

Commercial Solid Waste Collection Agreement

This Commercial Solid Waste Collection Agreement (Agreement) becomes effective on the 15th day of August, 2014 (EFFECTIVE DATE), by and between the County of Ventura (COUNTY) and _____ (COLLECTOR).

RECITALS

WHEREAS, pursuant to the California Public Resources Code Section 40059 and Ventura County Ordinance Code Section 4750, the COUNTY may determine the terms of, and provide for, the collection of SOLID WASTE pursuant to this Agreement; and

WHEREAS, the COUNTY has selected the COLLECTOR to provide non-exclusive SOLID WASTE collection services in the SERVICE AREA as provided herein; and

WHEREAS, the COUNTY and COLLECTOR desire to enter into this Agreement to establish the terms, conditions and requirements pursuant to which COLLECTOR may provide said SOLID WASTE collection services;

AGREEMENT

NOW, THEREFORE, the COUNTY and COLLECTOR for, and in consideration of, the covenants, terms, and conditions contained in this Agreement, do mutually agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Agreement, the following terms and phrases are defined as follows:

Section 1.1 ACT

ACT means the California Integrated Waste Management Act of 1989 (commencing with Section 40000 of the Public Resources Code), as may be amended.

Section 1.2 BASE RATE

BASE RATE means the CUSTOMER RATE with REGULATORY FEES deducted.

Section 1.3 BOARD

BOARD means the Board of Supervisors of the COUNTY.

Section 1.4 COLLECTION SERVICES

COLLECTION SERVICES means all aspects of REGULAR COLLECTION SERVICE, SPECIAL SERVICES, TEMPORARY COLLECTION SERVICE and any other services regarding the collection of SOLID WASTE that are provided in the SERVICE AREA, including the transport and delivery of the collected SOLID WASTE for processing, disposal or DIVERSION.

Section 1.5 COLLECTOR

COLLECTOR means the above-identified party to this Agreement.

Section 1.6 COMMERCIAL CUSTOMER

COMMERCIAL CUSTOMER means a COMMERCIAL GENERATOR who receives SOLID WASTE COLLECTION SERVICES from the COLLECTOR.

Section 1.7 COMMERCIAL GENERATOR

COMMERCIAL GENERATOR means any person or entity generating SOLID WASTE within the unincorporated area of Ventura County that is not a RESIDENTIAL GENERATOR as defined in Section 1.20 (RESIDENTIAL GENERATOR) including but not limited to any person or entity generating SOLID WASTE on a parcel that is greater than 5 acres, has a Ventura County Non-Coastal Zoning Ordinance (NCZO) zoning designation of Agricultural Exclusive, Rural Agricultural, Rural Exclusive or Open Space, and contains either zero, one or multiple SINGLE-FAMILY DWELLINGS.

Section 1.8 COUNTY

COUNTY means the County of Ventura, a political subdivision of the State of California.

Section 1.9 CUSTOMER RATE (S)

CUSTOMER RATE(S) means the approved maximum customer charges for each specific service as provided in Section 4.1 (CUSTOMER RATES) and Exhibit B hereto which is incorporated herein by this reference. The initial maximum CUSTOMER RATES are set forth on Exhibit B. Said maximum CUSTOMER RATES are subject to adjustment during the term of this Agreement in accordance with Article 4 (SERVICE RATES).

Section 1.10 DIRECTOR

DIRECTOR means the DIRECTOR of the COUNTY Public Works Agency, or such other COUNTY official as the DIRECTOR may designate.

Section 1.11 DIVERSION

DIVERSION means activities that reduce or eliminate the amount of SOLID WASTE from SOLID WASTE disposal and return these materials to the commerce stream in the form of raw materials for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace.

Section 1.12 DWELLING UNIT(S)

DWELLING UNIT(S) means one (1) or more rooms with internal access between all rooms, which provide complete independent living facilities for at least one (1) family, including provisions for living, sleeping, eating, cooking, bathing, and sanitary facilities.

Section 1.13 ELECTRONIC WASTE

ELECTRONIC WASTE means any electronic devices or cathode ray tubes, as described by Title 22, Section 66273.3 or 66273.6 of the California Code of Regulations and/or by Title 40 Code of Federal Regulations, Part 273, as may be amended or superseded by applicable state and federal regulations.

Section 1.14 HAZARDOUS WASTE

HAZARDOUS WASTE means waste designated as hazardous by federal, state, or local laws or regulations, excluding waste defined as ELECTRONIC WASTE, which shall not be considered HAZARDOUS WASTE hereunder.

Section 1.15 MULTI-FAMILY DWELLING

MULTI-FAMILY DWELLING means a building or portion of a building containing two (2) or more DWELLING UNITS, or a mobile home park (consisting of five (5) or more mobile homes in close proximity and on individual spaces).

Section 1.16 RECYCLABLES

RECYCLABLES means all SOLID WASTE that is identified for DIVERSION pursuant to Ventura County Ordinance Code Section 4770-2.2, as may be amended.

Section 1.17 REGULAR COLLECTION SERVICE

REGULAR COLLECTION SERVICE means SOLID WASTE COLLECTION SERVICES provided by the COLLECTOR on a regularly scheduled basis, for which the COLLECTOR has provided containers and has established a regular monthly or bi-monthly billing cycle.

Section 1.18 REGULATORY FEES

REGULATORY FEES means any and all COUNTY fees applicable to COLLECTOR arising from or related to COLLECTOR's provision of COLLECTION SERVICES pursuant to applicable COUNTY ordinances and resolutions. The REGULATORY FEES, which may be supplemented or otherwise modified in COUNTY's sole discretion, currently include a Waste Management Fee, a Collector Fee and a California Integrated Waste Management Program Fee, pursuant to Ventura County Ordinance Code Sections 4775, 4750-6 and 4792, respectively, as may be amended.

