services provided that in no case shall the term of such contracts extend beyond the Term of this Agreement, and provided that in the event the County terminates this Agreement the contracts with any and all Customers shall terminate on the termination date of this Agreement.

## **5.2 PROCESSING AND MARKETING SERVICES**

A. **Processing.** Contractor agrees to Transport and deliver (i) all C&D it Collects in the County to the Approved C&D Processing Site, (ii) all Recyclable Materials it Collects in the County to the Approved Recyclable Processing Site, and (iii) all Organic Materials it Collects in the County to the Approved Organics Processing Site. Residue from the C&D, Recyclable Materials, and Organics Processing and Composting activities shall be Disposed of by Contractor or its Approved Processor at the Designated Disposal Site in accordance with Section 5.4. Contractor selected the Approved Processing Site(s), which are identified in Exhibit D. Contractor shall permit or arrange for the County to inspect the Approved Processing Site(s) and observe operations at any time during the Term.

Contractor or its Approved Processor(s) shall possess all permits and approvals necessary for use of the Approved Processing Site(s) in full regulatory compliance. Contractor shall, upon County request, provide or request from its Approved Processor(s) and provide copies of notices of violation or permits to the County. Upon request of the County, Contractor shall provide a certified statement from its Approved Processor(s) documenting its Diversion rate.

If Contractor elects to use a Processing Site(s) that is different than the Approved Processing Site(s) specified in Exhibit D, it shall request written approval from the County sixty (60) calendar days prior to use of the site and obtain the County's written approval no later than ten (10) calendar days prior to use of the site.

If Contractor is unable to use an Approved Processing Site due to an emergency or sudden unforeseen closure of the Approved Processing Site, Contractor may use an alternative Processing Site provided that (i) the Contractor provides verbal and written notice to the County within twenty-four (24) hours of use of an alternative Processing Site, and (ii) the alternative Processing Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Approved Processing Site is not feasible and the period of time Contractor proposes to use the alternative Processing Site. Contractor shall use the alternative Processing Site for no more than twenty-four (24) hours without obtaining County's written approval.

B. **Marketing.** The Contractor or its Approved Processor shall be responsible for marketing C&D, Recyclable Materials, and Organic Materials Collected in the County and Diverted. Contractor and/or its Approved Processor may retain all revenues generated from the sale of Permitted Materials that are Diverted.

Upon request, Contractor or its Approved Processor shall provide proof (in the form of sales receipts showing end-user) to the County that all C&D, Recyclable Materials, and Organic Materials Diverted are

marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the State regulations established by the Act. All residual material from the Processing activities that is not marketed for use shall be accounted for as Disposal Tonnage at the Approved Disposal Site. No Permitted Material shall be transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

Contractor or its Approved Processor shall provide the County, upon written request, with a list of broker/buyers it uses to market C&D, Recyclable Materials, and/or Organic Materials Diverted. County may audit brokers or buyers to confirm that materials are being Recycled and Diverted from Disposal. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed of material generated by the County or elsewhere, Contractor shall immediately inform the County and terminate its contract or working relationship with such party immediately.

C. **Processing and Marketing Costs.** Contractor shall pay all costs associated with Processing and marketing of Permitted Materials including payment of any gate fees charged at the Approved Processing Sites.

### **5.3 NOTIFICATION OF RECYCLING SERVICES**

The Contractor must notify each Customer of the availability of Recyclable Materials, Organic Materials, and/or C&D services upon Customer request of Solid Waste Collection services provided under this Agreement. The Contractor shall also require that Customers requesting Collection of Solid Waste do not include more than five (5%) percent Recyclable Materials, Organic Materials, or C&D by weight or volume in a Solid Waste Roll-Off Container. If Customer Disposes of Recyclable Materials, Organic Materials, or C&D that totals more than five (5%) by weight or volume in a Solid Waste Roll-Off Container, the Customer must Source Separate those materials from the Solid Waste as required by the County Code.

If Contractor fails to notify each Customer of the availability of Recyclable Materials, Organic Materials, and/or C&D services upon Customer request of Solid Waste Collection services during a calendar month, the County may assess Liquidated Damages in accordance with Section 11.5 and Exhibit A.

### **5.4 DISPOSAL**

A. **Disposal of Solid Waste Collected.** Contractor shall Transport all Solid Waste Collected in the County to the Designated Disposal Site, which the County specifies shall be the Buena Vista Landfill in Watsonville, California. The County Contract Manager may also approve deliveries of Solid Waste by Contractor to the Ben Lomond Transfer Station in writing for specific projects and/or periods of time. Contractor shall pay all costs associated with Transporting and Disposal of Solid Waste including payment of any gate fees charged at the Designated Disposal Site. In the event that Contractor is approved to use the Ben Lomond Transfer Station, the County Contract Manager may require Contractor to pay a surcharge in addition to the gate fees charged at the Designated Disposal Site in order to recover the County's cost of transferring and Transporting Solid Waste to the Designated Disposal Site.

B. **Disposal of Processing Residue.** Contractor shall, or shall require its Approved Processor to, Dispose of residue from Processing of C&D, Recyclable Materials, and Organic Materials Collected within the County, that are not Diverted through Processing activities, by Transporting the residue to the

Designated Disposal Site, which is lawfully authorized to accept such material.

C. **Permitted Site.** Contractor or its Approved Processor shall only Dispose of materials at an Approved Disposal Site that is in full regulatory compliance. Contractor, or its Approved Processor, shall keep or confirm all existing permits and approvals necessary for use of the Approved Disposal Site(s) in full regulatory compliance. Contractor shall, upon request, provide copies of notices of violation or permits to the County.

D. **Compliance with Regulations.** Contractor shall observe and comply with all regulations in effect at the Designated Disposal Site and Approved Disposal Site(s) and cooperate with the operator thereof with respect to delivery of Solid Waste, including directions to unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with Hazardous Waste exclusion programs.

E. **Disposal at Approved Site.** Contractor, or its Approved Processor, shall not Dispose of such residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws. Contractor, or its Approved Processor, shall Dispose of residue at the Designated Disposal Site.

F. **Alternative Disposal Site.** If Contractor, or its Approved Processor, elects to use a Disposal Site(s) that is different than the Designated Disposal Site, it shall request written approval from the County sixty (60) calendar days prior to use of the site and obtain the County's written approval no later than ten (10) calendar days prior to use of the site.

If Contractor, or its Approved Processor, is unable to use the Approved Disposal Site due to an emergency or sudden unforeseen closure of the Approved Disposal Site, Contractor, or its Approved Processor, may use an alternative Disposal Site provided that (i) the Contractor provides verbal and written notice to the County within twenty-four (24) hours of use of an alternative Disposal Site, and (ii) the alternative Processing Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Approved Disposal Site is not feasible and the period of time Contractor, or its Approved Processor, proposes to use the alternative Disposal Site. Contractor shall use the alternative Disposal Site for no more than twenty-four (24) hours without obtaining County's written approval.

## **5.5 BILLING**

Contractor shall bill all Customers and collect billings in accordance with Contractor-established Rates, which are set in a manner consistent with provisions of Section 9.3. The Contractor shall prepare, mail, and collect bills (or shall issue written receipts for cash payments) for Collection services provided by Contractor. Contractor shall be responsible for collection of payment from Customers with past due accounts.

