

FRANCHISE AGREEMENT  
FOR REFUSE, RECYCLABLE MATERIALS, AND GREEN WASTE  
COLLECTION SERVICES

Executed Between the  
County of Butte

and

Recology Butte Colusa Counties

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## RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intention of the parties:

**WHEREAS:** The County Board of Supervisors desires to ensure that all residents and commercial businesses of the County be provided with the highest quality of refuse, recycling, and yard waste material collection processing and disposal, from a thorough, competent, and qualified company; and

**WHEREAS:** pursuant to Article XI, §7 of the California Constitution, County has authority over matters of public health and sanitation, including without limitation the collection and management of all solid waste within its geographic jurisdiction; and

**WHEREAS:** The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939" or the "Act") requires the County, cities and other local jurisdictions to implement plans for source reduction, reuse, and recycling as integrated waste management practices; and

**WHEREAS:** AB 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS:** AB341 authorizes and requires local agencies to implement a mandatory commercial recycling program; and

**WHEREAS:** California Public Resources Code Section 40059 permits the County to enter into an exclusive agreement for solid waste handling, imposing terms and conditions on a provider of such services, if, in the opinion of the governing body, the public health, safety, and well-being require the imposition of those terms and conditions through an exclusive agreement; and

**WHEREAS:** Chapter 31 of the County Code requires among other things that a collector or transporter of refuse, recyclable materials, and green waste be properly authorized to do so by the County of Butte; and

**WHEREAS:** The County has determined that it is best able to protect the public health and safety of the residents of the County by entering into a Franchise Agreement for the Collection of Refuse, Recyclable Materials, Green Waste and Food Waste subject to certain terms and conditions; and

**WHEREAS:** Contractor has represented and warranted to County that it has the experience, responsibility, qualifications, and ability to implement safe Refuse, Recyclable Materials, Green Waste, and Food Waste Collection services and to arrange with residents and businesses and other entities in the County of all materials in compliance with Applicable Law and the provisions of this Agreement; and

**WHEREAS:** The County further declares its intent to regulate and set the maximum rates the Contractor may charge Customers for the Collection, transportation, processing, recycling,

composting and/or disposal of Refuse, Recyclable Materials, Green Waste, Food Waste, Bulky Items; and

**WHEREAS:** The Board of Supervisors of the County of Butte determines and finds that based on Contractor's qualifications, past performance, financial strength as well as costs to the County, as described in this Franchise Agreement, it is in the best interest of the County of Butte to, and that the public health, safety and well-being require, the granting of an exclusive franchise to Contractor based on the terms and conditions contained in this Franchise Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, County and Contractor do hereby agree as follows:

## **1. Representations and Warranties by Contractor**

The Contractor (and, for purposes of Section 1.4, County) represents and warrants that, as of the Effective Date of this Franchise Agreement the following are true and correct:

### **1.1. Corporate or Company Status**

The Contractor, doing business as Recology Butte Colusa Counties, represents that it is either a corporation or a limited liability company, duly organized, validly existing and in good standing under the laws of the State of California. The Contractor is qualified to do business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Franchise Agreement.

### **1.2 Corporate or Company Authorization**

The Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Franchise Agreement. The Board of Directors or partners (or the shareholders if necessary) of the Contractor (if a Corporation), or the Managers and Members of the Company have taken all actions required by law, its articles of incorporation, and its bylaws, or its operating agreement, or otherwise, to authorize the execution of this Franchise Agreement. The person signing this agreement on behalf of Contractor has authority to do so.

### **1.3 Franchise Agreement Duly Executed**

The persons signing this Franchise Agreement on behalf of the Contractor have been authorized to do so. This Franchise Agreement constitutes a legal, valid and binding obligation of the Contractor.

### **1.4 No Conflict with Applicable Law or Other Documents**

Both Contractor and County represent and warrant that neither the execution and delivery of this Franchise Agreement, nor the performance by the Contractor of its obligations hereunder (a) conflicts with, violates or will result in a violation of any existing Applicable Law or governmental regulations applicable to either party; or (b) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which is a party or by which is bound.