Section 1.19 RESIDENTIAL CUSTOMER

RESIDENTIAL CUSTOMER means a RESIDENTIAL GENERATOR that receives SOLID WASTE COLLECTION SERVICES from the COLLECTOR.

Section 1.20 RESIDENTIAL GENERATOR

RESIDENTIAL GENERATOR means any person or entity generating SOLID WASTE from any SINGLE-FAMILY DWELLING or MULTI-FAMILY DWELLING, and from onsite domestic uses accessory to these DWELLING UNITS, in the unincorporated area of Ventura County, except that a RESIDENTIAL GENERATOR shall not include any person or entity generating SOLID WASTE on a parcel that is greater than 5 acres, has a NCZO zoning designation of Agricultural Exclusive, Rural Agricultural, Rural Exclusive or Open Space, and contains either zero, one (1) or multiple SINGLE-FAMILY DWELLINGS.

Section 1.21 REVENUE

REVENUE means actual or expected gross income and compensation to COLLECTOR generated from COLLECTION SERVICES in the SERVICE AREA, including all forms of consideration such as, but not limited to, monthly service charges, one-time service charges, special handling charges, and any other revenue arising from or related to any COLLECTION SERVICES, inclusive of all amounts related to REGULATORY FEES, TIPPING FEES and all other fees, costs and expenses that COLLECTOR receives from its customers as part of COLLECTOR's charges. This definition of REVENUE shall be used by COUNTY to determine the amounts that COLLECTOR must pay, pursuant to Section 5.1 (REGULATORY FEES PAID TO COUNTY) and applicable COUNTY ordinances and resolutions, for REGULATORY FEES that are based on a percentage of COLLECTOR's revenue. For all other purposes revenue shall be defined in accordance with the methods and procedures established by the Financial Accounting Standards Board, known as Generally Accepted Accounting Principles (GAAP).

Section 1.22 SERVICE AREA

SERVICE AREA means the unincorporated area of Ventura County as shown in Exhibit A hereto which is incorporated herein by this reference.

Section 1.23 SINGLE-FAMILY DWELLING

SINGLE-FAMILY DWELLING means a building or a mobile home containing one principal

DWELLING UNIT.

Section 1.24 SOLID WASTE

SOLID WASTE means those discarded wastes defined as such in the ACT, whether or not these wastes are, or may be, designated for DIVERSION. For purposes of this definition, the term “discarded” shall have the meaning used for that term in the ACT. SOLID WASTE is inclusive of RECYCLABLES and ELECTRONIC WASTE, but shall not mean, or include, any HAZARDOUS WASTE.

Section 1.25 SPECIAL SERVICES

SPECIAL SERVICES means SOLID WASTE COLLECTION SERVICES made available in the SERVICE AREA, which are in addition to regularly scheduled route pickups.

Section 1.26 TEMPORARY COLLECTION SERVICE

TEMPORARY COLLECTION SERVICE means SOLID WASTE COLLECTION SERVICES provided on a one-time or limited term basis, for which the COLLECTOR has temporarily placed containers or has otherwise provided for the removal of SOLID WASTE.

Section 1.27 TIPPING FEES

TIPPING FEES means the actual fees paid by the COLLECTOR at a permitted SOLID WASTE facility or other legal processing site or destination for the disposition of SOLID WASTE collected from the SERVICE AREA pursuant to this Agreement.

ARTICLE 2. TERM OF AGREEMENT

Section 2.1 TERM OF AGREEMENT

The term of this Agreement shall commence on the EFFECTIVE DATE and expire on December 31, 2023. In the event COLLECTOR voluntarily elects to terminate this Agreement before the Agreement term has expired, and absent a determination by the COUNTY of a COLLECTOR default pursuant to Article 7 (DEFAULT AND REMEDIES FOR BREACH), the COLLECTOR shall notify the DIRECTOR in writing no fewer than ninety (90) days prior to ceasing COLLECTION SERVICES.

ARTICLE 3. SERVICES AND OPERATIONS

Section 3.1 COLLECTION SERVICES

While this Agreement remains in effect and pursuant to its terms and conditions, the COLLECTOR shall have the non-exclusive right to offer and provide COLLECTION SERVICES to COMMERCIAL GENERATORS within the SERVICE AREA. The COLLECTOR shall also have the non-exclusive right to offer and provide bin services to RESIDENTIAL GENERATORS within the SERVICE AREA, provided that the bin services are in addition and supplemental to residential SOLID WASTE collection service consisting of the container service described in Ventura County Ordinance Code Section 4770-1.2 that the RESIDENTIAL GENERATOR is receiving from a residential collector under exclusive contract with the COUNTY. In no event shall COLLECTOR collect HAZARDOUS WASTE within the SERVICE AREA pursuant to this Agreement.

Section 3.2 DIVERSION STANDARDS

COLLECTOR shall comply with all waste diversion requirements set forth in Ventura County Ordinance Code Sections 4770-1 (Residential Customer Diversion Requirements) and 4770-2 (Commercial Waste Diversion Requirements), as may be amended, that apply to the

COLLECTION SERVICES being provided. DIVERSION shall be reported on a quarterly basis as part of the quarterly report submittal required pursuant to Section 3.13 (REPORTING AND FEE PAYMENT REQUIREMENTS). DIVERSION information shall be accompanied by sufficient documentation, as required by the DIRECTOR in his or her sole discretion, to demonstrate such DIVERSION.

Section 3.3 COMPLIANCE WITH LAWS

In performing and providing any and all aspects of the COLLECTION SERVICES pursuant to this Agreement, COLLECTOR shall comply with all applicable federal, state and local laws, regulations and ordinances.