Contractor shall maintain copies of all billings and receipts, each in chronological order, for five (5) years after expiration or termination of this Agreement. Contractor shall retrieve and make available to the County copies of the billings and receipts within five (5) days of the County Contract Manager's written request for the billings and receipts. The Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

## **5.6 CUSTOMER SERVICE**

Contractor shall maintain a business office within the County or within a reasonable distance of the County limits approved by the County Contract Manager. The business office shall staff at least one customer service representative capable of accepting payments from Customers, answering service questions, and resolving Customer service issues. Contractor shall have a toll-free Customer service telephone number and shall have staff available to answer calls from at least 8:00 a.m. to 6:00 p.m., Monday through Friday. An answering machine shall record Customer calls and voice messages between 6:00 p.m. and 8:00 a.m.

## **5.7 PUBLIC EDUCATION AND OUTREACH**

The public education and outreach campaigns to be performed by the Contractor shall be defined cooperatively between the Contractor and the County. The campaigns shall be documented by the Contractor in an annual education and outreach plan (Annual Plan) to be presented to the County who shall be invited to provide comments on the Annual Plan. Contractor must notify Customers of the services available for Hazardous Waste and Excluded Materials collection and processing, which are not acceptable in Roll-Off Containers under this Agreement

# **ARTICLE 6 STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL**

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## **6.1 OPERATING DAYS, HOURS, AND SCHEDULES**

### **A. Days and Hours of Collection**

1. **Residential Premises.** Delivery or Collection of a Roll-Off Container to or from Residential Premises shall only occur between the hours of 7:00 a.m. and 6:00 p.m., any day of the week.
2. **Commercial Premises.** Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are two hundred (200) feet or less from Residential Premises shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday. Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are more than two hundred (200) feet from Residential Premises shall only occur between the hours of 5:00 a.m. and 7:00 p.m., any day of the week. The County Contract Manager may require modifications to hours for delivery and Collection from Commercial Premises to resolve noise complaints, and, in such case, the County Contract Manager may change the allowable operating hours.
3. **Exceptions.** In the event of an unforeseen circumstance, the Contractor may deliver or Collect a Roll-Off Container from Residential or Commercial Premises that are two hundred (200) feet or less from Residential Premises between the hours of 5:00 a.m. and 10:00 p.m., upon prior written approval from the County Contract Manager.



4. **Failure to Comply.** If the Contractor fails to comply with the Collection hours described in this Section, the Contractor shall pay the County Liquidated Damages as described in Section 11.4 and Exhibit A.

## **6.2 COLLECTION STANDARDS**

### **6.2.1 Instructions to Customer**

Contractor shall instruct Customers as to any preparation of Permitted Materials necessary prior to placing in the Roll-Off Container. Contractor shall, in written form, inform all Customers as to the Permitted Materials that can be included in the Roll-Off Container and any Unpermitted Waste not allowed for Collection.

### **6.2.2 Care of Private Property**

Contractor shall not damage private property. Contractor shall ensure that its employees: (i) close all gates opened in making Collections, unless otherwise directed by the Customer; (ii) do not cross landscaped areas; and (iii) do not climb or jump over hedges and fences.

County shall refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private and public property caused by its employees to its previous condition.

### **6.2.3 Litter Abatement**

**A. Minimization of Spills.** Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during Collection and Transportation operations. If any Permitted Materials are spilled or scattered during Collection or Transportation operations, the Contractor shall promptly clean up all spilled and scattered materials.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the County.

If Contractor fails to perform some or all of the requirements described in this Section, the Contractor shall pay the County Liquidated Damages as described in Section 11.4 and Exhibit A.

**B. Clean-Up.** Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up litter and absorbent material for cleaning up liquid spills. The Contractor shall discuss instances of repeated spillage not caused by it with the Customer of the Premises where spillage occurs, and Contractor shall report such instances to County. If the Contractor has attempted to have a Customer stop creating spillage but is unsuccessful, the County will attempt, upon notice by the Contractor, to rectify such situation with the Customer.

**C. Covering of Loads.** Contractor shall cover all Roll-Off Containers at the pickup location before Transporting materials and until it is unloaded to prevent Permitted Materials from escaping during Transportation.

#### **6.2.4 Noise**

All Collection operations shall be conducted as quietly as possible and shall conform to Applicable Law. Contractor will promptly resolve any complaints of noise during the morning or evening hours of the day to the satisfaction of the County. In the event of repeat occurrences of noise levels in excess of seventy-five (75) dba, the Contractor shall pay Liquidated Damages in accordance with Section 11.4 and Exhibit A.

### **6.3 VEHICLE REQUIREMENTS**

A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat, clean, and operable condition at all times. If Contractor fails to keep Collection vehicles in a safe and sanitary condition, the Contractor shall pay the County Liquidated Damages as described in Section 11.4 and Exhibit A.

B. **Specifications.** Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality regulations and other applicable noise control regulations. All vehicles used to Transport Permitted Materials shall use recycled motor oil, unless the Contractor provides County with written technical documentation that such use will be detrimental to the vehicle.

C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique identification number for each vehicle used to provide services under this Agreement, shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of three (3) inches high. All vehicles shall be uniformly painted. Contractor shall not place the County's logo on its vehicles.

D. **Advertising.** The Contractor shall provide for County prepared advertising to be displayed on the Collection vehicles at no cost to the County, and no other advertisement or other display shall be carried on any Collection vehicle without the written approval of the County Contract Manager, excluding Contractor logos, truck identification and contact information.

#### **E. Cleaning and Maintenance**

1. **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned at least once every seven (7) Business Days and cleaned and painted as required to present a clean appearance of the exterior and interior compartment of the vehicle.

2. **Maintenance.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operating properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the County upon request to the extent necessary to perform the inspections described in Sections 6.3.G and 6.8.

3. **Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause, so as to

maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

4. **Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with County's applicable zoning regulations.

F. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions for vehicles and roads.

G. **Vehicle Inspection.** County may inspect vehicles at any time to determine compliance with the requirements of this Agreement. Contractor shall make vehicles available to the County and/or Santa Cruz County Health Department for inspection, at any frequency County reasonably requests. The Contractor may have such inspections conducted by the California Highway Patrol, or other designated agency, and shall provide the results of such inspection to the County Contract Manager within ten (10) days of receipt. The Contractor shall maintain, at its primary business offices within the County, a record of daily vehicle inspection reports for all Collection-related vehicles and shall make such reports available to the County Contract Manager for review at all times.

H. **Facility Accounts.** Contractor shall establish and maintain, throughout the Term of this Agreement, an account with the Designated Disposal Site and any other Approved Processing Sites. Such account(s) shall be used for all transactions covered by this Agreement. Contractor shall have a stored tare weight set for each Collection vehicle and each Roll-Off Container at the Designated Disposal Site. Contractor must also retare each Collection vehicle and/or Roll-Off Container after each major maintenance and/or repair to maintain an accurate weight. Contractor shall have each Collection vehicle weighed at each Approved Processing Site or the Designated Disposal Site to determine the total loaded weight of each load delivered to the Approved Processing Sites and Designated Disposal Site.

