

1 **NON-EXCLUSIVE WASTE HAULERS AGREEMENT**

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3 This Non-Exclusive Waste Haulers Agreement (“Agreement”) is dated
4 _____ and is between _____ (“Contractor”),
5 and the County of Fresno, a political subdivision of the State of California (“County”). The
6 County and Contractor may be referred to herein individually as “Party” and collectively as “the
7 Parties”.

8 **Recitals**

9 A. It has been determined by the County’s Board of Supervisors, pursuant to the board
10 authority granted to local governmental agencies under Public Resources Code Section 40059,
11 that the Collection and Disposal of Solid Waste and other “Discarded Materials” in the
12 unincorporated area of the County of Fresno is to be provided by private waste haulers, subject
13 to such regulations as the County may impose; and

14 B. Fresno County Ordinance Code Chapter 8.21 establishes the Exclusive Area Program
15 (“ESAP”), pursuant to which the County has entered into contracts that establish Exclusive
16 Areas that are assigned thereunder to certain specifically designated private waste haulers
17 (“ESAP Haulers”) to provide weekly collection services as provided therein. Specifically, each
18 ESAP Hauler provides, under its separate Agreement and within its designated Exclusive
19 Service Area, the collection of Solid Waste placed in containers with a capacity of less than ten
20 (10) cubic yards, by residential and commercial customers for disposal or recycling as
21 appropriate; and

22 C. Fresno County Ordinance Code Chapter 8.24 establishes the County’s program for
23 regulation of those Solid Waste and Discarded Materials Handling Services that are not
24 governed by the provisions of Ordinance Code Chapter 8.21 and the exclusive contracts with
25 the ESAP Haulers. Stated briefly, any transaction involving the Collection, for compensation, of
26 Solid Waste in Containers with a capacity of ten (10) cubic yards or more is not governed by the
27 provisions of Chapter 8.21 and shall remain subject to open market competition under the
28 provisions of Chapter 8.24; and

1 D. The provisions of Ordinance Code Chapter 8.24 are intended to apply to persons and
2 entities that are engaged in the Collection, transportation, processing, recycling, composting or
3 Disposal of Solid Waste, for compensation, with respect to transactions involving their
4 Collection, for compensation, of Solid Waste in Containers with a capacity of ten (10) cubic
5 yards or more from any residential or commercial Customer; and

6 E. The regulatory program established by Ordinance Code Chapter 8.24 provides the
7 issuance to each successful applicant of a Permit and execution of a Non-Exclusive Waste
8 Hauler Agreement (NEWHA) such as this one, that binds the contracting waste hauler to certain
9 requirements for the benefit of the general public; and

10 F. ESAP Haulers are fully and equally entitled to participate in the non-exclusive market
11 open to NEWHA Haulers, as transactions involving the collection of Solid Waste in Containers
12 with a capacity of ten (10) cubic yards or more is not an exclusive market and is intended to and
13 shall remain subject to open competition. However, non-ESAP Haulers may not provide
14 collection services that are governed by Chapter 8.21 and the Agreements between the County
15 and ESAP Haulers, as each ESAP Hauler is entitled to provide Solid Waste and Discarded
16 Materials Handling Services for the collection of Solid Waste Placed in containers with a
17 capacity of less than ten (10) cubic yards on an exclusive basis within its designated Exclusive
18 Service Area; and

19 G. The purpose of this Agreement is to provide, by means of Non-Exclusive Waste Hauler
20 Agreements such as this one, for the Collection, transportation, processing, recycling,
21 composting and Disposal of Solid Waste that is not governed by the provisions of Ordinance
22 Code Chapter 8.21 and the exclusive contracts with the ESAP Haulers. Contractor, as a
23 NEWHA Hauler hereunder, shall comply with all provisions of this Agreement in providing Solid
24 Waste and Discarded Materials Handling Services as that term is defined herein and in Fresno
25 County Ordinance Code Chapter 8.24, for any and each transaction involving the Collection by
26 Contractor, for compensation, of Solid Waste in Containers with a capacity of ten (10) cubic
27 yards or more from any residential or commercial Customer. This Agreement shall be effective
28 retroactively to April 1, 2024.

1 The parties therefore agree as follows:

2 **Definitions**

3 For purposes of this Agreement, unless a different meaning clearly is required by the
4 context, the following words and phrases shall be defined as set for in this Article I (and
5 additional definitions relevant to this Agreement are set forth in Chapter 8.21 of the Ordinance
6 Code).

7 A. "AB 341" means the California legislation (Stats. 2006, Ch. 476), as it may be amended
8 from time to time, that among other things, added Chapter 12.8 (commencing with
9 Section 42649) to Part 3 of Division 30 of the Public Resources Code, imposing
10 mandatory commercial recycling and requirements that each jurisdiction implement an
11 outreach and education program and monitor compliance with the mandatory
12 commercial recycling requirements.

13 B. "AB 1826" means the California legislation (Stats. 2014, Ch. 727), as it may be amended
14 from time to time, that, among other things, added Chapter 12.9 (commencing with
15 Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, imposing
16 requirements that each jurisdiction implement an organic waste recycling program and
17 provide for education, outreach and monitoring of business subject to the requirements.

18 C. "Blue Container" has the same meaning as in 14CCR Section 18989.2(a)(5) and shall be
19 used for the purpose of storage and collection of Source Separated Recyclable Materials
20 or Source Separated Blue Container Organic Waste.

21 D. "Collection" (and "Collect", "Collected", and "Collecting") means the pickup and removal
22 by Contractor from its Customers premises of Solid Waste, or other material and
23 transportation of such material to a Processing Site or Solid Waste Facility as
24 appropriate and consistent with Contractor's obligations under the Non-Exclusive Waste
25 Hauler Agreement.

26 E. "Construction and Demolition Debris" (also known as C&D) means the debris from used
27 construction materials, dredging, grubbing, and rubble resulting from constructing,
28 remodeling, repair, razing, renovation, demolition, excavation, or construction clean-up

1 activities at residential, commercial, or governmental buildings, and any other structure
2 or pavement.

3 F. "Container(s)" means roll-off boxes, compactors, trailers, or similar containers with a
4 capacity of ten (10) cubic yards or more used to provide Solid Waste and Discarded
5 Materials Handling Services. All Containers shall be clearly labeled with the company
6 name and phone number on a minimum of two sides with a minimum font size of four
7 inches. Contractor shall ensure that containers meet the color and/or labeling
8 requirements per SB 1383 for type(s) of materials collected. This definition does not
9 include carts or bins as defined in Chapter 8.21 and utilized as part of delivery services
10 under an ESAP Agreement.

11 G. "Container Contamination" or "Contaminated Container" means a container, regardless
12 of color, that contains Prohibited Contain Contaminants, or as otherwise defined in 14
13 CCR Section 18982(a)(55).

14 H. "County" means the legal entity known as the County of Fresno, California, a political
15 subdivision of the State of California. It can also mean the geographical area within the
16 territorial boundaries of the County of Fresno, as it exists now or in the future.

17 I. "County Representative" means the Director of the Department of Public Works and
18 Planning, or his/her designee, who may be a County official or an agent of County
19 specifically designated to serve as the County Representative and thereby authorized by
20 Chapter 8.24 to administer the program and enforce the terms of this Agreement on
21 County's behalf.

22 J. "Customer" means the person or entities receiving Solid Waste and Discarded Materials
23 Handling Services pursuant to this Non-Exclusive Waste Hauler Agreement.