Section 3.4 COLLECTION SERVICE LEVEL

COLLECTOR shall collect all containerized SOLID WASTE placed out for collection on the scheduled collection day. If SOLID WASTE placed out for collection is not placed out prior to a prearranged collection time or in the proper location, or the amount of SOLID WASTE exceeds the contracted service level, COLLECTOR may decline to collect the SOLID WASTE until customer makes appropriate arrangements with COLLECTOR for additional service in accordance with established CUSTOMER RATES. COLLECTOR must affix a written explanation on container(s) clearly explaining why material was not removed.

Section 3.5 DAYS AND HOURS OF COLLECTION

All COLLECTION SERVICES shall be provided between the hours of 5:00 a.m. and 6:00 p.m. Monday through Saturday, excluding holidays. For COLLECTION SERVICES within 500 feet of a DWELLING UNIT, collection hours shall be between 6:00 a.m. and 6:00 p.m. Monday through Saturday, excluding holidays. The COUNTY may modify days and hours of collection at any time by notifying the COLLECTOR in writing fifteen (15) working days prior to said modification. If COLLECTOR misses a scheduled collection day because of a holiday, COLLECTOR shall provide COLLECTION SERVICES to the missed area on the weekday after the regularly established collection day. If the COLLECTOR fails to collect all properly containerized SOLID WASTE on the regularly scheduled collection day due to driver error, equipment failure, or other operational conditions beyond the immediate control of the COLLECTOR, the COLLECTOR shall collect said SOLID WASTE within twenty-four (24) hours (Sundays and holidays excepted) at no additional charge to customers.

Section 3.6 ROUTES AND SCHEDULES

(a) No later than two (2) business days after requested by the DIRECTOR, COLLECTOR shall provide the DIRECTOR with any or all of the requested information and materials regarding the COLLECTION SERVICES: COLLECTOR's route maps, schedules of collection routes, customer lists, monthly rate and service levels for each customer, billing ledgers, and all other operational information and materials needed to access and provide the COLLECTION SERVICES to COLLECTOR's customers (including but not limited to access keys and codes). COLLECTOR shall keep all such information and materials current at all times. The failure or refusal of COLLECTOR to provide such information and materials to DIRECTOR shall be conclusively presumed to be grounds for specific performance and/or the granting of equitable relief necessary to enforce this covenant which shall be enforceable in Ventura County Superior Court and shall not be subject to arbitration pursuant to Section 7.6 (ARBITRATION).

(b) COLLECTOR shall notify all affected customers of any changes in routes or schedules at least fifteen (15) days before said changes becomes effective. The COUNTY reserves the right to conduct route audits of COLLECTOR'S routes as needed. COLLECTOR shall plan all

COLLECTION SERVICE routes to efficiently minimize environmental impacts (i.e., exhaust emissions from waste collection vehicles).

Section 3.7 CUSTOMER CONTACT AND EMERGENCY RESPONSE

Between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday (holidays excepted), COLLECTOR shall maintain an office with a local telephone number listed in the telephone directory in its name, for response to customer calls. Staff receiving customer calls shall be adequately trained to respond to customer requests and complaints and shall do so courteously and promptly. During all other hours, COLLECTOR may use a telephone answering service or device to receive customer calls and shall respond to all calls by the close of the next business day. COLLECTOR shall also list its local telephone number on its customer bills as well as the COUNTY-provided COUNTY telephone number. Customer bills will identify these telephone numbers as the numbers to call for customer service inquiries. COLLECTOR shall provide DIRECTOR with, and immediately update as needed, a current telephone number that can be used by the COUNTY on a 24-hour basis to contact the COLLECTOR, its management, or someone authorized to act on its behalf. COLLECTOR shall equip at least one truck with a two-way radio or telephone that is available at all times for emergency response or to respond to customer complaints. COLLECTOR shall report any accident, as defined by State of California Motor Vehicle Code Section 16000, to COUNTY within one (1) business day of occurrence.

Section 3.8 CUSTOMER COMPLAINTS

The COLLECTOR shall keep an electronic log, in a form approved by the DIRECTOR, of all written and oral customer complaints received regarding the COLLECTION SERVICES. At a minimum, the log shall include a description of the complaint, the date the complaint was received, the staff person who received the complaint, the name, telephone number and address of the complainant, the actions the COLLECTOR undertook to resolve the complaint, and the date the action(s) were taken. COLLECTOR shall respond to customer complaints within twenty-four (24) hours of receipt, holidays and weekends excluded. The COLLECTOR shall compile a customer complaint log summary in a format approved by the DIRECTOR and shall submit to DIRECTOR with the quarterly reports referenced in Section 3.13(a) (REPORTING AND FEE PAYMENT REQUIREMENTS). The COLLECTOR shall retain a record of each complaint for three (3) years from the time the complaint was first received.

Section 3.9 CONDUCT OF PERSONNEL

COLLECTOR shall require its employees and agents to be courteous, to work as quietly as possible, to leave containers where originally found, to wear appropriate clothing and other personal protective equipment as necessary, to use only regular pedestrian walkways or driveways while on private property, and to avoid trespassing, loitering, or meddling with property or events that do not concern them. COLLECTOR shall promptly clean up any spilled material created during collection of any container.

Section 3.10 ENVIRONMENTAL CAMPAIGNS, PROGRAMS, and EDUCATION

At COLLECTOR's expense, COLLECTOR shall cooperate and coordinate with the COUNTY on all SOLID WASTE collection and DIVERSION matters, including, but not limited to, the implementation of COUNTY source separation and DIVERSION programs, COUNTY SOLID WASTE-related public education and information campaigns, and implementation of COUNTY waste characterization and other SOLID WASTE planning studies.