#### **6.4 ROLL-OFF CONTAINER REQUIREMENTS**

A. **General.** All Roll-Off Containers shall meet applicable Federal, State, County and local regulations for safety.

B. **Specifications**

1. **Prevent Leakage.** If the type of materials placed in the Container may result in leakage of liquids, Contractor shall take precautions to prevent the leakage of liquids. In accordance with **Section 17315 of Chapter 3 of Title 14 of the California Code of Regulations**, Roll-Off Containers used to Collect garbage and putrescible materials and/or garbage and putrescibles mixed with rubbish shall be non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and shall be designed for safe handling and the containment of refuse.
2. **Provision of Sufficient Capacity.** In accordance with **Section 17315 of Chapter 3 of Title 14 of the California Code of Regulations**, Containers for garbage and rubbish should be of an adequate size and in sufficient numbers to contain without overflowing, all the refuse that a household or other establishment generates within the designated removal period.

C. **Roll-Off Container Identification.** All Contractor-provided Roll-Off Containers shall prominently display the Contractor's name, local telephone number, a unique Roll-Off Container identification number, and a list of acceptable materials. As appropriate, Roll-Off Containers shall be labeled for: Solid Waste, Recyclable Materials, Organic Materials, or C&D. Such labeling may be temporary labeling in the form of magnetic or detachable signs.

If Contractor fails to comply with the provisions of this Section 6.4, the Contractor shall pay the County Liquidated Damages as described in Section 11.4 and Exhibit A.

D. **Cleaning, Painting, and Maintenance.** All Roll-Off Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Roll-Off Containers at least every two (2) years, or more frequently, to present a clean, graffiti-free appearance.

E. **Roll-Off Container Inspections.** County may inspect Roll-Off Containers at any time to determine compliance with sanitation requirements. Contractor shall make Containers available to the County at any frequency it requests. The County shall have the right to prohibit the use of any Roll-Off Container that fails to comply with the provisions in this Section 6.4.

F. **Abandoned Roll-Off Containers.** Contractor shall not abandon any Roll-Off Container used to provide Permitted Materials Collection services under this Agreement. If the Contractor abandons a Contractor-owned Roll-Off Container, County may remove the Roll-Off Container and Process and Dispose of the contents. If the County removes a Roll-Off Container abandoned by Contractor, the County may charge Contractor for the County's costs incurred removing such Roll-Off Container, Transporting, Processing, and Disposing of its contents, and/or the cost of storing such Roll-Off Container. Contractor shall reimburse the County for such costs within fourteen (14) calendar days of the date of the County's invoice to the Contractor for such costs. If the Contractor does not pay the invoice amount within fourteen (14) days, the County shall become the Roll-Off Container owner if the invoice stated the County's intent to become the Container owner in lettering of at least 12 point font.

For the purposes of this Section 6.4.F, "abandon" means the following:

1. Contractor's failure to remove a Contractor-owned Roll-Off Container within five (5) calendar days of receiving a written request from a Customer or the County or within five (5) calendar days after the termination of the customer service agreement between Contractor and the Customer, or
2. Contractor's failure to remove a Contractor-owned Roll-Off Container within ten (10) calendar days upon expiration or termination of this Agreement, except in the case where Contractor has been granted an extension of the Term of the Agreement or Contractor has been granted a subsequent agreement authorizing Contractor to Collect and transport the type or types of materials for which the Roll-Off Container was used pursuant to this Agreement.

## **6.5 PERSONNEL**

A. **General.** Contractor shall furnish such qualified drivers, maintenance, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class B California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the County's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

D. **Employee Conduct and Courtesy.** Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures and shall pay the County Liquidated Damages as described in Section 11.4 and Exhibit A.

E. **Living Wage.** This Agreement is subject to the provisions of Santa Cruz County Code Chapter 2.122, requiring payment of a living wage to covered employees. Non-compliance during the Term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

If a contract for Living Wage covered services in excess of fifty thousand dollars (\$50,000) is terminated prior to its expiration, any new contract with a subsequent contractor for the same services must include this term:

"CONTRACTOR shall make best efforts to offer employment to qualified employees of the prior contractor for the performance of this contract. Such efforts shall not be required in regard to employees who are (1) exempt under the Fair Labor Standards Act, (2) family members of the prior contractor, (3) employed by the prior contractor for less than six (6) months, or (4) convicted of a job-related or workplace crime. Upon request by the COUNTY, the CONTRACTOR shall demonstrate to the COUNTY that good faith efforts have been made to comply with this provision."

F. **Employee Identification.** While performing services under this Agreement, all of the Contractor's employees performing field service shall be dressed in clean clothes and shall wear badges that include the employee's name and/or employee number, and Contractor's name, as approved by the County.

## **6.6 HAZARDOUS WASTE AND EXCLUDED MATERIALS INSPECTION AND HANDLING**

A. **Response to Hazardous Waste and Excluded Materials Identified during Collection.** If Contractor determines that material placed in any Roll-Off Container for Collection is a Hazardous Waste and/or Excluded Material that may not legally be Disposed of at an Approved Disposal Site or handled at

the Processing Site, or presents a hazard to Contractor's employees, the Contractor shall refuse to accept such material. The Contractor shall contact the Customer and request the Customer to arrange proper Disposal. If the Generator cannot be reached immediately, the Contractor shall, before leaving the Premises, leave a tag at least two inches by six inches (2" x 6") in size, which indicates the reason for refusing to Collect the material and lists a phone number for obtaining information on proper disposal of the Hazardous Waste and/or Excluded Material. Under no circumstances shall Contractor's employees knowingly Collect Hazardous Waste and/or Excluded Material.

If Hazardous Wastes and/or Excluded Materials are found in a Roll-Off Container that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the County's Fire Department using the 911 emergency number.

The Contractor shall notify the County of any Hazardous Waste and/or Excluded Materials identified in Roll-Off Containers or left at any Premises within twenty-four (24) hours of identification of such material.

**B. Response to Hazardous Wastes Identified at the Approved Processing Site(s).** The Contractor, or its Approved Processor shall provide load checkers and equipment operators at the Approved Processing Site(s) to identify Hazardous Waste and/or Excluded Material for storage in approved, on-site, Hazardous Waste and/or Excluded Material storage container(s). Contractor shall make reasonable efforts to identify and notify the Customer. Contractor shall arrange for removal of the Hazardous Waste and/or Excluded Material by permitted haulers in accordance with Applicable Laws and regulatory requirements.

If the Hazardous Waste and/or Excluded Material delivered to an Approved Processing Site by Contractor before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor may make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

**C. Regulations and Record Keeping.** Contractor shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by regulations shall be maintained at the Contractor's facility. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

## **6.7 LIVING WAGE AND NON-DISCRIMINATION**

This contract is subject to the provisions of Santa Cruz County Code Chapter 2.122, requiring payment of a living wage to covered employees. Noncompliance during the term of this Agreement will be considered a material breach and may result in termination of the contract or pursuit of other legal or administrative remedies.

During and in relation to the performance of this Contract, Contractor agrees as follows:

**A.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or

any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of fifty thousand dollars (\$50,000) to Contractor and if Contractor employs fifteen (15) or more employees, the following requirements shall apply:

(1) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer.