24 K. "Designee" means an entity that a Jurisdiction contracts with or otherwise arranges to
25 carry out any of the Jurisdiction's responsibilities of this ordinance as authorized in 14
26 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private
27 entity, or a combination of those entities.

28 L. "Discarded Material" means Solid Waste, Recyclable Materials, and Organic Materials

1 placed by a Generator in a Collection Container and/or at a location that is designated
2 for Collection.

3 M. "Disposal," "Disposing," "Dispose," or "Disposed" means the final disposition, at a Solid
4 Waste Facility, of Solid Waste Collected by Contractor.

5 N. "Diversion" or "Diverted" means activities that reduce or eliminate the amount of Solid
6 Waste from Solid Waste Disposal including, but not limited to, recycling and composting.

7 O. "Edible Food" means food intended for human consumption, or as otherwise defined in
8 14 CCR Section 18982(a)(18). For the purposes of this ordinance or as otherwise
9 defined in 14 CCR Section 18982(a)(18). "Edible Food" is not Solid Waste if it is
10 recovered and not discarded. Nothing in this ordinance or in 14 CCR, Division 7,
11 Chapter 12, requires or authorizes the Recovery of Edible Food that does not meet the
12 food safety requirements of the California Retail Code.

13 P. "ESAP Hauler" means a Solid Waste Enterprise engaged in commercial hauling of Solid
14 Waste and Discarded Materials in the unincorporated area of the County governed by
15 the Exclusive Service Area Program provisions of Chapter 8.21. Only an ESAP Hauler
16 can be both an ESAP Hauler and a NEWHA Hauler.

17 Q. "Exclusive Services Area Program" or "ESAP" means the program established by the
18 enactment of Chapter 8.21, including the contracts described therein ("ESAP
19 Agreements") that establish the Exclusive Service Areas that are assigned thereunder to
20 designated private waste haulers ("ESAP Haulers"), to provide weekly collection
21 services as provided therein.

22 R. "Excluded Waste" means hazardous substance, hazardous waste, infectious waste,
23 designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive
24 waste and toxic substances or material that facility operator(s), which receive materials
25 from the Jurisdiction and its generators, reasonably believe(s) would, as a result of or
26 upon acceptance, transfer, processing, or disposal, be a violation of local, State, or
27 Federal law, regulation, or ordinance, including: land use restrictions or conditions,
28 waste that cannot be disposed of in Class III landfills or accepted at the facility by permit

1 conditions, waste that in Jurisdictions, or its Designee's reasonable opinion would
2 present a significant risk to human health or the environment., cause a nuisance or
3 otherwise create or expose Jurisdiction, or its Designee, to potential liability; but not
4 including de minimis volumes or concentrations of waste of a type and amount normally
5 found in Single-Family or Multi-Family Solid Waste after implementation of programs for
6 the safe collection, processing, recycling, treatment, and disposal of batteries and paint
7 in compliance with Sections 41500 and 41802 of the California Public Resources Code.
8 Excluded Waste does not include used motor oil and filters, household batteries,
9 universal wastes, and/or latex paint when such materials are defined as allowable
10 materials for collection through the Jurisdiction's collection programs and the generator
11 or customer has properly placed the materials for collection pursuant to instructions
12 provided by Jurisdiction or its Designee for collection services.

13 S. "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat,
14 poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells.
15 Food Scraps excludes fats, oils, and grease when such materials are Source Separated
16 from other Food Scraps.

17 T. "Gray Container" has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall
18 be used for the purpose of storage and collection of Gray Container Waste.

19 U. "Gray Container Waste" means Solid Waste that is collected in a Gray Container that is
20 part of the three-container Organic Waste collection service that prohibits the placement
21 of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and
22 (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5).

23 V. "Green Container" has the same meaning as in 14 CCR Section 18982.2(a)(29) and
24 shall be used for the purpose of storage and collection of Source Separated Green
25 Container Organic Waste (SSGOCOW).

26 W. "Non-Exclusive Waste Hauler(s)" or "NEWHA Hauler" means a person or entity
27 authorized to engage in commercial hauling of Solid Waste and Discarded Materials in
28 the unincorporated area of the County that is not governed by the Exclusive Service

1 Area Program provisions of Chapter 8.21. Only and ESAP Hauler can be both an ESAP
2 Hauler and a NEWHA Hauler.

3 X. "Non-Exclusive Waste Hauler Agreement" or "NEWHA" means the agreement between
4 the County and NEWHA Hauler that is a prerequisite to the authorized provision of the
5 Solid Waste and Discarded Materials.

6 Y. "Non-Exclusive Waste Hauler Agreement Permit," or "NEWHA Permit," or "Permit"
7 means the permit required to engage in authorized commercial hauling of Solid Waste
8 and Discarded Materials in the unincorporated area of the County that is not governed
9 by the Exclusive Service Area Program provisions of Chapter 8.21.

10 Z. "Organic Materials" or "Compostable Materials" means Discarded Materials from the
11 Customer intended for and capable of being composted, digested or otherwise
12 processed (such as food scraps, yard trimmings or compostable paper), and that are
13 separated, set aside, handled, packaged, offered, or otherwise delivered for collection by
14 a Customer in a manner different from Solid Waste. Organic Materials shall not include
15 and Excluded Waste.

16 AA. "Prohibited Container Contaminants" means the following: (i) discarded materials placed
17 in the Blue Container that are not identified as acceptable Source Separated Recyclable
18 Materials for the Jurisdiction's Blue Container; (ii) discarded materials placed in the
19 Green Container that are not identified as acceptable Source Separated Green
20 Container Organic Waste for the Jurisdiction's Green Container; (iii) discarded materials
21 placed in the Gray Container that are acceptable Source Separated Recyclable
22 Materials and/or Source Separated Green Container Organic Wastes to be placed in
23 Jurisdiction's Green Container and/or Blue Container; and (iv) Excluded Waste placed in
24 any container.

25 BB. "Quarterly Remittance(s)" means the quarterly payment made to the County by each
26 NEWHA Hauler of Service Fees and County Solid Waste Surcharges by the forty-fifth
27 day following the end of the preceding quarter, as more thoroughly provided in Article 3
28 of this Agreement.

1 CC. "Recyclable Materials" or "Recyclables" means Discarded Materials from the Customer
2 intended for and capable of being recycled, and that are separated, set aside, handles,
3 packaged, offered, or otherwise delivered for collection by a Customer in a manner
4 different from Solid Waste. Recyclable Materials shall not include any Excluded Waste.

5 DD. "Residual" means the non-recyclable, non-compostable materials left over after
6 processing residual waste or source-separated Recyclables or Organics. This material is
7 typically disposed in a landfill.

8 EE. "Route Review" means a visual Inspection of containers along a Hauler Route for the
9 purpose of determining Container Contamination and may include mechanical
10 Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR
11 Section 18982(a)(65).

12 FF. "SB 1383" means Chapter 395, Statutes of 2016 (Lara, SB1383), commonly referred to
13 as "SB1383", as amended, supplemented, supersedes, and replaced from time to time,
14 that among other things, adopted methane emissions reduction goals that include the
15 following targets to reduce the landfill disposal of organics:

- 16 a. A 50-percent reduction in the level of statewide disposal of organic waste from
17 the 2014 level by 2020.
- 18 b. A 75-percent reduction in the level of the statewide disposal or organic waste
19 from the 2014 level by 2025.