Section 3.11 DESTINATION FACILITIES

COLLECTOR shall deliver all SOLID WASTE to be disposed to a legally permitted disposal facility, and shall deliver all SOLID WASTE intended for DIVERSION to a legally permitted

processing site or destination. The COUNTY may, in its sole discretion, direct COLLECTOR to use a specific SOLID WASTE disposal and/or processing facility within, or outside, Ventura County upon ninety (90) days written notice. COLLECTOR shall be responsible for paying all transportation costs and applicable TIPPING FEES.

Section 3.12 COLLECTION EQUIPMENT

(a) COLLECTOR shall maintain each truck and appurtenant machinery, and any vehicles used or supplied by it, in good mechanical condition, free from leaks and in compliance with all applicable federal, state and local laws, regulations, and ordinances. The name and telephone number of COLLECTOR shall be displayed on both sides of the truck and shall be kept legible and visible. In December of each year, COLLECTOR shall submit to the DIRECTOR copies of California Highway Patrol's Biennial Inspection of Terminals Program (commonly referred to as BIT Program) submittals for all vehicles in the COLLECTOR's fleet used within the SERVICE AREA at any time during the current year.

(b) COLLECTOR shall supply all containers required to provide the COLLECTION SERVICES provided to each customer. All containers shall be maintained in good working condition, original appearance and leak-proof. COLLECTOR must remove any graffiti within fourteen (14) days of being notified of, or seeing, graffiti on container. The name and telephone number of COLLECTOR shall be displayed on all containers, and shall be kept legible and visible.

Section 3.13 REPORTING AND FEE PAYMENT REQUIREMENTS

At its expense, COLLECTOR shall electronically provide DIRECTOR with quarterly and other periodic reports in a digital and/or such other format and delivery method as may be prescribed by the DIRECTOR, along with all of COLLECTOR's required REGULATORY FEE payments, as provided below:

(a) All quarterly reports as required by the Ventura County Ordinance Code, the ACT, and any other state, federal and local law, as may be amended. These reports currently include those required by Ventura County Ordinance Code Sections 4780-4 and 4792-6, as may be amended. The quarterly reports shall accompany COLLECTOR's payment of all REGULATORY FEES. Said reports and payments are due to the COUNTY no later than thirty (30) days after the close of each calendar quarter (i.e., on or before April 30, July 30, October 30, and January 30 of each calendar year). Notwithstanding the foregoing, in the event this Agreement is terminated by either party for any reason, all final reports shall be due, and all REGULATORY FEES accruing up to the effective date of termination shall be due and payable by COLLECTOR to COUNTY, within thirty (30) days after the effective date of termination.

(b) The quarterly customer complaint logs required by Section 3.8 (CUSTOMER COMPLAINTS) shall be submitted to COUNTY with the quarterly reports referenced above.

(c) COLLECTOR shall provide COUNTY with a copy of any contract between COLLECTOR and any federal, state or local agency regarding COLLECTION SERVICES in SERVICE AREA, and any amendment thereto, within thirty (30) days of COLLECTOR's award of such contract(s) and/or any amendments thereto.

(d) Such other reports the DIRECTOR may designate and require in his or her sole discretion, after COLLECTOR is provided thirty (30) days advanced notification of any such requirement.

Section 3.14 INSPECTION

At any reasonable time requested, the COUNTY shall have the right to inspect, and COLLECTOR shall make available, all equipment, trucks, vehicles, and containers used by COLLECTOR in the SERVICE AREA. At its request, and upon not less than twenty-four (24) hours advanced written notice, the COUNTY shall also have the right to inspect and audit COLLECTOR'S books and records to verify information contained in, or which should have been reported in, the reports required by Section 3.13 (REPORTING AND FEE PAYMENT REQUIREMENTS) or to verify the payment of appropriate COUNTY fees pursuant to Section 5.1 (REGULATORY FEES PAID TO COUNTY). The costs of such audits and inspections shall be borne by the COLLECTOR when inaccuracies in COLLECTOR'S books and records result in a material difference in what should have been reported pursuant to Section 3.13 (REPORTING AND FEE PAYMENT REQUIREMENTS). For purposes of this Section, a material difference shall mean a difference of ten percent (10%) or more.

Section 3.15 EMERGENCY COLLECTION SERVICE AND RATES

At the direction of the COUNTY, and upon reasonable notice under the circumstances, COLLECTOR shall provide SOLID WASTE collection services within unincorporated Ventura County during a locally-declared (excluding any state- or federally-declared) emergency. COLLECTOR shall be compensated only for its actual costs and expenses incurred in providing said emergency collection services. COLLECTOR shall document such costs and services and provide said documentation to the COUNTY upon request, after which COUNTY shall compensate COLLECTOR for undisputed charges no later than 90 days after receipt.

ARTICLE 4. SERVICE RATES

Section 4.1 CUSTOMER RATES

- (a) COLLECTOR may charge and collect from its customers no more than the maximum CUSTOMER RATES for the COLLECTION SERVICES shown in Exhibit B. For COLLECTION SERVICES not listed in Exhibit B, COLLECTOR may charge and collect any negotiated rate.
- (b) COLLECTOR shall itemize all of its rates and charges on its customers' bills, thereby allowing the customer to see each individual charge and component of the bill.
- (c) Pursuant to Ventura County Ordinance Code Section 4770-2.5, as may be amended, the COLLECTOR shall cooperate with COUNTY efforts to implement pricing incentives that encourage the separation of RECYCLABLES from refuse, and which discourage disposal.

Section 4.2 INITIAL CUSTOMER RATES

Beginning on the EFFECTIVE DATE, the COLLECTOR may charge each customer up to the maximum CUSTOMER RATES set forth in Exhibit B.