In addition, the Contractor shall make a good faith effort to consider minority/women/disabled-owned business enterprises in Contractor's solicitation of goods and services. Definitions for minority/women/disabled-owned business enterprises are available from the County General Services Purchasing Division.

(2) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders said Contractor may be declared ineligible for further contracts with the County.

(3) The Contractor shall cause the foregoing provisions of subparagraphs 7B(1) and 7B(2) to be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than fifty thousand dollars (\$50,000) and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

## **6.8 COMMUNICATION AND COOPERATION WITH COUNTY**

A. **Communications.** If requested, the Contractor shall meet with the County or its agent to discuss service issues.

B. **Inspection by County.** The County, or its designated representatives, shall have the right to observe and review Contractor operations and Approved Processing Site(s) used by Contractor and enter Contractor's Premises for the purposes of such observation and review during reasonable hours without advance notice. This shall include inspection of Contractor placed Containers at the location where service is provided to Customer(s).

C. **Cooperate with County-Initiated Studies.** Contractor shall cooperate with and assist the County or its agent with the performance of County-initiated studies of Permitted Materials such as, but not limited to, waste characterization and composition studies.

## **ARTICLE 7**

### **RECORD KEEPING AND REPORTING**

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#### **7.1 GENERAL**

##### **7.1.1 Maintenance of Records**

The Contractor shall maintain in its local office within the County, unless specifically authorized in writing to maintain records out of County, full and complete financial and accounting records, pertaining to cash, billing and Disposal transactions for this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be made available in the Contractor's local offices. Such records shall be subject to audit and inspection, for the primary purpose of reviewing billing operations, accounts receivable, Disposal fee charges, and compliance with service classifications by the County and its authorized officers, agents or employees, at any reasonable time at the Contractor's principal office.

The gross receipts derived from the services provided for under this Agreement, whether such services are performed by the Contractor or by a Subcontractor or Subcontractors, shall be recorded as revenues in the accounts of the Contractor. The Contractor shall maintain and preserve all cash, billing and disposal records for a period of not less than three (3) years following the expiration or termination of the Franchise. At the request of the County, reports submitted by the Contractor shall be audited and certified by an independent third party selected by the County, at the County's expense. This audit may include a Customer billing audit in order to verify that each Customer is receiving the level of service for which they are being billed.

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.

##### **7.1.2 Retention of Records**

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in chronological order and readily and easily interpreted.

##### **7.1.3 Inspection of Records**

The Contractor's cash receipts, billing and disposal records shall be available at the Contractor's local office at any time during regular business hours for inspection and audit by one or all of the County Contract Manager, County Administrative Officer, and/or County Contract Manager's designee during the term of this Agreement and for a period of three (3) years following the expiration or termination of the Agreement.

##### **7.1.4 Record Security**

Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as fire, theft, and earthquake. Electronically maintained data and records



shall be protected and backed-up.

## **7.2 RECORDS**

### **7.2.1 Financial and Operational Records**

At a minimum, the following operational records shall be maintained by Contractor for the County relating to:

- A. Customer account information and billing records;
- B. Tonnage of material Collected by type (e.g., Solid Waste, Recyclable Material, Organic Material, or C&D) listed by the Approved Processing Site where such materials were delivered. Where possible, information is to be separated by Residential and Commercial Customers.
- C. Tonnage of Recyclable Materials, Organic Material, and C&D Diverted from Disposal by Contractor and supporting documentation.
- D. Diversion level, which shall equal Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by one hundred (100), listed separately by month for the previous quarter. Tonnage Diverted shall reflect Permitted Materials Processed less residue Disposed.
- E. Residue levels of Processed or Composted materials.
- F. Weight tickets from (i) Designated Disposal Site documenting the Tonnage of Solid Waste Collected within the County and delivered to the Designated Disposal Site; (ii) Processing Sites documenting the Tonnage of Permitted Materials Collected within the County and delivered to the Approved Processing Sites; and, (iii) Approved Disposal Sites documenting the Tonnage of residue delivered to Approved Disposal Sites. All weight tickets shall be provided listing a unique vehicle number, date, and time.
- G. End use and markets for recovered materials. This shall include the company name, principal name, phone number, and address of the end use market with the weight of each material type delivered to each.

Contractor shall make records available to the County upon request.

### **7.2.2 Customer Records**

Contractor shall maintain accurate and complete records containing the number and types of accounts served by the Contractor. The records shall contain, at a minimum, the Customer's name, type of business or identification that the service is provided to a residential Premises, phone number, address of Roll-Off Container delivery and Collection location, date of delivery and Collection, itemized listing of services performed, type of Permitted Material Collected, Tonnage Collected, and the amount charged to provide services. The information shall be provided to the County upon request.

### **7.2.3 CERCLA Defense Records**

The County views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the County regards its ability to prove where Permitted Materials Collected by the Contractor are taken for Processing, Recycling, Composting, Transfer, or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where Permitted Materials Collected were Processed, Composted, and Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to County (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

### **7.3 GENERAL REPORTING REQUIREMENTS**

The format of each report shall be designated by the County. Contractor may propose alternative report formats if Contractor can demonstrate to the satisfaction of the County Contract Manager that the alternative report formats will achieve the County's objectives and reduce the effort for both the Contractor and County. Contractor agrees to mail a copy of all reports and submit all reports on computer discs or by e-mail in a format compatible with County's software and computers at no additional charge. Contractor will provide a certification statement, under penalty of perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Contractor shall submit reports within twenty (20) calendar days of the end of each month. The County Contract Manager may, at their sole discretion and noticed in writing, allow Contractor to reduce the frequency of reporting to once per calendar quarter at any time during the Term of this Agreement. If Contractor does not submit the reports by the dates required in this Article, Contractor shall pay the County Liquidated Damages as described in Section 11.4 and Exhibit A.

Contractor shall submit (via mail and e-mail in an excel based format) all reports to:

Solid Waste Division Manager  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

### **7.4 REPORTS**

The report shall present the following information.

- A. **Total Tonnage.** Total Permitted Materials Tonnage Collected by Contractor within the County during the previous month, listed separately by material type, and the processing facility(ies) used.
- B. **Diverted Tonnage.** Permitted Materials Tonnage Collected by Contractor within the County that was Diverted during the previous month, listed separately by material type, and the processing

facility(ies) used.

- C. **Disposed Tonnage.** Permitted Materials Tonnage Collected by Contractor within the County that was Disposed during the previous month.
- D. **Diversion Level.** Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by one hundred (100) for the previous month. Tonnage Diverted shall reflect Permitted Materials Processed less residue Disposed.
- E. **C&D.** Tonnage generated from C&D permitted sites, noting the permit number, the site address, the Tonnage hauled, the date hauled, and the facilities to which the material was hauled.
- F. **Disposal and Processing Locations.** Contractor shall provide a list of the names and addresses of where Permitted Materials Collected within the County during the previous month was Diverted and Disposed. Such list shall include the amount of Permitted Materials Tonnage Diverted and/or Disposed at each location during the previous month, listed separately by material type.
- G. **Revenues.** Gross revenues (e.g., cash receipts) earned on all Roll-Off Container Collection, Transportation, Processing, Recycling, Composting, and/or Disposal services provided to Customers within the County during the previous quarter, listed separately by month.
- H. **Insurance.** Updated insurance certificates.
- I. **Account Information.** In table format, the name and service address for Customers within the County limits served and number of Roll-Off Containers serviced per month listed by Roll-Off Container type (Drop Box or Compactor), Roll-Off Container size, and listed separately by Permitted Material type, and regularly schedule service and unscheduled (on-call) service.
- J. **Contractor Officers and Board Members.** Provide a list of Contractor's officers and members of its board of directors (only required with the December monthly report each year, or in the event of a change in the officers or board members).