20 GG. "Solid Waste" has the same meaning as defined in State Public Resources Code
21 Section 40191, which defined Solid Waste as all putrescible and non-putrescible solid,
22 semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes,
23 industrial wastes, demolition and construction wastes, abandoned vehicles and parts
24 thereof, discarded home and industrial appliances, dewatered, treated, or chemically
25 fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid
26 and semi-solid wastes, and other discarded solid and semi-solid wastes. Excluded from
27 the definition of Solid Waste are: Excluded Waste, Recyclable Materials kept separate
28 from Solid Waste for the purpose of Recycling, Organic Materials, and Construction and

1 Demolition Debris with less than 10% Residual.

2 HH. "Solid Waste Enterprise" means any individual, partnership, joint venture,
3 unincorporated private organization, or private corporation, which is regularly engaged in
4 the business of providing Solid Waste Handling Services.

5 II. "Solid Waste Facility" includes a solid waste transfer or processing station, a composting
6 facility or organics processing facility, a gasification facility, a transformation facility, and
7 Engineered Municipal Solid Waste conversion facility, or a disposal facility as consistent
8 with California Public Resources Code 40194.

9 JJ. "Solid Waste and Discarded Materials Handling Services" means the removal of Solid
10 Waste and placement in a Collection vehicle for transport, storage, or processing of
11 Solid Waste for residential, commercial, institutional, or industrial users or Customers.

12 KK. "Source Separated" means the segregation, by the Generator, of materials designated
13 as separate, including separation of materials by the generator, property owner, property
14 owner's employee, property manager, or property manager's employee into different
15 containers for the purpose of collection such that Source Separated materials are
16 separated from Gray Container Waste or other Solid Waste for the purposes of
17 collection and processing.

18 LL. "Special Waste" includes any materials that under current or future statute or regulation
19 require the application of special treatment, handling, or Disposal practices beyond
20 those normally required for Solid Waste. "Special Waste" shall be deemed to include,
21 without limitation, all of the following: flammable waste; liquid waste transported in a bulk
22 tanker; sewage sludge; pollution control process waste; residual and debris from
23 cleanup of a spill or release of chemical substances, contaminated soil, waste, residual,
24 debris and articles from the cleanup of a site or facility formerly used for the generation,
25 storage, treatment, recycling, reclamation, or Disposal of any other Special Wastes;
26 dead animals; manure; waste water; explosive substances; radioactive substances;
27 fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or
28 parts thereof, including tires.

1 **Article 1**

2 **Contractor's Services**

3 1.1 **Scope of Services.** The Contractor shall perform all of the services provided in
4 Exhibit "A" to this Agreement, titled "Scope of Services."

5 1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and
6 able to perform all of the services provided in this Agreement.

7 1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all
8 applicable federal, state, and local laws and regulations in the performance of its obligations
9 under this Agreement, including but not limited to workers compensation, labor, and
10 confidentiality laws and regulations.

11 1.4 **Maintenance of Permit and Appeal Procedures.**

12 (A) The Permit shall remain valid for the term of this Agreement. Unless suspended
13 or revoked for the reasons provided in section 1.4 (D) , the Permit must be renewed by
14 Contractor on or before expiration of such term by written application to the County
15 Representative, the procedure for which may include, but is not necessarily limited to
16 inspection by the County Representative or designee of the Contractor's Collection
17 Vehicles that are used in the performance of the Solid Waste and Discarded Materials
18 Handling Services authorized to be provided by Contractor hereunder.

19 (B) Upon any failure by Contractor to renew the requisite Permit prior to the renewal
20 deadline, the Permit shall expire by its terms at 12:01 a.m. on the next calendar day.
21 Expiration of the Permit shall result in automatic and immediate termination of
22 Contractor's authorization to provide Solid Waste and Discarded Materials Handling
23 Services thereunder and shall constitute termination of this Agreement and Contractor's
24 rights to provide Solid Waste and Discarded Materials Handling Services pursuant
25 hereto. The Permit may be reinstated at County's discretion, upon written application by
26 Contractor to the County Representative within thirty (30) calendar days following its
27 expiration, together with Contractor's submittal to County of any reports or payments
28 required hereunder from Contractor that are overdue at the time of such reinstatement

1 application.

2 (C) Contractor agrees that, during the term of this Agreement, Contractor's Collection
3 Vehicles will be made available for inspection at a site designated by the County
4 Representative, upon five (5) business days advance request, and Contractor hereby
5 acknowledges that the Parties contemplate that such inspections may take place
6 annually. Any Collection Vehicle that fails to pass such inspection shall not be utilized by
7 Contractor in providing Solid Waste and Discarded Materials Handling Services
8 hereunder until the deficiency is cured and such vehicle(s) passes a subsequent
9 inspection by the County Representative or Designee.

10 (D) Contractor's Permit may be suspended for the following reasons:

11 (1) A significant percentage of its Collection Vehicles fail to pass inspection,

12 (2) Violation of any provision of this Agreement, including but not limited to failure
13 to remit timely and payment of report with due under this Agreement.

14 (E) Collection vehicles purchased by Contractor under this Agreement shall be
15 Renewable Natural Gas (RNG) Vehicles.

16 (F) Contractor shall be given notice, by certified mail, return receipt requested, of any
17 such violation or deficiency, or any delinquency in payment, and the date of any
18 scheduled hearing on the proposed suspension or revocation of its Permit. If Contractor
19 fails to cure any violation within thirty (30) calendar days following the County's mailing
20 of such notice, then Contractor's Permit shall be suspended, effective on the fifth
21 calendar day following mailing to Contractor of notice of the suspension on its Permit.

22 (G) A Contractor will be provided the opportunity for a hearing on the proposed
23 suspension or revocation its Permit in accordance with Ordinance Code Section
24 8.24.100. In the event of a ruling approving the suspension or revocation of a Permit,
25 Contractor may appeal any ruling approving the suspension or revocation of its Permit to
26 the Director of the County's Department of Public Works and Planning ("Director"). Such
27 appeal must be in writing and provide a detailed explanation of the basis for such
28 appeal. Such appeal must be delivered, personally or by certified or registered mail to

1 the office of the Director, and such appeal must be received by County within twenty (20)
2 days after the County's mailing of the notice of proposed suspension or revocation, or it
3 shall be rejected as untimely. A hearing on any timely delivered appeal will be scheduled
4 by the Director or his/her designee within a reasonable period of time following receipt
5 thereof, and written notice of the hearing date shall be mailed to Contractor at least
6 twenty (20) days prior thereto. Failure by Contractor to pursue this appeal procedure
7 shall be deemed a failure by Contractor to exhaust its available administrative remedies,
8 upon which County may rely as an absolute defense to any subsequent claim or legal
9 action initiated by Contractor regarding the suspension or revocation its Permit.

10 (H) Final Revocation of Contractor's Permit shall constitute grounds for immediate
11 termination of this Agreement. Contractor's Permit may be revoked for the following
12 reasons:

13 (I) Due to violation of applicable law or regulation by Contractor, or

14 (J) If Contractor's Permit remains suspended for more than ninety (90) days
15 following the effective date of the suspension of such Permit under Article 1.4.

16 (K) In the event of the final revocation of a Permit following the Director's denial of an
17 appeal by Contractor, the County Representative shall notify the Contractor within forty-
18 eight (48) hours in writing of the decision and the reasons therefor. Such notification may
19 be made in person or by registered/certified mail. Any notice of final revocation shall
20 include, without limitation, the effective date of that Contractor's Permit to collect Solid
21 Waste and Discarded Materials.

22 (L) If County terminates this Agreement for any of the reasons set forth in this Article
23 1.4, Contractor's obligation to remit payments due hereunder, for Solid Waste collected
24 by Contractor prior to the final termination date, shall survive the termination of this
25 Agreement.