Section 4.3 ADJUSTMENTS TO CUSTOMER RATES

Adjustments to CUSTOMER RATES shown in Exhibit B shall be made by COUNTY pursuant to Section 4.4 (ANNUAL INFLATION ADJUSTMENTS), Section 4.5, (REGULATORY FEE ADJUSTMENTS) and Section 4.6 (UNUSUAL AND UNANTICIPATED COSTS). COLLECTOR'S implementation of all such adjustments in its customer billings shall only occur once per calendar year, effective on January 1.

Section 4.4 ANNUAL INFLATION ADJUSTMENTS

(a) Provided that the COLLECTOR is in compliance with the terms and conditions contained herein as determined by the DIRECTOR, the below-described annual inflation adjustment will be automatically applied to the BASE RATE and charges for SPECIAL SERVICES listed in Exhibit B and will become effective every January 1 beginning in 2015. The annual inflation adjustment shall be calculated by the COUNTY based on eighty-five percent (85%) of the aggregate amount of:

1. Ninety-five percent (95%) of the annual percentage change (up or down) in the Consumer Price Index (CPI) database: All Urban Consumers (Current Series), Los Angeles-Orange-Riverside County, CA, *All Items Less Energy*, not seasonally adjusted; and
2. Five percent (5%) of the annual percentage change (up or down) in the CPI database: Commodity Data, Fuels and Related Products and Power, *Natural Gas*, not seasonally adjusted.

The above calculations will be based on the comparison between:

- a. The twelve (12) month average CPI ending September of the most recent year (regardless if a projection is deemed "preliminary"); and
- b. The twelve (12) month average CPI ending September of the preceding year.

(b) The DIRECTOR shall calculate the annual inflation adjustment based on the foregoing and notify the COLLECTOR on or before the first day of November preceding the annual January 1 inflation adjustment, unless otherwise delayed by CPI publishing. The methodology used for this inflation adjustment is shown in Exhibit C (Rate Adjustment Calculation Worksheet) hereto which is incorporated herein by this reference.

4.4.1 CAP ON ANNUAL INFLATION ADJUSTMENT

The annual inflation adjustment as applied to the CUSTOMER RATE shall not exceed five percent (5%), up or down, in any given year. Notwithstanding the foregoing, in the event the annual inflation figure computed pursuant to Section 4.4 exceeds ten percent (10%) for three (3) consecutive years, then the allowable annual inflation adjustment applied to the CUSTOMER RATE in the third year will equal one-half of the annual inflation figure for the third year, even if that annual adjustment exceeds five percent (5%). (For example, if the annual inflation figure computed pursuant to Section 4.4 is eleven percent (11%) in year one, thirteen percent (13%) in year two, and twelve percent (12%) in year three, then the annual inflation adjustment for years one and two is five percent (5%), and for year three is six percent (6%).) In the fourth year following three consecutive years with annual inflation figures above ten percent (10%), the above-stated five percent (5%) cap will again apply to the annual inflation adjustment.

Section 4.5 REGULATORY FEE ADJUSTMENTS

Any change in COUNTY REGULATORY FEES shall become effective on January 1 of the year following the Board approval of the change, and shall be applied by COUNTY to COUNTY's CUSTOMER RATE adjustments and all charges for SPECIAL SERVICES listed on Exhibit B. The DIRECTOR shall calculate these CUSTOMER RATE adjustments based on the methodology shown in Exhibit C (Rate Adjustment Calculation Worksheet).

Section 4.6 UNUSUAL AND UNANTICIPATED COSTS

(a) The COLLECTOR may petition the COUNTY for consideration of a review of CUSTOMER RATES if circumstances arise that could not have been predicted or foreseen as of the EFFECTIVE DATE which result in significant, uncompensated cost increases to the COLLECTOR regarding the provision of COLLECTION SERVICES. Such unusual and unanticipated costs may include, but are not limited to: (1) proposed changes in the COLLECTOR's level of service under this Agreement required by the COUNTY; (2) a significant increase in costs or expenses that arise out of causes beyond the control, or without the fault or negligence of, the COLLECTOR; (3) changes in technology that significantly modify the intention and circumstances which have a direct bearing on the costs of services provided by COLLECTOR hereunder; and (4) the enactment of any new, or the increase of any existing, governmental regulatory fees or costs that cannot be addressed by adjusting the CUSTOMER RATES pursuant to Section 4.5 (REGULATORY FEE ADJUSTMENTS).

(b) COLLECTOR shall petition the COUNTY by providing the DIRECTOR with a written explanation and all documentation supporting its request for a CUSTOMER RATE adjustment. The DIRECTOR shall issue a written decision that either approves, denies or approves a modified CUSTOMER RATE adjustment in response to COLLECTOR's request. COLLECTOR may thereafter appeal DIRECTOR's decision to the BOARD by providing DIRECTOR a written appeal notice within ten (10) calendar days after the decision, after which date the decision shall become final and non-appealable. In the event of an appeal to the BOARD, the BOARD may either approve, deny or approve a modified CUSTOMER RATE adjustment. The BOARD's resulting decision shall be final, non-appealable and shall not be subject to arbitration pursuant to Section 7.6 (ARBITRATION).

(c) The COUNTY may also initiate a CUSTOMER RATE review pursuant to the factors set forth in Section 4.6(a). The COUNTY will provide written notice to the COLLECTOR if such a rate review is being initiated. The COLLECTOR shall provide all written explanation and documentation deemed necessary by the COUNTY to complete its rate review within sixty (60) days of the date that the COUNTY provided its written notice to the COLLECTOR. The DIRECTOR shall issue a written decision regarding the potential CUSTOMER RATE adjustment. COLLECTOR may appeal DIRECTOR's decision to the BOARD by providing DIRECTOR a written appeal notice within ten (10) calendar days after the DIRECTOR's decision, after which date the decision shall become final and non-appealable. In the event of an appeal to the BOARD, the BOARD may either approve, deny or approve a modified CUSTOMER RATE adjustment. The BOARD's resulting decision shall be final, non-appealable and shall not be subject to arbitration pursuant to Section 7.6 (ARBITRATION).