### **1.5 No Litigation**

The Contractor represents and warrants that there is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against the Contractor, or otherwise affecting the Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would (a) materially and adversely affect the Contractor's performance hereunder, (b) adversely affect the validity or enforceability of this

Franchise Agreement, or (c) have a material and adverse effect on the financial condition of the Contractor or the entity providing the guaranty of the Contractor's performance.

#### 1.6 Customer Rate and Account Data Provided Prior to Executing this Franchise Agreement

The Contractor has made available to Consultant information on its Customer rates and accounts. The Contractor recognizes that the County has relied on Consultant's review of this information in developing franchise areas. To the best of the Contractor's knowledge, the information Contractor provided is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

#### 1.7 Ability to Perform

The Contractor has the expertise and professional and technical capability to perform all of its obligations under this Franchise Agreement. All services to be provided by the Contractor pursuant to this Franchise Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional contractors in similar fields and circumstances in accordance with sound professional practices. Both parties also warrant that they are familiar with all laws that may affect its performance of this Franchise Agreement and shall advise the other of any changes in any laws that may affect the Contractor's performance of this Franchise Agreement.

#### 1.8 Waiver of Right to Continuance Under AB 939

With this Franchise Agreement, the Contractor agrees to waive the five-year noticing requirement, specified under Public Resources Code Section 49520, which specifies that the County provide a notice to licensed haulers five years in advance of the County's transition to a franchised system. The County provided such notice on or about October 11, 2012.

## **2. Term of Agreement**

#### 2.1 Effective Date and Term

The Effective Date of this Franchise Agreement shall be March 1, 2015. The term of this Agreement shall continue for a period of fifteen (15) years commencing on March 1, 2015, and ending on February 28, 2030.

#### 2.2 Option to Extend Term

The term of the Franchise Agreement may be extended once, for five (5) years through February 28, 2035, at County's sole discretion. The County shall provide the Contractor with one hundred eighty (180) days notice prior to the initial termination date of the County's determination regarding extension of the term. Contractor shall have thirty (30) days from date of said notice to accept or reject extension of term.

### 3. Scope of Agreement

#### 3.1 Scope of Exclusive Franchise

Through this Franchise Agreement, the County grants to the Contractor an exclusive franchise, right, and privilege, for only its designated franchise area(s), as set forth in Exhibit A, except as provided in Section 3.5, to provide Franchise Services. This exclusive Franchise includes:

- 3.1.1 Collection and disposal of Refuse generated at Residential and Commercial Premises, except for Refuse (other than Construction and Demolition Debris) collected from Commercial Customers pursuant to Temporary roll-off / debris box service. Roll-off/debris boxes used to service Commercial Customer's Refuse disposal requirements on a scheduled, recurring basis (not Temporary) shall be considered as part of exclusive Franchise services.
- 3.1.2 Collection and Processing of Recyclable Materials generated at Residential and Commercial Premises.
- 3.1.3 Collection and Processing of Green Waste generated at Residential and Commercial Premises.
- 3.1.4 Collection and Processing of Food Waste generated at Residential and Commercial Premises.

#### 3.2 Non-exclusive Debris Box Service

Contractor shall have the non-exclusive right to provide roll-off / debris box service in any of the County Franchised Service Areas on a Temporary basis.

#### 3.3 Christmas Tree Collection Program

The Contractor shall agree to collect Christmas trees at no additional charge from Residential Customers for a four (4) week period beginning December 26<sup>th</sup> of the applicable calendar year.

#### 3.4 Special Services

The Contractor shall have the right, but not the obligation, to provide additional special services requested by Customers which are directly related to, or ancillary to, any of the other services authorized by this Franchise Agreement. The nature and terms of these special services shall be negotiated between the Contractor and the Customer and compensation shall be paid by the requesting Customer.