26 **1.5 Transport and Disposal of Solid Waste.**

27 The Parties acknowledge that County is responsible under California law to provide for
28 the collection of Solid Waste and Discarded Materials within its jurisdictional boundaries

1 and has the authority to control by ordinance the disposition of Solid Waste and
2 Discarded Materials collected in the unincorporated area of the County. It is agreed
3 between County and Contractor, commencing on the Effective Date and continuing
4 throughout the term of this Agreement, as follows:

5 (A) Flow Control – Delivery of Solid Waste to Designated Solid Waste Facility

6 (1) Contractor expressly agrees to deliver, to such permitted Solid Waste Facility
7 as may be designated by the County, from and after the date of County’s written
8 notification to Contractor of such designation (unless exempted from such
9 requirement pursuant to the immediately following Section B), all of the Solid Waste
10 Collected by Contractor within the unincorporated area of Fresno County pursuant to
11 this Agreement.

12 (B) Application for Limited Exemption from Flow Control Requirement

13 (1) Any Contractor may make an application to the County Representative for an
14 exemption from the Flow Control requirement set forth in the immediately preceding
15 Section A.

16 a. The application for exemption must provide sufficient justification to
17 support the requested exemption, which may in the County
18 Representative’s discretion be granted on the basis of extreme economic
19 inefficiencies attributable to geographical hardship or other extenuating
20 circumstances. An exemption may be rejected on the sole basis of
21 Contractor’s demonstrated failure to comply with the reporting
22 requirements set forth in Article 2 of this Agreement.

23 a. An exemption granted to any Contractor shall be in writing and shall be
24 valid only for a period of two (2) years following the date on which is
25 granted, at which time the exemption will expire by its terms. Provided,
26 however, that the Contractor may submit an application together with
27 sufficient explanatory supporting justification, to support an extension of
28 the exemption, not more than 120 days and not less than 60 days prior to

1 its expiration. If any exemption granted to a Contractor expires by its
2 terms, that Contractor may submit an application seeking issuance of a
3 new exemption no sooner than 90 days following the expiration of the
4 prior exemption. If any exemption granted to a Contractor is revoked
5 pursuant to the provisions of the immediately following Section C, then
6 Contractor will not be eligible to apply for issuance of a new exemption
7 until 36 months have passed following the revocation of the prior
8 exemption.

9 (C) Revocation of Exemption

10 (1) Breach of any provisions of this Agreement, including but not limited to the
11 reporting and payment requirements listed in the immediately following Articles 2
12 And Article 1.5, respectively, may result in revocation of the exemption; and in the
13 event of such revocation, to deliver all Solid Waste to the Solid Waste Facility
14 designated by the County in accordance with the provisions of the Agreement.

15 **Article 2**

16 **Records and Reporting**

17 2.1 Contractor shall maintain accurate and complete accounting records containing the
18 underlying financial and operating data relating to and showing the basis for computation of all
19 revenues associated with providing Collection, transportation, processing, recycling,
20 composting, and Disposal of Solid Waste pursuant to the provisions of this Agreement. The
21 accounting records shall be prepared in accordance with Generally Accepted Accounting
22 Principles (GAAP) consistently applied. At a minimum, the following operational records relating
23 to each of the following shall be maintained by Contractor for a period of three (3) years
24 following the date of expiration or termination of this Agreement:

25 (A) Customer account information and billing records.

26 (B) Tonnage of material collected, identified by type (e.g., Solid Waste, Recyclable
27 Material, Organic Material, or Construction and Demolition Debris), listed by the
28 Processing Site or Solid Waste Facility to which such materials were delivered. To the

1 extent possible, Contractor also shall maintain in its records information that separately
2 accounts for the respective amounts of tonnage collected by Contractor from its
3 residential and commercial Customers.

4 (C) Tonnage (if any) of Recyclable Materials, Organic Material, or Construction and
5 Demolition Debris (C&D) Diverted from Disposal by Contractor, together with supporting
6 documentation.

7 (D) Diversion level (if applicable), which shall equal tonnage Diverted by Contractor
8 divided by the tonnage Collected by Contractor multiplied by 100, listed separately by
9 month for the previous quarter. Tonnage Diverted shall reflect Discarded Materials
10 Processed less Residual Disposed.

11 (E) Residual levels of processed or composted materials.

12 (F) Weight tickets from: (i) each Solid Waste Facility documenting the tonnage of
13 Solid Waste Collected by Contractor within the County's unincorporated area and
14 delivered to such Solid Waste Facility; (ii) Processing Sites documenting the tonnage of
15 Discarded Materials collected within the County's unincorporated area and delivered to
16 the approved Processing Sites; and (iii) permitted Solid Waste Facilities documenting
17 the tonnage of Residual delivered to such facilities by vehicle, date and time.

18 (G) Names, service addresses, contact information and service levels for Customers
19 required to comply with AB 341, AB 1826, and SB 1383 including State agencies,
20 schools, and County facilities.

21 (H) Contractor shall maintain accurate and complete records containing the number
22 and types of accounts served by Contractor. The records shall contain, at a minimum,
23 the Customer's name, type of business, phone number, collection address or location,
24 date of Collection, itemized listing of services performed, type of material Collected,
25 tonnage Collected, and the amount charged to provide services. The information shall
26 be provided to the County upon request.

27 (I) Quarterly reports shall be submitted within forty-five (45) days of the end of the
28 calendar quarter in electronic copy based upon County format and shall be provided

1 electronically in software acceptable to County, unless otherwise directed by County
2 Representative. Quarterly reports shall include a jurisdictional report, if applicable. The
3 Contractor's Quarterly Reports shall provide the following information:

4 (1) Total Tonnage. Total tonnage Collected by Contractor within the County's
5 unincorporated area during the previous quarter, listed separately by material type
6 and by month.

7 (2) Diverted Tonnage. Tonnage Collected by Contractor within the County's
8 unincorporated area that was Diverted during the previous quarter, listed separately
9 by material type and by month.

10 (3) Disposed Tonnage. Tonnage Collected by Contractor within the County's
11 unincorporated area that was Disposed during the previous quarter, listed separately
12 by month.

13 (4) Diversion Level. Tonnage Diverted by Contractor divided by the tonnage
14 Collected by Contractor multiplied by 100, listed separately by month for the previous
15 quarter. Tonnage Diverted shall reflect Discarded Materials processed less Residual
16 Disposed.

17 (5) C&D. Tonnage generated from construction and demolition permitted sites,
18 noting the permit number, the site address, the tonnage hauled, the date hauled, and
19 the facilities to which the material was hauled.

20 (6) Disposal and Processing Locations. Contractor shall provide a list of the
21 names and addresses identifying where Discarded Materials collected within the
22 County's unincorporated area during the previous quarter were Diverted and
23 Disposed. Such list shall include the amount of Discarded Materials tonnage
24 Diverted and/or Disposed at each location during the previous quarter, listed
25 separately by month.

26 (7) Solid Waste Management Surcharge Fees. Fees generated from tonnage
27 Collected by Contractor within the County's unincorporated area that was Disposed
28 during the previous quarter, listed separately by month.

1 (8) Revenues. Gross revenues (e.g., cash receipts) earned on all Collection,
2 transportation, processing, recycling, composting and Disposal services provided to
3 Customers within the County's unincorporated area during the previous quarter,
4 listed separately by month.