(d) The existing CUSTOMER RATES shall remain effective unless and until the COUNTY issues a final, non-appealable decision regarding an adjustment in accordance with this Section 4.6. Any CUSTOMER RATE adjustment approved pursuant to this Section 4.6 may only be implemented by COLLECTOR effective on January 1 of the calendar year following the date of the final, non-appealable COUNTY decision approving the adjustment.

ARTICLE 5. COUNTY FEES

Section 5.1 REGULATORY FEES PAID TO COUNTY

(a) COLLECTOR shall pay all REGULATORY FEES, including fees based on each ton of SOLID WASTE collected and delivered for disposal and on REVENUE from COLLECTION SERVICES in the SERVICE AREA, for each year, or portion thereof, in accordance with the payment schedule stated in Section 3.13 (REPORTING AND FEE PAYMENT).

REQUIREMENTS). The BOARD will set by resolution the amount of each said REGULATORY FEE to be paid to the COUNTY in accordance with the applicable COUNTY ordinances establishing the respective REGULATORY FEES.

(b) REGULATORY FEES remitted by COLLECTOR after the due dates specified in Section 3.13(a) (REPORTING AND FEE PAYMENT REQUIREMENTS) shall incur a late charge on the amount due, as adjusted if necessary, calculated at an annual rate of twelve percent (12%), until paid by COLLECTOR. A United States Postal Service postmark date shall be considered as the date of payment remittance by COLLECTOR to COUNTY.

ARTICLE 6. INDEMNITY, INSURANCE, AND ASSURANCES OF PERFORMANCE

Section 6.1 DEFENSE AND INDEMNIFICATION

To the fullest extent allowable by law, COLLECTOR shall defend, indemnify and hold harmless the COUNTY and its board, departments, officers, officials, employees, agents and volunteers (collectively, "Indemnitee"), from and against any and all third party claims, allegations, suits, actions, legal or administrative proceedings, judgments, debts, demands, damages, including those involving injury or death to any person or persons, and damage to any property including loss of use resulting therefrom, incidental and consequential damages, liabilities, interest, fines, costs, attorneys' fees and expenses of whatsoever kind of nature whether arising before, during or after commencement or completion of this Agreement, whether against COLLECTOR or Indemnitee, which are in any manner, directly, indirectly, in whole or in part, arising from breach of any provision of the Agreement or any act, omission, fault or negligence, whether active or passive, of COLLECTOR, a subcontractor of COLLECTOR or anyone directly or indirectly employed by them or anyone for whose acts they may be liable in connection with or incident to COLLECTOR's performance of the Agreement (including without limitation the failure to collect, handle, or dispose of SOLID WASTE in accordance with applicable law), even though the same may have resulted from the joint, concurring or contributory negligence, or from the passive negligence, of Indemnitee or any other person or persons, unless the same be caused by the sole negligence or willful misconduct of Indemnitee, or except to the extent caused by the active negligence of Indemnitee. In instances where Indemnitee's active negligence accounts for a percentage of the liability involved, the obligation of COLLECTOR as set forth in this Section 6.1 shall be for the entire percentage of liability not attributable to that active negligence.

Section 6.2 INSURANCE

(a) Without limiting COLLECTOR's defense and indemnification obligations pursuant to Section 6.1 (DEFENSE AND INDEMNIFICATION), COLLECTOR, at its sole cost and expense, shall obtain and maintain in full force during the term of this Agreement the following types of insurance:

1. Commercial General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage per occurrence and \$2,000,000 CSL General Aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability.
2. Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL each accident bodily injury property damage, including owned, non- owned and

hired automobiles. Also include Uninsured/Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.

3. Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of COLLECTOR and Employer's liability in the minimum amount of \$1,000,000.

(b) All insurance required will be primary coverage as respects COUNTY and any insurance or self-insurance maintained by the COUNTY will be in excess of COLLECTOR'S insurance coverage and the COUNTY will not contribute toward any claim(s) in excess of COLLECTOR'S insurance coverage. COUNTY is to be notified within two (2) business days if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements. The COUNTY, its boards, agents, departments, officers, employees, agents and volunteers are to be named as Additional Insureds as respect to work done by COLLECTOR under the terms of this contract on all policies required (except Workers' Compensation). COLLECTOR agrees to waive all rights of subrogation against the COUNTY, its boards, agents, departments, officers, employees, agents and volunteers for losses arising directly or indirectly from the activities and/or work performed by COLLECTOR under the terms of this agreement. COLLECTOR will provide written notice to the DIRECTOR sixty (60) days before policies are canceled, reduced in scope of coverage, or not renewed.

(c) COLLECTOR agrees to provide COUNTY with the following insurance documents on or before the effective date of this contract.

1. Certificates of Insurance for all required coverage.
2. Additional Insured endorsements.
3. Waiver of Subrogation endorsements (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others).
4. Ten (10) Days Notice Cancellation Clause endorsements in the event of nonpayment.

(d) Failure to provide these documents may be grounds for immediate termination or suspension of this Agreement.

(e) All insurance requirements and provisions of this Section 6.2 shall apply to any COUNTY-approved subcontractor used by COLLECTOR to perform any of COLLECTOR'S services provided under this Agreement, and it is COLLECTOR'S duty to confirm its subcontractors' compliance with the same.