The County reserves the right to request additional reports from Contractor, and upon County's request, Contractor shall provide information required above for the time period requested by the County. It is the desire of the County to track the above required information on an ongoing basis throughout the term of this Agreement.

## **7.5 COUNTY CONTRACT MANAGER**

The County has designated staff, the County Contract Manager, to be responsible for the monitoring and administration of this Agreement. Contractor shall meet and confer with the County Contract Manager to resolve differences of interpretation and to implement and execute the requirements of this Agreement in an efficient and effective manner that is consistent with the stated objectives of this Agreement.

From time to time the County Contract Manager may designate other agents of the County or Member Agencies to work with Contractor on specific matters. In such cases, those individuals should be

considered designees of the County Contract Manager for those matters to which they have been engaged. Such designees shall be afforded all of the rights and access granted thereto. In the event of a dispute between the County Contract Manager's designee and Contractor, the County Contract Manager's determination shall be conclusive.

In the event of dispute between the County Contract Manager and the Contractor regarding the interpretation of or the performance of Services under this Agreement, the County Contract Manager's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event of a dispute between the County Contract Manager and the Contractor results in such material impact to the Contractor, Contractor may appeal the determination of the County Contract Manager to the Board of Supervisors whose determination shall be conclusive. For the purposes of this section, "material impact" is an amount equal to or greater than one-quarter (1/4) of one percent (1%) of Contractor's annual Gross Receipts under this Agreement.

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

## **ARTICLE 8**

### **FRANCHISE FEES AND OTHER FEES**

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#### **8.1 GENERAL**

Contractor shall collect the fees described in this Section from Customers through Contractor's regular billings and remit collected amounts to County on a monthly basis as described in Section 8.5.

#### **8.2 FRANCHISE FEE**

The Contractor shall pay the County a Franchise Fee equal to ten percent (10%) of the sum of the gross amount of collected revenue from Customers of the Contractor, gross funds collected on all past due accounts, and the gross revenues derived from the sale of all Recyclable Materials for all non-exclusive services provided for under this Agreement herein and for any other services performed under this Agreement. Franchise fees shall be paid within thirty (30) days of the end of each month for the gross amount received in that month. Franchise fees shall be paid to the County of Santa Cruz by check delivered to the Director of Public Works.

#### **8.3 ADMINISTRATIVE FEE**

The Contractor shall pay an Administrative Fee to the County each month. The amount of the Administrative Fee shall be ten dollars (\$10) per pull of all material types and shall be paid in equal quarterly installments. The County shall use the Administrative Fee to offset expenses including staffing costs related to contract management, compliance, and monitoring, and to enforce the Agreement with respect to any violations by third parties, including initiating and/or assisting in prosecuting enforcement actions. The County shall retain the sole right to set priorities for its contract monitoring and enforcement among County personnel. This fee shall be a pass-through cost.

#### **8.4 AB 939/AB 341 FEE**

The Contractor shall pay an AB 939/AB 341 Fee to the County each month. The amount of the AB 939/AB 341 Fee shall be five (\$5) dollars per pull of all material types and shall be paid in equal quarterly installments. The County shall use the fee revenue to offset expenses for County programs, education and outreach campaigns, reporting, compliance, or other activities involved in compliance with AB 939 and AB 341. The County shall retain the sole right to set priorities for the use of its AB 939/AB 341 Fee. This fee shall be a pass-through cost.

#### **8.5 OTHER FEE**

The County may set other fees or adjust the fees established in this Section from time-to-time during the Term of this Agreement.

#### **8.6 ADJUSTMENT TO FEES**

The County may adjust the fees established in this Article annually at any time during the Term of this Agreement.

#### **8.7 PAYMENT SCHEDULE AND LATE FEES**

On or before the twentieth (20<sup>th</sup>) day of each month during the Term of this Agreement, Contractor shall remit to County Franchise Fees and other fees as described in this Article. If such remittance is not paid to the County on or before the twentieth (20<sup>th</sup>) day of any month, Contractor shall pay, in addition to the amount owed to County, two percent (2%) of the amount owing for that month; plus an additional two percent (2%) owing on any unpaid balance for each following thirty (30) calendar day period the fee remains unpaid

Each monthly remittance to County shall be accompanied by a statement itemizing each fee paid; detailing calculation of all fees; stating actual gross revenues (e.g., cash receipts) for the monthly period collected from all operations conducted or permitted by this Agreement, and stating the number and size of Containers serviced by Contractor for the monthly period. Each remittance including all supporting documentation shall be provided to:

Attn: Director of Public Works  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

#### **8.8 OVERPAYMENT OF FEES**

If Contractor believes it has paid Franchise Fees or other fees as described in this Article, in excess of the fees due to the County, Contractor may submit a request for refund to the County Contract Manager. If proof of overpayment is satisfactory to the County Contract Manager, the County Contract Manager shall authorize the County to refund the overpayment to the Contractor. Contractor shall not apply any overpayment as a credit against any Franchise Fee or other amounts payable to the County, unless specifically authorized to do so by the County Contract Manager in writing.

## **ARTICLE 9**

### **CONTRACTOR'S COMPENSATION AND RATES**

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#### **9.1 CONTRACTOR'S COMPENSATION**

Contractor's compensation for performance of all its obligations under this Agreement shall be: (i) actual Rate revenues paid to Contractor (e.g., cash receipts) by Customers that obtained Contractor's Collection services less fees dues to the County in accordance with Article 8, and (ii) revenues generated by the sale of Collected materials Diverted from Disposal.

Contractor's compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing, Composting, and Disposal fees, regulatory fees, County fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's costs are more than Contractor's compensation, Contractor shall not be compensated for the difference in costs and revenues. If Contractor's costs are less than Contractor's compensation, Contractor shall retain the difference.

#### **9.2 COUNTY'S RIGHT TO SET MAXIMUM RATES**

The County reserves the right to establish maximum Rates for Permitted Materials Collection services provided under this Agreement in the event that: (a) there are three (3) or fewer companies holding non-exclusive franchise Agreements for Collection of Permitted Materials, or (b) the Rates charged by the companies holding non-exclusive franchise Agreements for Collection of Permitted Materials are no longer comparable to those of other jurisdictions, as reasonably determined by County. If the County chooses to exercise its right to set maximum Rates, County shall notify Contractor at least one hundred eighty (180) calendar days prior to the date that maximum Rates become effective. In such case, County will set maximum Rates with consideration of reasonable and necessary costs for Collection, Processing, Composting, and Disposal and with the intention of setting maximum Rates that will enable parties, including the Contractor, that have executed Non-Exclusive Franchise Agreements with the County for Roll-Off Container Collection services the ability to recover reasonable and necessary costs and a reasonable profit.