5 (9) Account Information. In table format, the number of Customers within the
6 County's unincorporated area served by Contractor and the number of Containers
7 serviced per month listed by Container type (e.g., Drop Box or Compactor) and
8 Container size, and listed separately by Discarded Material type, and regularly
9 scheduled service and unscheduled (on-call) service.

10 (10) State-mandated Reporting Data. Provide reporting data for customers
11 subject to the requirements of AB 341, AB 1826, SB 1383 or any new laws or
12 requirements, in addition to the CalRecycle Electronic Annual Report (EAR).

13 (11) Jurisdictional Tonnage. Tonnage collected within the fifteen (15)
14 incorporated cities within the boundaries of the County and any applicable fees.
15 Reporting includes waste type, disposal and processing location, total tonnage
16 collected, diverted, and disposed during the previous quarter, listed separately by
17 month.

18 (12) Contractor Officers and Board Members. Provide a list of Contractor's
19 officers and members of its board of directors (only required to be provided with the
20 first quarter report each year, or in the event of a change in Contractor's officers or
21 board members).

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

26 **Article 3**

27 **Requisite Payment of Services and Other Fees**

28 3.1 Contractor's Quarterly Remittance hereunder requires that Contractor make the

1 following payments to County on a quarterly basis, which payments shall be due and payable
2 on or before: May 15 (for the preceding first quarter consisting of January 1 through March 31);
3 August 15 (for the preceding second quarter consisting of April 1 through June 30); November
4 15 (for the preceding third quarter consisting of July 1 through September 30); and February 15
5 (for the preceding fourth quarter consisting of October 1 through December 31). The payment of
6 each Quarterly Remittance shall be accompanied by a summary breakdown of the amount of
7 Contractor's payment attributable to each of the following components:

8 (A) In consideration of the rights granted to Contractor under this Agreement, and to
9 cover related costs to be incurred by County including program administration,
10 Contractor shall pay to the County each quarter a Service Fee in an amount equal to ten
11 percent (10%) of actual gross revenues remitted to Contractor by its Customers for the
12 services provided by Contractor under this Agreement.

13 (B) The Parties acknowledge and agree that this Service Fee is imposed for the
14 benefits conferred to Contractor pursuant to this Agreement, for the regulatory costs to
15 County for managing the NEWHA program, and are necessary to cover the reasonable
16 costs of the NEWHA program, including, but not limited to:

17 (1) The regulatory costs for issuing NEWHA permits;

18 (2) performing investigations, inspections, and audits as required and permitted
19 by this Agreement, by both the Department of Public Works and Planning –
20 Resources Division and Environmental Health;

21 (3) the administrative enforcement of State law pertaining to the collection and
22 disposal of solid waste, including, but not limited to, AB 341, AB 1826, and SB 1383
23 by Contractor;

24 B. Contractor shall pay to the County the surcharge for Solid Waste management
25 program activities, as listed in the County of Fresno Master Schedule of Fees, Charges and
26 Recovered Costs for each ton Collected by Contractor from its Customers pursuant to the
27 provisions of this Agreement. (This surcharge is incorporated into the tipping fee at the
28 American Avenue Disposal Site, and thus requires no separate payment if that facility is used.)

1 C. Contractor shall pay to the County the surcharge that funds all closure/post-closure
2 maintenance costs for the Southeast Regional Disposal Site, as listed in the County of Fresno
3 Master Schedule of Fees, Charges and Recovered Costs for each ton Collected by Contractor;
4 provided, that this surcharge is applicable only as to Solid Waste Collected pursuant to this
5 Agreement within the Southeast Regional Solid Waste Commission Area, as identified in the
6 map attached hereto as Exhibit "D".

7 **Article 4**

8 **Term of Agreement**

9 4.1 **Term.** The term of this Agreement shall be three (3) years, unless earlier terminated
10 under Article 1.4 of this Agreement due to the termination or revocation of Contractor's requisite
11 Permit. Before the expiration of such term, it shall be the Contractor's responsibility to enter into
12 a successor agreement with the County (and to apply for renewal and at all times maintain in
13 good standing the viability of its Permit), in order for Contractor to retain its authorization to
14 provide those certain Solid Waste and Discarded Materials Handling Services as specified
15 herein.

16 4.2 **Compliance with Laws.** In providing the Solid Waste and Discarded Materials
17 Handling Services authorized to be provided by Contractor hereunder, Contractor shall at all
18 times comply with all applicable Federal, State, and local laws, ordinances, regulations, and
19 Fresno County Charter Provisions now in force and as they may be enacted, issued, or
20 amended during the term of this Agreement. In addition, by execution of this Agreement,
21 Contractor hereby expressly acknowledges that Contractor has reviewed and is familiar with the
22 provisions of Fresno County Ordinance Code Chapters 8.20 through 8.25.

23 If Contractor fails to comply with other requirements of the Agreement including public
24 education, reporting, contamination monitoring, recordkeeping, or other obligations of this
25 Agreement that delegate County's responsibility and/or authority under SB 1383 Regulations to
26 Contractor, Contractor may be subject to an administrative fine, as listed in Ordinance Code's
27 Chapter 8.24.

28 4.3 **Relationship of Parties.** The Parties intend that Contractor shall perform the Solid

1 Waste and Discarded Materials Handling Services as authorized herein as an independent
2 contractor engaged by the County and not as an officer or employee of the County, nor as a
3 partner of or joint venturer with the County. No employee or agent of Contractor shall be or shall
4 be deemed to be an employee or agent of the County. Except as expressly provided herein,
5 Contractor shall have the exclusive control over the manner and means of providing the Solid
6 Waste and Discarded Materials Handling Services as authorized herein and all persons
7 performing such services. Contractor shall be solely responsible to the County for the acts and
8 omissions of its officers, employees, subcontractors, and agents. Neither Contractor nor any of
9 its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits,
10 workers' compensation benefits, or any other benefits which accrue to County employees by
11 virtue of their employment with the County. Neither Contractor nor any of its employees shall
12 provide, directly or indirectly, any gifts or gratuities to any County employee or representative.

13 **Article 5**

14 **Notices**

15 5.1 **Contact Information.** The persons and their addresses having authority to give and
16 receive notices provided for or permitted under this Agreement include the following:

17 **For the County:**
18 Non-Exclusive Waste Haulers Agreement
19 County of Fresno
20 2220 Tulare Street
21 Fresno, Ca 93721
22 fcswdrdesk@fresnocountyca.gov

23 **For the Contractor:**
24 Name:
25 Address:
26 City, State Zip:
27 Email Address:

28 5.2 **Change of Contact Information.** Either party may change the information in section
5.1 by giving notice as provided in section 5.3.

5.3 **Method of Delivery.** Each notice between the County and the Contractor provided

1 for or permitted under this Agreement must be in writing, state that it is a notice provided under
2 this Agreement, and be delivered either by personal service, by first-class United States mail, by
3 an overnight commercial courier service, or by Portable Document Format (PDF) document
4 attached to an email.

5 (A) A notice delivered by personal service is effective upon service to the recipient.

6 (B) A notice delivered by first-class United States mail is effective three County
7 business days after deposit in the United States mail, postage prepaid, addressed to the
8 recipient.

9 (C) A notice delivered by an overnight commercial courier service is effective one
10 County business day after deposit with the overnight commercial courier service,
11 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
12 the recipient.

13 (D) A notice delivered by PDF document attached to an email is effective when
14 transmission to the recipient is completed (but, if such transmission is completed outside
15 of County business hours, then such delivery is deemed to be effective at the next
16 beginning of a County business day), provided that the sender maintains a machine
17 record of the completed transmission.