#### 3.5 Limitations on Franchise

Granting of this Franchise shall not preclude an owner, resident, or commercial entity from contracting for the categories of materials described below to be delivered to, collected and/or

transported by the Contractor or others, provided that nothing in this Franchise Agreement is intended to or shall be construed to excuse any person from obtaining from the County any authorization which is otherwise required by law. The Contractor shall not have the exclusive right and privilege to collect the following materials:

- 3.5.1 Self Haul. Solid Waste, Recyclable Materials, Green Waste, Food Waste, or Construction and Demolition Debris which is personally removed from any Premises by the owner or occupant and is transported to a Processing Facility, transfer station, or permitted solid waste disposal facility.
- 3.5.2 Commercial Recyclables. Recyclables Materials generated by Commercial Premises that are source separated by generator and collected through a private arrangement with the generator and the generator receives a net payment for the Recyclable Materials.
- 3.5.3 Construction and Demolition Debris. Construction and Demolition Debris generated at Commercial or Residential Premises, when:
  - (1) The building or demolition/modification contractor owns and operates the hauling equipment necessary to remove and haul the Construction and Demolition Debris generated, or
  - (2) The Construction and Demolition Debris generated is hauled by a fixed body vehicle or trailer known as an “end dump” which vehicle or trailer must have a non-detachable debris container with an open top and cannot be capable of loading itself and the driver remains with the vehicle while it is being loaded, provided further that equivalent services or equipment are not available from the Contractor.

The Contractor may, at its sole discretion, provide C&D Collection, Disposal and/or Processing services on a non-exclusive basis as a separate, distinct service apart from this Franchise Agreement.

- 3.5.4 Charities. Recyclable Materials that are donated by the generator to youth, civic, charitable, or other nonprofit organizations.
- 3.5.5 Bottle Bill. Recyclable beverage containers delivered by the generator for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500 *et seq. California Public Resources Code*.
- 3.5.6 Animal Waste. Animal waste and remains from slaughterhouse or butcher shops, grease waste, and used cooking oil.
- 3.5.7 Biosolids. By-products of sewage treatment including sludge, sludge ash, grit, and screenings.

3.5.8 Hazardous Waste. Hazardous Waste, Household Hazardous Waste, and Infectious Waste.

3.5.9 E-Waste. Source separated E-waste and source separated Universal Waste, including household batteries, fluorescent light bulbs, and mercury switches, or

3.5.10 Material Removed As Incidental Part of Other Service Provided. (i) Materials removed from a premise by a company as an incidental part of a gardening, landscaping, weed abatement, tree trimming, cleaning, maintenance, construction, or similar service offered by that company rather than as a waste hauling service, and using equipment owned and operated by that company. (ii) Materials removed as part of delivery of a replacement item when the removal and transportation is provided by the vendor that sold the item (e.g., carpet, white goods). (iii) Bulky Items removed from a Premises by a property clean-up or maintenance company, using a fixed body vehicle (end dump), as an incidental part of the total maintenance service offered by the company, rather than as a waste hauling service, and using equipment owned and operated by that company.

### 3.6 Materials Collected in Public Right-of-Way

The Contractor shall collect materials from the litter/recycling receptacles located within the public right-of-way which are initially described in Exhibit C. The County may request modification of the number or location of such receptacles.

### 3.7 Governmental and Tribal Entities

The Contractor's exclusive Franchise shall not include State, Federal, or tribal entities if and to the extent the County has no legal power to include them in the exclusive Franchise. To the same extent, the provisions of this Franchise Agreement shall not preclude or prohibit any such State, Federal, or tribal entity, or any officer or employee thereof, from collecting, removing, and disposing of its Solid Waste. Subject to the foregoing, the Contractor's exclusive Franchise shall include all State, Federal and tribal entities, as well as County and other local governmental bodies.

### 3.8 County Option to Incorporate Additional or Modified Provisions

The County shall have the right to direct the Contractor to perform reasonably available additional services (including new diversion programs, billing services, etc.), or to reasonably modify the Contractor's manner in which it performs its services, such as collection times, locations, use of collected waste, etc. Any additional costs that are anticipated or incurred as a result of the County's direction shall be an allowable cost for purposes of determining refuse collection rates, and shall be recoverable from the date the change in service or new program is implemented.