#### **9.3 CONTRACTOR'S RATES**

Contractor shall set the Rates it charges its Customers for Roll-Off Collection services. The Contractor's Rates shall not exceed County-established maximum Rates, if the County exercises its rights under Section 9.2.

## **ARTICLE 10**

### **INDEMNITY AND INSURANCE**

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#### **10.1 INDEMNIFICATION**

Contractor shall indemnify, defend with counsel acceptable to the County, protect and hold harmless the County and each of its officers, officials, employees, volunteers, and agents (collectively, indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and 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 without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

Contractor's duty to defend and indemnify herein shall include Damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste Collected in the County. Contractor shall be required to indemnify the County for the costs for any claims arising from the Processing, Composting, or Disposal of Permitted Materials, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is intended to operate as an agreement to defend and indemnify and hold harmless indemnitees to the full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

In addition, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of the Act are not met by the Contractor with respect to the Permitted Materials Collected under this Agreement, and such failure is due to Contractor delays in providing information that prevents Contractor or County from submitting reports required by the Act in a timely manner.

This provision will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by County to contribution or indemnity from third parties.

#### **10.2 INSURANCE**

##### **10.2.1 Minimum Scope of Insurance**

Coverage shall be at least as broad as:

- A. Insurance Services Office Commercial General Liability coverage.
  - 1. Personal injury
  - 2. Contractual liability

- B. Insurance Services Office covering Automobile Liability, code I “any auto”.
- C. Worker’s Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
- D. Such other insurance coverages and limits as may be required by the COUNTY.

**10.2.2 Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

- A. General Liability: \$1,000,000 each occurrence for bodily injury and property damage; \$1,000,000 for personal and advertising injury; \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- B. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- C. Workers’ Compensation: Workers’ compensation limits as required by the Labor Code of the State of California.
- D. Employer’s Liability: \$1,000,000 each accident for bodily injury.  
\$1,000,000 disease each employee.  
\$1,000,000 disease policy limit.

**10.2.3 Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**10.2.4 Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Liability Coverages
  - 1. The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officials, employees, or volunteers. The automobile liability is



endorsed to contain MCA-90 coverage.

2. The Contractor's insurance coverage shall be primary insurance as respects the County, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officials, employees, or volunteers.
  4. Coverage shall state that the 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 insurer's liability.
- B. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the County, its officers, employees, and volunteers for losses arising from work performed by the Contractor for the County.
- C. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 calendar days' prior written notice by certified mail, return receipt requested, has been given to the County.

#### **10.2.5 Acceptability of Insurers**

The insurance policies required by this Section shall be issued by an insurance company or companies authorized 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.

#### **10.2.6 Verification of Coverage**

Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the County with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the County before work commences. The County may require complete, certified copies of all required insurance policies, at any time.

#### **10.2.7 Required Endorsements**

- A. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty calendar days' prior written notice shall be given to the County of Santa Cruz in the event of cancellation, reduction in coverage, or non-renewal of this policy."

Director of Public Works  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

B. The Commercial General Liability, Business and Automobile Liability, and Pollution Legal Liability policies shall contain endorsements in substantially the following form:

1. "Thirty calendar days' prior written notice shall be given to the County of Santa Cruz in the event of cancellation, reduction in coverage, or non-renewal of this policy."

Director of Public Works  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

2. "The County of Santa Cruz, its officers, employees, and agents are additional insureds on this policy."

3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the County of Santa Cruz, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

4. "Inclusion of the County of Santa Cruz as an insured shall not affect the County's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the County in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

### **10.2.8 Delivery of Proof of Coverage**

Simultaneously with the execution of this Agreement, Contractor shall furnish the County certificates of each policy of insurance required hereunder, in form and substance satisfactory to County. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the County requests, copies of each policy, together with all endorsements, shall also be promptly delivered to County.

Renewal certificates will be furnished annually to County to demonstrate maintenance of the required coverages throughout the Term.

### **10.2.9 Other Insurance Requirements**

A. If any services are delegated to a Subcontractor, the Contractor shall require such Subcontractor to provide statutory Workers' Compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work in accordance with Sections 10.2.2.C and 10.2.2.D and 10.2.4.B. The liability insurance required by Section 10.2.2.A shall cover all

Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.2.

- B. If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, Contractor shall be in breach of the Agreement until notice is received by County that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to County. Any failure to maintain the required insurance shall be sufficient cause for County to terminate this Agreement. No action taken by County pursuant to this Section shall in any way relieve Contractor of its responsibilities under this Agreement.
- C. The 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 the Contractor or any Subcontractor because of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the County.
- D. The Commercial General Liability, Automobile Liability, and Pollution Legal Liability insurance policies shall be written on an "occurrence," rather than a "claims made" basis. If Contractor is unable to purchase Pollution Legal Liability insurance on an occurrence form and must purchase such insurance on a claims-made form:
  - 1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
  - 2. The policy shall be endorsed to provide not less than a five (5) year discovery period. This requirement shall survive expiration or termination of the Agreement.
  - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years following the expiration or termination of the Agreement.
  - 4. A copy of the claims reporting requirements must be submitted to County for review.
  - 5. These requirements shall survive expiration or termination of this Agreement.

## **ARTICLE 11**

### **DEFAULT AND REMEDIES**

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#### **11.1 EVENTS OF DEFAULT**

Each of the following shall constitute an event of default ("Event of Default") hereunder:

- A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, including, but not limited to, Contractor's failure to comply with the living wage

requirements in Section 6.7 or pay County fees in accordance with Article 8 of this Agreement, and the breach continues for more than ten (10) Business Days after written notice from the County for the correction thereof;

- B. Contractor's to provide notification of recycling services as required by Section 5.3 of this Agreement or public education and outreach as required by Section 5.7 of this Agreement;
- C. Any representation, warranty, or disclosure made to County by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;
- D. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;
- E. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;
- F. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

### **11.2 RIGHT TO TERMINATE UPON DEFAULT**

Upon a default by Contractor, the County may terminate this Agreement within ten (10) calendar days of the default but no later than one hundred eighty (180) calendar days after the default. Such termination shall be effective ten (10) calendar days following the County's written notice to Contractor, and such termination shall be effective without the need for any hearing, suit, or legal action.

### **11.3 COUNTY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

The County's right to terminate the Agreement under Section 11.2 is not exclusive, and the County's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an

election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which the County may have.

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

#### **11.4 LIQUIDATED DAMAGES**

- A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by County as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Roll-Off Collection, Processing, and Disposal service is of utmost importance to County and that County has considered and relied on Contractor's representations as to its quality of service commitment in executing this Agreement. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, County and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that County will suffer. Therefore, without prejudice to County's right to treat such non-performance as an event of default under this Article, the Parties agree that the Liquidated Damages amounts established in Exhibit A of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit A.

County may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by

Customers, occupants, and Generators.

Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. Before assessing Liquidated Damages, County shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and/or non-performance. The County may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. County may, within ten (10) calendar days after issuing the notice, request a meeting with Contractor. County may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. County will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 11.4. The decision of County shall be final and County shall not be subject to, or required to exhaust, any further administrative remedies.