18 **5.4 Claims Presentation.** For all claims arising from or related to this Agreement,
19 nothing in this Agreement establishes, waives, or modifies any claims presentation
20 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
21 of Title 1 of the Government Code, beginning with section 810)

22 **Article 6**

23 **Indemnity and Defense**

24 **6.1 Indemnity.** The Contractor shall indemnify and hold harmless and defend the
25 County (including its officers, agents, employees, and volunteers) against all claims, demands,
26 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
27 liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to
28 the performance or failure to perform by the Contractor (or any of its officers, agents,

1 subcontractors, or employees) under this Agreement. The County may conduct or participate in
2 its own defense without affecting the Contractor's obligation to indemnify and hold harmless or
3 defend the County.

4 6.2 **Survival.** This Article 6 survives the termination of this Agreement.

5 **Article 7**

6 **Insurance**

7 7.1 The Contractor shall comply with all the insurance requirements in Exhibit C to this
8 Agreement.

9 **Article 8**

10 **Inspections, Audits, and Public Records**

11 8.1 **Inspection of Documents.** The Contractor shall make available to the County, and
12 the County may examine at any time during business hours and as often as the County deems
13 necessary, all of the Contractor's records and data with respect to the matters covered by this
14 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon
15 request by the County, permit the County to audit and inspect all of such records and data to
16 ensure the Contractor's compliance with the terms of this Agreement.

17 8.2 **State Audit Requirements.** If the compensation to be paid by the County under this
18 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
19 California State Auditor, as provided in Government Code section 8546.7, for a period of three
20 years after final payment under this Agreement. This section survives the termination of this
21 Agreement.

22 8.3 **Public Records.** The County is not limited in any manner with respect to its public
23 disclosure of this Agreement or any record or data that the Contractor may provide to the
24 County. The County's public disclosure of this Agreement or any record or data that the
25 Contractor may provide to the County may include but is not limited to the following:

26 (A) The County may voluntarily, or upon request by any member of the public or
27 governmental agency, disclose this Agreement to the public or such governmental
28 agency.

1 (B) The County may voluntarily, or upon request by any member of the public or
2 governmental agency, disclose to the public or such governmental agency any record or
3 data that the Contractor may provide to the County, unless such disclosure is prohibited
4 by court order.

5 (C) This Agreement, and any record or data that the Contractor may provide to the
6 County, is subject to public disclosure under the Ralph M. Brown Act (California
7 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

8 (D) This Agreement, and any record or data that the Contractor may provide to the
9 County, is subject to public disclosure as a public record under the California Public
10 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning
11 with section 6250) ("CPRA").

12 (E) This Agreement, and any record or data that the Contractor may provide to the
13 County, is subject to public disclosure as information concerning the conduct of the
14 people's business of the State of California under California Constitution, Article 1,
15 section 3, subdivision (b).

16 (F) Any marking of confidentiality or restricted access upon or otherwise made with
17 respect to any record or data that the Contractor may provide to the County shall be
18 disregarded and have no effect on the County's right or duty to disclose to the public or
19 governmental agency any such record or data.

20 **8.4 Public Records Act Requests.** If the County receives a written or oral request
21 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
22 and which the County has a right, under any provision of this Agreement or applicable law, to
23 possess or control, then the County may demand, in writing, that the Contractor deliver to the
24 County, for purposes of public disclosure, the requested records that may be in the possession
25 or control of the Contractor. Within five business days after the County's demand, the
26 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's
27 possession or control, together with a written statement that the Contractor, after conducting a
28 diligent search, has produced all requested records that are in the Contractor's possession or

1 control, or (b) provide to the County a written statement that the Contractor, after conducting a
2 diligent search, does not possess or control any of the requested records. The Contractor shall
3 cooperate with the County with respect to any County demand for such records. If the
4 Contractor wishes to assert that any specific record or data is exempt from disclosure under the
5 CPRA or other applicable law, it must deliver the record or data to the County and assert the
6 exemption by citation to specific legal authority within the written statement that it provides to
7 the County under this section. The Contractor's assertion of any exemption from disclosure is
8 not binding on the County, but the County will give at least 10 days' advance written notice to
9 the Contractor before disclosing any record subject to the Contractor's assertion of exemption
10 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs
11 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,
12 failure to produce any such records, or failure to cooperate with the County with respect to any
13 County demand for any such records.

14 **Article 9**

15 **Disclosure of Self-Dealing Transactions**

16 9.1 **Applicability.** This Article 9 applies if the Contractor is operating as a corporation or
17 changes its status to operate as a corporation.

18 9.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a
19 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
20 "Self-Dealing Transaction Disclosure Form" (Exhibit B to this Agreement) and submitting it to the
21 County before commencing the transaction or immediately after.

22 9.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is
23 a party and in which one or more of its directors, as an individual, has a material financial
24 interest.

25 **Article 10**

26 **General Terms**

27 10.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
28 Agreement may not be modified, and no waiver is effective, except by written agreement signed

1 by both parties. The Contractor acknowledges that County employees have no authority to
2 modify this Agreement except as expressly provided in this Agreement.

3 10.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
4 under this Agreement without the prior written consent of the other party.

5 10.3 **Governing Law.** The laws of the State of California govern all matters arising from
6 or related to this Agreement.

7 10.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
8 County, California. Contractor consents to California jurisdiction for actions arising from or
9 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
10 brought and maintained in Fresno County.

11 10.5 **Construction.** The final form of this Agreement is the result of the parties' combined
12 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
13 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
14 against either party.

15 10.6 **Days.** Unless otherwise specified, "days" means calendar days.

16 10.7 **Headings.** The headings and section titles in this Agreement are for convenience
17 only and are not part of this Agreement.

18 10.8 **Severability.** If anything in this Agreement is found by a court of competent
19 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
20 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
21 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
22 intent.

23 10.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
24 not unlawfully discriminate against any employee or applicant for employment, or recipient of
25 services, because of race, religious creed, color, national origin, ancestry, physical disability,
26 mental disability, medical condition, genetic information, marital status, sex, gender, gender
27 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
28 all applicable State of California and federal statutes and regulation.

1 10.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
2 of the Contractor under this Agreement on any one or more occasions is not a waiver of
3 performance of any continuing or other obligation of the Contractor and does not prohibit
4 enforcement by the County of any obligation on any other occasion.

5 10.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
6 between the Contractor and the County with respect to the subject matter of this Agreement,
7 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
8 publications, and understandings of any nature unless those things are expressly included in
9 this Agreement. If there is any inconsistency between the terms of this Agreement without its
10 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
11 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
12 exhibits.

13 10.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
14 create any rights or obligations for any person or entity except for the parties.

15 10.13 **Authorized Signature.** The Contractor represents and warrants to the County that:

16 (A) The Contractor is duly authorized and empowered to sign and perform its
17 obligations under this Agreement.

18 (B) The individual signing this Agreement on behalf of the Contractor is duly
19 authorized to do so and his or her signature on this Agreement legally binds the
20 Contractor to the terms of this Agreement.

21 10.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
22 electronic signature as provided in this section.

23 (A) An "electronic signature" means any symbol or process intended by an individual
24 signing this Agreement to represent their signature, including but not limited to (1) a
25 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
26 electronically scanned and transmitted (for example by PDF document) version of an
27 original handwritten signature.

28 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed

1 equivalent to a valid original handwritten signature of the person signing this Agreement
2 for all purposes, including but not limited to evidentiary proof in any administrative or
3 judicial proceeding, and (2) has the same force and effect as the valid original
4 handwritten signature of that person.