Section 6.3 ASSURANCES OF PERFORMANCE

Throughout the term of this Agreement, COLLECTOR, at its expense, shall maintain for COUNTY'S benefit a performance bond or letter of credit in the face amount of \$10,000 to assure performance of COLLECTOR'S obligations under this Agreement. COLLECTOR shall use a COUNTY-approved bond or letter of credit template, which the COUNTY must approve and accept as to final form. Said bond or letter of credit shall provide for arbitration of claims consistent with Section 7.6 (ARBITRATION). Throughout the term of this Agreement, an admitted surety insurer or bank authorized to do business in the State of California shall issue the bond or letter of credit. COLLECTOR shall not permit the bond or letter of credit to be canceled or modified, or to expire without providing the DIRECTOR thirty (30) days advance written notice, and without first obtaining and providing a replacement bond, notice of maturity, or replacement letter of credit satisfactory to DIRECTOR.

ARTICLE 7. DEFAULT AND REMEDIES FOR BREACH

Section 7.1 CIRCUMSTANCES THAT CONSTITUTE MATERIAL BREACH

Without limitation, the following acts by COLLECTOR shall each, in COUNTY's sole discretion, constitute a material breach of this Agreement for purposes of termination under Section 7.2 (TERMINATION UPON DEFAULT): (1) failure to comply with any of the terms or conditions of this Agreement; (2) failure to submit to the COUNTY within thirty (30) days after it is due any fee payment or any of the reports or information requested by the COUNTY or required to be submitted pursuant to this Agreement; (3) failure to comply with any SOLID WASTE DIVERSION standard outlined within Section 3.2 (DIVERSION STANDARDS) and Section 1.16 (RECYCLABLES); (4) intentional submission to the COUNTY of any materially inaccurate information or financial data or information; (5) commission of the following crimes by the COLLECTOR, its parent or affiliates or any of their directors, officers or employees, the conduct of which relates directly or indirectly to this Agreement or performance hereunder: bribery, forgery, price fixing, proposal rigging, fraud, obstruction of justice, extortion, racketeering or illegal disposal of HAZARDOUS WASTE; and (6) failure of the COLLECTOR to provide REGULAR COLLECTION SERVICE in accordance with established schedules to ten (10) or more customers for seven (7) or more calendar days after the last regularly scheduled REGULAR COLLECTION SERVICE is provided.

Section 7.2 TERMINATION UPON DEFAULT

(a) If the COLLECTOR is in material breach or default of this Agreement, the COUNTY, in its sole discretion, may terminate this Agreement, provided, however, the COUNTY must first give COLLECTOR written notice of such breach or default specifying the particulars thereof. The COUNTY may not terminate this Agreement on the grounds of said breach or default if said breach or default is remedied within ten (10) business days after such notice or, if the nature of the breach or default is such that more than ten (10) business days are required for its remedy, then the COUNTY may not terminate this Agreement if COLLECTOR commences such remedy within ten (10) business days, and thereafter diligently prosecutes the remedy to completion. The provisions herein to allow remedy of default shall not apply to material breaches numbered (4), (5) or (6) of Section 7.1 (CIRCUMSTANCES THAT CONSTITUTE MATERIAL BREACH).

(b) If COLLECTOR violates any provision contained in Chapter 7 of Division 4 of the Ventura County Ordinance Code, as may be amended, COLLECTOR may also be subject to any and all applicable civil and criminal sanctions set forth therein, as may be amended.

Section 7.3 REMEDIES UPON DEFAULT

If either the COLLECTOR or the COUNTY breaches any of the terms of this Agreement, the other party shall be entitled to recover its damages, whether or not the default has been remedied under Section 7.2 (TERMINATION UPON DEFAULT) above. In the event COLLECTOR is in default or breach of any of the terms or conditions of this Agreement, the COUNTY may also declare the amount of the COLLECTOR'S performance bond or letter of credit forfeited to the extent necessary to remedy said breach or default, including without limitation, to pay the cost or expense to the COUNTY of obtaining replacement COLLECTION SERVICES. The amounts of said bond or letter of credit in no way limits the COLLECTOR'S liability for damages.

Section 7.4 FORCE MAJEURE

Neither party shall be liable for breach of contract or default under this Agreement if such failure to perform is caused by riot, war, strike, acts of God or other similar or different circumstances beyond the reasonable control of the party.

Section 7.5 NON-WAIVER

The waiver or failure of COLLECTOR or the COUNTY to enforce any provision of this Agreement shall not be construed as a continuing waiver as to future enforcement of any such provision or any other provision.

Section 7.6 ARBITRATION

Except as otherwise provided in this Agreement, any controversy, dispute, or claim arising out of, or related in any way to this Agreement, including without limitation, any claims for damages or compensation or any claims under or pursuant to a performance bond or letter of credit, shall be subject to binding arbitration the hearing of which shall occur in Ventura County before a neutral arbitrator in accordance with Title 9 of Part 3 of the California Code of Civil Procedure (commencing with Section 1280). Judgment upon any award or determination rendered by said arbitrator may only be entered in Ventura County Superior Court. Each party shall bear its own costs, expenses and attorney fees incurred in said arbitration proceedings.

ARTICLE 8. MISCELLANEOUS PROVISIONS

Section 8.1 ASSIGNMENT, SUBCONTRACTS, AND CHANGE OF OWNERSHIP

(a) No COLLECTOR interest in this Agreement may be assigned, sold, subcontracted or transferred (collectively referred to hereinafter as TRANSFER), either in whole or in part, without the prior written consent of the COUNTY in accordance with this Section 8.1. COLLECTOR shall promptly notify DIRECTOR in writing in advance of any proposed TRANSFER, which must be approved by the BOARD prior to taking effect. In the event the BOARD approves of any TRANSFER, said approval shall not relieve COLLECTOR of any of its obligations or duties under this Agreement unless this Agreement is duly amended in writing to that effect pursuant to Section 8.4 (AMENDMENTS). For purposes of this Section, "TRANSFER" shall also include, but not be limited to:

1. A sale, exchange, or other transfer to a third party of at least 25 percent of COLLECTOR'S assets dedicated to service under this Agreement;
2. A sale, exchange or other transfer to a third party, including other shareholders, of outstanding common stock of COLLECTOR, which may result in a change of control of COLLECTOR;
3. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which COLLECTOR or any of its shareholders is a party, which results in a change of ownership or control of COLLECTOR;
4. Any assignment by operation of law including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of COLLECTOR'S property, or transfer occurring in a probate proceeding;

5. Any combination of the foregoing, (whether or not in related or contemporaneous transactions), which has the effect of any such transfer or change of ownership or change of control of COLLECTOR.