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

The amount of Liquidated Damages specified in Exhibit A shall be adjusted annually on the anniversary of the Effective Date. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect changes in the Consumer Price Index – All Urban Consumers (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following Bureau of Labor Statistics' parameters.

- Not Seasonally Adjusted
- Area – Los Angeles-Riverside-Orange County, CA
- Item – All Items
- Base Period – 1982-84=100

The formula for annual adjustment is as follows:

$$\text{Adjusted Liquidated Damage Amount} = \text{Then-current Liquidated Damage Amount} \times \frac{\text{most current CPI-U}}{\text{previous 12-month CPI-U}}$$

For example:

Current Liquidated Damage Amount = **\$150.00**

Most recently published index (January 2010) = **224.610**

Index published 12 months prior to most recently published index  
(January 2009) = **220.719**

Adjusted Liquidated Damage Amount =  $\$150.00 \times (224.610/220.719) =$  **\$152.64**

If the CPI-U is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in

order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by County within ten (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) day period, County may order the termination of the rights or “franchise” granted by this Agreement.

## **11.5 DIVERSION NON-PERFORMANCE**

The Contractor is required to notify all Customers of the availability of Recyclable Materials, Organic Materials, and/or C&D services upon Customer request of Solid Waste Collection services provided under this Agreement. Contractors that Collect Solid Waste Roll-Off Containers shall provide for Diversion services in order that Customers not include more than five (5%) percent Recyclable Materials, Organic Materials, or C&D by weight or volume. If Customer Disposes of more than five (5%) Recyclable Materials, Organic Materials, or C&D by weight or volume in a Solid Waste Roll-Off Container, the Customer must Source Separate those materials from the Solid Waste and Contractor is required to provide the Customer with Source Separated Collection for Recyclable Materials, Organic Materials, and/or C&D as required by the County Code and by Section 5.3 of this Agreement.

If the Contractor fails to: i) comply with Customer notification of the available Diversion services; ii) provide Diversion Collection services to Customers requesting Solid Waste Collection services; and/or, iii) provide Customer outreach as described in Section 5.3 of this Agreement, the County may levy, and Contractor shall pay, Liquidated Damages described in Section 11.4 and Exhibit A. Upon receiving two (2) notices of noncompliance with Diversion standards as described in this Section, County Contract Manager may determine Contractor to be in default of this Agreement and may terminate the Agreement without further opportunity for remedy by Contractor.

## **11.6 CONDITIONS UPON TERMINATION**

In the event this Agreement is terminated under the provisions of this Article, the following conditions shall be effective:

- A. **Prohibit Roll-Off Collection Services.** Contractor shall have no right or authority to engage in Roll-Off Collection services in the County for a period of five (5) years from the date of termination. After five (5) years, should the Contractor provide proof that the event causing the Contractor to default under this Agreement has been corrected, the Contractor may reapply for a non-exclusive Roll-Off Collection service franchise, and the County, at the sole and complete discretion of the County, may reinstate the Contractor based on review of its reapplication.
- B. **Continuing Liabilities.** Contractor shall remain liable to the County for:
  - 1. Fees due in accordance with Article 8 that would otherwise be payable by the Contractor.
  - 2. Liquidated Damages assessed pursuant to Section 11.4.
  - 3. Reports required by Article 7 for Roll-Off Collection activities performed by Contractor up to and including the date of termination.

4. Indemnity obligations under Section 10.1.
  5. Record keeping and retention obligations under Sections 7.1 and 7.2.
- C. **Release Customers and Generators from Obligations.** Contractor shall allow Permitted Materials Generators served by Contractor to arrange for Permitted Materials Collection services with a hauler authorized to perform such services, without penalty or liability for breach of any contract between Contractor and its Customers or Generators.
- D. **Remove Roll-Off Containers.** Contractor shall remove all of Contractor's Roll-Off Containers from all of Contractor's Collection locations and shall properly Recycle, Process, Compost, or Dispose of Permitted Materials in such Roll-Off Containers.

## **ARTICLE 12**

### **OTHER AGREEMENTS OF THE PARTIES**

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#### **12.1 RELATIONSHIP OF PARTIES**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by County and neither as an officer nor employee of the County, nor as a partner of, or joint venturer with, the County. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of the County. Except as expressly provided herein, Contractor shall have control over the manner and means of conducting the Roll-Off Container Collection, Transportation, Processing, Recycling, Composting, and Disposal services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to County employees by virtue of their employment with the County.

#### **12.2 PERMITS AND LICENSES**

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement which are required by any governmental agency.

#### **12.3 COMPLIANCE WITH LAW**

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

#### **12.4 GOVERNING LAW**

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



## **12.5 JURISDICTION**

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Santa Cruz 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 Santa Cruz County.

## **12.6 BINDING ON SUCCESSORS**

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

## **12.7 ASSIGNMENT**

Neither Party shall assign its rights nor delegate 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. Under no circumstances shall any assignment be considered by County if Contractor is in default at any time during the period of consideration.

## **12.8 PARTIES IN INTEREST**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns.

## **12.9 WAIVER**

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

## **12.10 NOTICE PROCEDURES**

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

A. If to County:

Public Works Director  
County of Santa Cruz  
701 Ocean Street, Room 410

Santa Cruz, CA 95060

B. If to Contractor:

Lewis Tree Service, Inc.  
1500 Brommar St.  
Santa Cruz, CA 95062

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The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail.

### **12.11 REPRESENTATIVES OF THE PARTIES**

References in this Agreement to the "County" shall mean the County Board of Supervisors and all actions to be taken by the County shall be taken by the County Board of Supervisors except as provided below. The County Board of Supervisors may delegate, in writing, authority to the County Contract Manager and/or to other County officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of the Contractor in all matters related to the Agreement and shall inform the County in writing of such designation and of any limitations upon his or her authority to bind the Contractor. The County may rely upon action taken by such designated representative as actions of the Contractor unless they are outside the scope of the authority delegated to him/her by the Contractor as communicated to County.

### **12.12 CRIMINAL ACTIVITY OF CONTRACTOR**

#### **12.12.1 Criminal Activity**

For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:

- A. **Convictions.** The entry against any Contractor Party or its officers, of a criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality, or regulatory agency of competent jurisdiction, based on acts taken in his or her official capacity on behalf of Contractor with respect to:
1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to municipal Solid Waste services of any kind (including Collection, Transportation, transfer, Processing, Recycling, Composting, or Disposal), including this Agreement or any amendment thereto;

2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;
  3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
  4. Unlawful disposal of Hazardous Wastes, the occurrence of which any Contractor Party knew or should have known;
  5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging, and sales and market allocation, and of unfair and anti-competitive trade practices laws;
  6. Violation of securities laws; and,
  7. Felonies.
- B. **Pleas.** Entry of a plea of "guilty," "nolo contendere," or "no contest" by a Contractor Party based on acts taken in his, her, or its official capacity on behalf of Contractor with respect to the conduct described in preceding Section 12.12.1.A.

#### **12.12.2 Notice**

Contractor shall notify County in writing within five (5) calendar days of occurrence of any Criminal Activity by any Contractor Party.