5 (C) The provisions of this section satisfy the requirements of Civil Code section
6 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
7 Part 2, Title 2.5, beginning with section 1633.1).

8 (D) Each party using a digital signature represents that it has undertaken and
9 satisfied the requirements of Government Code section 16.5, subdivision (a),
10 paragraphs (1) through (5), and agrees that each other party may rely upon that
11 representation.

12 (E) This Agreement is not conditioned upon the parties conducting the transactions
13 under it by electronic means and either party may sign this Agreement with an original
14 handwritten signature.

15 10.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
16 original, and all of which together constitute this Agreement.

17 [SIGNATURE PAGE FOLLOWS]
18
19
20
21
22
23
24
25
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27
28

1 The parties are signing this Agreement on the date stated in the introductory clause.

2 COUNTY OF FRESNO

3
4
5 _____ Steven E. White, Director
6 Department of Public Works and Planning

7 2220 Tulare Street, 6th Floor
8 Fresno, CA 93721

9
10
11 For accounting use only:

12	Org No.:	None	None	9015	9020
	Account No.:	1450	1450	5800	5800
13	Fund No.:	0701	0701	0701	0720
	Subclass No.:	15002	15003	15001	15000

Exhibit A

Scope of Services

Contractor acknowledges its understanding that in order to maintain its eligibility to provide Solid Waste and Discarded Materials Handling Services to the extent not governed by Ordinance Code Chapter 8.21 and the contracts with ESAP Haulers, it is required by Ordinance Code Chapter 8.24 that Contractor must apply for and obtain from the County Representative, and at all times maintain in good standing, the appropriate Permit authorizing Contractor's activities as a Non-Exclusive Waste Hauler within the unincorporated area of Fresno County.

Contractor may be required to make its Collection Vehicles available for inspection by the County Representative or designee, and to pass such inspection, as a condition to the initial issuance of the requisite Permit.

As provided in Ordinance Code Chapter 8.24, any Solid Waste Enterprise, as that term is defined therein, is required to execute an agreement in form substantially identical to this Agreement, in order to attain eligibility for issuance by the County Representative of the requisite Permit. Contractor acknowledges its understanding that failure by Contractor to comply fully with the requirements of this Agreement may result in suspension or revocation of such Permit, as more thoroughly provided both herein below and in Ordinance Code Chapter 8.24.

This Agreement, together with issuance to Contractor of the requisite Permit as provided in Sections A and B of the Scope of Services, and Contractor's continued maintenance of the effectiveness of said Permit in good standing, provide authorization to Contractor to provide Solid Waste and Discarded Materials Handling Services, on a non-exclusive basis within the unincorporated area of the County of Fresno, for compensation remitted to Contractor by its residential and commercial Customers, for any and each transaction involving the Collection from such Customers of Solid Waste and Discarded Materials in Containers with a capacity of ten (10) cubic yards or more.

Container Requirements

Contractor shall differentiate Solid Waste Containers, Recyclable containers and organic Materials Containers from each other by providing Containers of different colors (blue for Recyclable Materials, green for Organic Materials, and grey for Solid Waste). All Containers

Exhibit A

shall be labeled in accordance with the requirements of SB 1383. When purchasing plastic Collection Containers, Contractor shall purchase Containers that contain a minimum of 30% post-consumer recycled plastic content. All such Containers shall be 100% recyclable at the end of their useful life.

Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. At least ninety (90) days in advance of Contractor Container purchases or repainting of metal Containers, Contractor shall present proposed colors to the County for review and approval. If an existing Container breaks or is otherwise rendered non-function, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to the Effective Date, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

Blue Containers

Option 1: Blue Containers must have a lid that is blue in color; and a body that is any color.

Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 2: Blue Containers must have a body that is blue in color, and a lid that is gray in color.

Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 3: Blue Containers must have a lid and body that is blue in color. Hardware such as

hinges and wheels on the Blue Containers may be a different color.

Green Containers (SSGCOW)

Option 1: Green Containers must have a lid that is green in color; and a body this is in any color.

Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 2: Green Containers must have a body that is green in color, and a lid that is gray in color. Hardware such as hinges and wheels on the Green Containers may be different in color.

Option 3: Green Containers must have a lid and body that are green in color. Hardware such as

Exhibit A

hinges and wheels on the Green Containers may be a different color.

Gray Containers (Gray Container Waste)

Option 1: Gray Containers must have a lid that is gray in color, and a body that is in any color.

Hardware such as hinges and wheels on the Gray Container may be a different color.

Option 2: Gray Containers must have a lid and body that are gray in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

C&D Bins and Roll-Off Boxes

Bins and Roll-Off boxes for Collection of C&D may be in any color, provided that the colors do not conflict with the Container color requirements of this Section and provided that the C&D Container colors are consisted for all C&D Containers.

Labeling Requirements

Commencing on August 1, 2024, Contractor shall place a label on each new Container body or lid that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the County Contract Analyst for approval.

Container Monitoring

This Section presents inspection method(s) for Prohibited Container Contaminants to be used by the Contractor in conducting contamination monitoring as required by SB 1383 and is conducted in a manner that results in all collector Routes being reviewed annually or more frequently if needed. Upon request from the Contractor, County may approve use of other CalRecycle-approved methods of contamination monitoring.

Container Inspection Methods

Option 1: When Contractor's Collector Route personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents.

Option 2: For Collection vehicles with automated Collection service, the Collection vehicle hopper shall be equipped with a video camera and monitoring system. The Contractor's

Exhibit A

Collector Route personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle.

Option 3: Contractor shall install camera equipment in Containers and use a cloud-based software that will enable Contractor, County, and/or other applicable enforcement personnel to monitor and examine the contents of Containers using digital photographic images obtained from the cameras installed in the Containers. The digital images shall be maintained and accessible for examination through the Contractor's cloud-based software platform. Contractor will perform regular and frequent remote monitoring of each Container, automatically, manually, or in combination using the remote monitoring system.

Actions Upon Identification of Prohibited Container Contaminants

The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log, in the on-board computer system, or other County-approved record keeping system, including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence, if required. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation if the on-board computer system did not automatically update the Customer's account record.

If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall issue a non-Collection notice for this Container and shall not Collect the Discarded Materials that contain Excluded Waste. Contractor's personnel shall record that observation and shall follow protocols.

Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the

Exhibit A

Blue Container, Green Container, and/or Gray Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that further instances (See guidance in subsection C.4 below) may subject the Customer to contamination Processing fees or the issuance of a non-Collection notice; and, (v) shall include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers or by other communication within fourteen (14) days after determining that a violation has occurred.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with Gray Container Waste and Transport the contaminated materials to the appropriate Approved Facility for Disposal or Processing.

If the Contractor observes Prohibited Container Contaminants in a Generator's Container on more than three (3) consecutive occasions and properly issues courtesy pick-up notices on each of those occasions, or otherwise observes Prohibited Container Contaminants in a Generator's Container on six (6) total occasions in any twelve (12) month period, the Contractor may impose a contamination Processing fee (which will be adjusted annually pursuant to Article 10). Contractor shall notify the County in its monthly report of Customers for which contamination Processing fees were charged. Contractor shall leave a contamination Processing fee notice attached to or adhered to the Generators' contaminated Containers or by other communication within fourteen (14) days after determining that a violation has occurred. The contamination Processing fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination Processing fee on its next bill. The format of the contamination Processing fee notice shall be approved by the County Contract Manager.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Approved Facility for Processing.