(b) COLLECTOR must comply with the following requirements prior to the COUNTY's consideration and approval of a TRANSFER request:

1. COLLECTOR must not be in material breach of this Agreement.
2. COLLECTOR must pay the COUNTY its reasonable expenses for attorney's fees and staff costs to investigate the suitability of any entity to which COLLECTOR proposes to TRANSFER its interests (hereinafter, collectively TRANSFEREE), and to review and finalize any documentation required as a condition for approving any such TRANSFER;
3. COLLECTOR shall furnish the COUNTY with audited financial statements of the proposed TRANSFEREE's operations for the immediately preceding three (3) operating years;
4. COLLECTOR shall furnish the COUNTY with satisfactory proof:
 - a. that the proposed TRANSFEREE has at least ten (10) years of solid waste management experience on a scale equal to, or exceeding, the scale of operations conducted by COLLECTOR under this Agreement;
 - b. that the proposed TRANSFEREE has conducted its operations in an environmentally safe and conscientious manner;
 - c. that the proposed TRANSFEREE has not had a license or permit authorizing TRANSFEREE's solid waste collection operations forfeited or revoked by any local, state or federal entity within the past five (5) years;
 - d. that the proposed TRANSFEREE or any of its officers, directors or employees have not pled or been found guilty (or pled no contest), or had an adverse civil judgment entered against them, regarding the following types of criminal offenses or civil claims related to, or arising from, a solid waste collection operation within the past five (5) years: bribery, forgery, price fixing, proposal rigging, fraud, obstruction of justice, extortion, racketeering or illegal disposal of SOLID WASTE or HAZARDOUS WASTE; and
 - e. that the proposed TRANSFEREE can otherwise perform its duties and obligations under this Agreement in a timely, safe, and effective manner.

Section 8.2 COMPLETE AGREEMENT

This Agreement, including Exhibits A through C hereto, constitutes the entire agreement and understanding between COLLECTOR and the COUNTY regarding the subject matter hereof and supersedes all previous agreements, understandings and representations of any nature whatsoever, whether oral or written, regarding the subject matter hereof.

Section 8.3 SEVERABILITY

If any term, provision, covenant or condition of this Agreement is determined by a court or arbitrator of competent jurisdiction to be invalid, void or unenforceable, the rest of the

Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 8.4 AMENDMENTS

This Agreement shall not be altered, amended, extended or modified except in a written amendment hereto that is duly approved by the BOARD and COLLECTOR.

Section 8.5 INDEPENDENT CONTRACTOR

COLLECTOR is solely responsible for supplying all personnel, property and equipment, and for covering all costs and expenses, associated with COLLECTOR's provision of the COLLECTION SERVICES, and with the performance its duties and obligations hereunder. No relationship of employer and employee is created by this Agreement, it being understood that COLLECTOR is an independent contractor, and neither COLLECTOR nor any of the persons performing services for COLLECTOR pursuant to this Agreement, whether said person be member, partner, employee, subcontractor, or otherwise, will have any claim under this Agreement or otherwise against the COUNTY for sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, or employee benefits of any kind. It is further understood and agreed by the parties hereto that, except as provided in this Agreement, COLLECTOR in the performance of its obligation hereunder is subject to the control or direction of the COUNTY merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results. If, in the performance of this Agreement, any third persons are employed by COLLECTOR, such persons will be entirely and exclusively under direction, supervision and control of COLLECTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by COLLECTOR, and the COUNTY will have no right or authority over such persons or the terms of such employment, except as provided in this Agreement.

Section 8.6 GOVERNING LAW

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

Section 8.7 NONDISCRIMINATION

In the performance of this Agreement, COLLECTOR shall abide by all applicable federal, state and local laws, regulations or ordinances pertaining to discrimination and shall not discriminate against any person, customer, servant or employee on account of race, sex, age, creed, color, religion, or national origin.

Section 8.8 CORPORATE AUTHORITY

COLLECTOR shall submit to DIRECTOR documentation sufficient to establish that the person acting on its behalf by signing this Agreement, or any amendments thereto, is authorized to do so.

Section 8.9 NO THIRD PARTY RIGHTS OR ENFORCEMENT

While this Agreement benefits the public interest throughout the unincorporated Ventura County, it is a contract between only the COUNTY and COLLECTOR and, accordingly, only the COUNTY and COLLECTOR may enforce the terms and conditions of this Agreement. No claims, demands, or causes of action by any entity, party or person claiming to be a third-party beneficiary hereunder are enforceable.

Section 8.10 NOTICES

All notices or correspondence under this Agreement shall be given to the following addresses and shall be deemed delivered on the date of actual delivery or on the third business day after the date of mailing. Either party may, by giving written notice in accordance with this Section, change the names or addresses of the persons or departments designated for receipt of future notices.

COUNTY:

Director, Public Works Agency
COUNTY OF VENTURA
PUBLIC WORKS AGENCY
800 S. Victoria Avenue
Ventura, CA 93009-1600

COLLECTOR:

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

COUNTY OF VENTURA

COLLECTOR:

By: _____

By: _____

R.R. PAKALA
Water and Sanitation Department
Public Works Agency
County of Ventura

Name/Title: _____

Date: _____

Date: _____

By: _____

Name/Title: _____

Date: _____