#### **12.12.3 Contractor's Cure**

Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the following:

- A. Terminate from employment or remove from office any offending individual Contractor Party, unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Contractor, and,
- B. Eliminate participation by any offending individual Contractor Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Contractor under this Agreement.

#### **12.12.4 Transfer and Hiring**

Contractor shall not allow or cause to be allowed to hire or transfer any individual from any Parent Company or subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor representative, field supervisor, officer, or director who is directly or indirectly responsible for performance of this Agreement without obtaining prior written consent of County,

following full disclosure to County of the facts and circumstances surrounding such Criminal Activity.

#### **12.12.5 County's Remedy**

In the event of any occurrence of Criminal Activity, the County, in its sole discretion, may terminate the Agreement within thirty (30) calendar days written notice to Contractor, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, in the following events:

- A. Contractor fails to comply with the foregoing obligation of this Section, or,
- B. The Criminal Activity concerns or relates directly or indirectly to this Agreement.

Contractor shall be given the opportunity to present evidence in mitigation during the thirty (30) calendar day notice period.

#### **12.13 ACKNOWLEDGMENT OF PUBLIC RESOURCES CODE SECTION 49523 NOTICE**

Nothing in this Agreement shall be construed as providing Contractor with the five year noticing rights required under PRC 49520. The parties agree that the provisions of PRC 49523 apply instead.

### **ARTICLE 13 MISCELLANEOUS AGREEMENTS**

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#### **13.1 ENTIRE AGREEMENT**

This Agreement, including the exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

#### **13.2 SECTION HEADINGS**

The article headings 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.

#### **13.3 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.

#### **13.4 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.

### **13.5 PRONOUNS AND PLURALS; TENSE**

When not inconsistent with the context, words and phrases used in the present tense include the future, and words and phrases used in the singular number include the plural number. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

### **13.6 TEXT TO CONTROL**

The captions of the Articles or Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting this Agreement.

### **13.7 AMENDMENT**

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

### **13.8 SEVERABILITY**

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

### **13.9 COUNTERPARTS**

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

### **13.10 EXHIBITS**

Each of the exhibits identified as Exhibit "A" through "D" is attached hereto and incorporated herein and made a part hereof by this reference.



IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

COUNTY OF SANTA CRUZ

CONTRACTOR Lewis Tree Service, Inc.

\_\_\_\_\_  
County Contract Manager

[Signature]  
Name

APPROVED AS TO FORM:

Vice President  
Title

[Signature]  
County Counsel

1500 Brommer St.  
Address

[Signature]  
Risk Manager

Santa Cruz, CA  
County

ATTEST:

\_\_\_\_\_  
County Clerk





**EXHIBIT A**

**SCHEDULE FOR LIQUIDATED DAMAGES**

Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

|     |  |  |
|-----|--|--|
| 1.  | <b>Notice of Availability of Services.</b> Failure to notify any Customer of the availability of Recycling, Organics, and/or C&D Collection service upon Customer request of Solid Waste Collection services.  | \$100/ event   |
| 2.  | <b>Leaks, Litter, or Spills.</b> For each occurrence over five during a calendar year of unreasonable leaks, litter, or spills of Permitted Materials near or on public streets and failure to pick up or clean up such material immediately.          | \$300/ event   |
| 3.  | <b>Unauthorized Collection Hours.</b> For each occurrence over five during a calendar year of Collecting Permitted Materials during unauthorized hours.  | \$300/ event   |
| 4.  | <b>Excessive Noise.</b> For each occurrence over 10 during a calendar year of excessive noise.   | \$300/ event   |
| 5.  | <b>Cleaning Collection Vehicles.</b> For each occurrence over five during a calendar year for failure to keep Collection vehicles in a safe and sanitary condition.  | \$150/ event   |
| 6.  | <b>Labeling of Roll-Off Containers.</b> For each occurrence of Contractor's failure to correctly label Contractor-owned Roll-Off Containers (in accordance with Section 6.4.C).  | \$500/ event   |
| 7.  | <b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by Collection vehicle personnel, customer service personnel, or other employees of Contractor.  | \$500/ event   |
| 8.  | <b>Injuries to Others.</b> For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury.                           | \$5,000/ incident  |
| 9.  | <b>Monthly Reports.</b> Failure to submit monthly reports in the timeframe specified in this Agreement.  | \$300/ day*  |
| 10. | <b>Report Hazardous Waste.</b> For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste.   | \$500/ event   |
| 11. | <b>Report Excluded Material.</b> For each failure to notify the appropriate authorities of reportable quantities of Excluded Material.   | \$500/ event   |
| 12. | <b>Failure of Other Obligations.</b> Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by County. | \$150/ for each obligation per day until obligation is performed |
| 13. | <b>Diversion Noncompliance.</b> For each instance of failure to meet diversion standards set forth in Section 11.5.  | \$100/ day   |

- \* Monthly reports shall be considered late until such time as a correct and complete monthly report is received by County. For each calendar day a report is late, the daily Liquidated Damage shall be as indicated in the monthly reports section above.

In placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and 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.

Contractor

County

Initial Here: WSD

Initial Here: \_\_\_\_\_

**EXHIBIT B  
SECRETARY'S CERTIFICATION**

The undersigned, being the Secretary of Lewis Tree Service, Inc.  
Company Name  
California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Katy Imel  
Name of Designated Representative be, and hereby is, authorized to

execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to the Non-Exclusive Franchise Agreement between the County of Santa Cruz and Company for Roll-Off Container Collection, Transporting, Processing, Recycling, Composting, and Disposal of Permitted Materials and that any such action taken to date is hereby ratified and approved.

Dated: 1/4/18

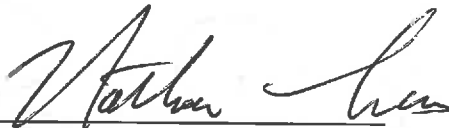
  
Signature  
President / Secretary  
Title

EXHIBIT C

STATEMENT OF APPLICANT'S UNDERSTANDING  
AND REPRESENTATIONS

The undersigned (who is duly authorized to bind the company submitting this application) has reviewed the requirements of the non-exclusive franchise agreement for Roll-Off Collection, Transporting, Processing, Recycling, Composting, and Disposal services for Solid Waste, Recyclable Materials, Organic Materials, and C&D, its exhibits, and reference documents. In addition, the undersigned attests that this application and any other supplementary information submitted with this application do not: (i) contain any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to state a material fact that is necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

Katy Imel  
Print Name

1/4/18  
Date

Vice President  
Title

Lewis Tree Service, Inc.  
Company Name

[Signature]  
Signature

EXHIBIT D

APPROVED PROCESSING FACILITIES

The following facilities were selected by the Contractor and approved by the County\*.

|                  | Approved Recyclables Processing Site | Approved Organics Processing Site |
|------------------|--------------------------------------|-----------------------------------|
| Facility name    | Buena Vista                          |                                   |
| Facility address |                                      |                                   |
| SWIS number      |                                      |                                   |
| Owner            |                                      |                                   |
| Operator         |                                      |                                   |

\* All Solid Waste and residue shall be Disposed of at the Designated Disposal Facility.

Contractor

County

Initial Here:   *KD*  

Initial Here: \_\_\_\_\_