Upon identification of Prohibited Container Contaminants in a Container in excess of standards agreed upon by the Parties or Excluded Waste, Contractor shall provide a non-

Exhibit A

Collection notice to the Generator. The non-Collection notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-Collection; (ii) include the date and time the notice was left or issued; (iii) describe the premium charge to Customer for Contractor to return and Collect the Container after Customer removes the Contamination; and, (iv) provide a warning statement that a contamination Processing fee may be assessed if Prohibited Container Contaminants are observed on more than three (3) consecutive occasions. The non-Collection notice shall include photographic evidence of the violation(s).

The Contractor's notice of non-Collection may be left attached to or adhered to the Generator's Container, or at the Premises' door or gate at the time the violation occurs, or subject to County's approval, may be delivered by mail, e-mail, text message, or electronic message.

Contractor shall submit a sample of its non-Collection notice to the County Contract Manager for approval prior to implementing use of it with Customers.

Upon request from Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of Customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day.

If the Contractor observes Prohibited Container Contaminants in a Generator's Container(s), Contractor may Dispose of the Container's contents, provided Contractor complies with the noticing requirements above.

Education and Outreach

Contractor shall include, at minimum, the following education and outreach content to Customers by incorporation of this content into the public education materials described in this section.

- A. Prior to March 19, 2024, and annually thereafter, CONTRACTOR shall provide the following to all its customers under the Agreement:
 1. Information on the Organic Recyclable Material Customer's requirements to properly separate materials in appropriate containers.
 2. Information on methods for: the prevention of Organic Recyclable Material

Exhibit A

generation; recycling Organics on-site; sending Organics to community composting; and any other local requirements regarding Organic Recyclable Material.

3. Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Recyclable Material, and the methods of Organic Recyclable Material recovery contemplated by the Agreement.
4. Information regarding how to recover Organic Recyclable Material.
5. Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Recyclable Material.

B. Material Distribution Methods:

- a. Contractor shall use the following methods to provide education information to Customers. All materials are to be approved by the County prior to distribution. The above information will be provided, at a minimum, through print and/or electronic media, and may also be provided through workshops, meetings and/or on-site visits.
- b. The Contractor shall be responsible for the design, printing, and distribution of these materials. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use 100% post-consumer paper if available, if not the maximum post-consumer content available, and procure printed materials from local businesses whenever possible.
- c. Contractor shall provide electronic and website content for education and outreach materials, which may include, but are not limited to: digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials.

C. Non-English Language Requirements

1. The Contractor shall make all public education and outreach materials required

Exhibit A

by this Section available in English, Spanish, Hmong, and Punjabi.

2. Upon County request, Contractor shall provide materials in additional languages beyond those specified in this Section in response to shifting demographics within the County; updates to State requirements or Applicable Law; or, any other reason deemed appropriate by the County and the Contractor shall be entitled to reimbursement for the costs associated therewith.

The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

Compliance with Laws. The Contractor shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to workers compensation, labor, and confidentiality laws and regulations.

Exhibit B

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Exhibit C

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.

2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.
 - (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and

Exhibit C

volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.

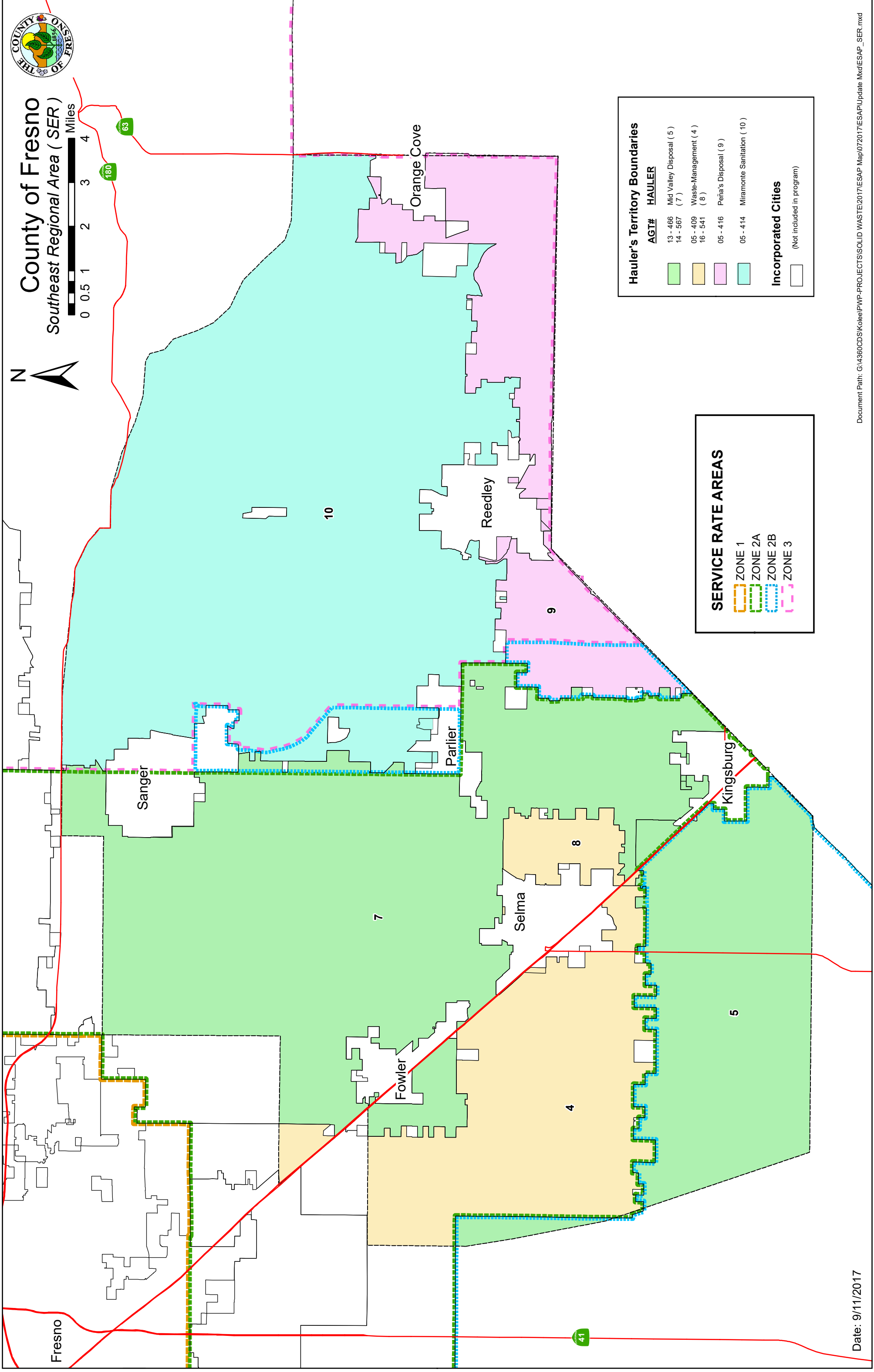
- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.

Exhibit C

(G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.



County of Fresno
Southeast Regional Area (SER)



SERVICE RATE AREAS

- ZONE 1
- ZONE 2A
- ZONE 2B
- ZONE 3

Hauler's Territory Boundaries

AGTH#	HAULER
13 - 466	Mid Valley Disposal (5)
14 - 567	(7)
05 - 409	Waste-Management (4)
16 - 541	(8)
05 - 416	Peña's Disposal (9)
05 - 414	Miramonte Sanitation (10)

Incorporated Cities

(Not included in program)

Fresno

Sanger

Fowler

Selma

Parlier

Kingsburg

Orange Cove

Reedley

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