### 3.9 Geographical Limits or Franchise/Service Area

The territory within the County with respect to which the County exercises franchising authority for the Collection, Transportation, and Processing of Solid Waste, Recyclable Materials and Green Waste, which territory is shown on a map on file in the office of the County Contract Manager, to which reference is hereby made for the description of said area as Exhibit A.

### 3.10 Growth in Accounts

The Contractor shall provide service to all existing or new Premises within the Service Area that subscribe for service during the term of this Franchise Agreement, provided that the Premises are located on a Service Road that is passable in a safe manner year-round to regular collection vehicles, and subject to the other terms and conditions of this Agreement. The Contractor shall not be required to drive on a private road or driveway to access Premises or collection containers. If the Contractor believes a Service Road is unsafe/inaccessible, the Contractor can present its reasons to the County, and the County will consider an exception to the Service Road requirement if the County determines that the road is in fact unsafe/inaccessible.

### 3.11 Title to Solid Waste

Once Solid Waste is placed in Containers and the Containers are properly placed for Collection, ownership and the right to possession shall transfer directly from the waste generator to the Contractor by operation of this Franchise Agreement unless otherwise agreed to by the waste generator and Contractor. Subject to the provisions of this Franchise Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or use the Solid Waste which it collects. Solid Waste, or any part thereof which is disposed of at a Disposal or Processing Facility (whether landfill, transformation facility, transfer station, or material recovery facility) shall become the property of the owner or operator of the facility once deposited there by Contractor.

### 3.12 Administration and Enforcement by County

The County has designated the Manager, Waste Management Division, Public Works Department (“County Contract Manager”) to be responsible for the monitoring and administration of this Franchise Agreement. The Contractor shall meet and confer with the County Contract Manager to resolve differences of interpretation and implement and execute the requirements of this Franchise Agreement in an efficient and effective manner that is consistent with the stated objectives of this Franchise Agreement.

From time to time, the County Contract Manager may designate other agents at the County to work with the Contractor on specific matters. In such cases, those individuals should be considered designates of the County Contract Manager for those matters to which they have been engaged. Such designates shall be afforded all of the rights and access granted thereto, subject to Contractor’s reasonable requests regarding protection of its confidential information and Section 12.4 of this agreement. In the event of a dispute between the County Contract Manager’s designate and Contractor, the County Contract Manager’s determination shall be conclusive.

The County Contract Manager is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations under this Franchise Agreement, either on behalf of the County, Contractor, or the public, pursuant to the County's Ordinance. The Contractor can appeal a decision made by the County Contract Manager by submitting an appeal in writing to the County Public Works Director within thirty (30) days of receiving the County Contract Manager's written decision. The Contractor will retain all judicial appellate rights.

#### **4. Collection Services**

##### 4.1 General

The Contractor will perform all services in a prompt, thorough, reliable, courteous and professional manner consistent with municipal solid waste collection industry standards so that Customers receive high-quality service at all times, subject to Uncontrollable Circumstances. If Uncontrollable Circumstances preclude the Contractor's timely performance of services, the Contractor will resume services on the first scheduled regular collection day following cessation of those Uncontrollable Circumstances, including collection of Solid Waste accumulated during the continuance of those Uncontrollable Circumstances.

##### 4.2 Collection Standards

###### 4.2.1 Care of Private Property

Reasonable care shall be used by the Contractor's employees in handling all privately owned collection containers and enclosures, and all damage caused by the negligence or carelessness of the Contractor's employees shall be promptly adjusted with the owner thereof.

###### 4.2.2 Noise

All collection operations shall be conducted in a reasonably quiet manner and shall conform to applicable Federal, State, County and City noise level regulations, to include compliance with the California Noise Control Act of 1973 (Health and Safety Code Section 46000), and County Ordinance 4053, titled Residential Generator Noise. Solid Waste collection operations shall not be conducted in, or adjacent to, residential areas prior to 5:30 AM or after 8:00 PM (excluding Sundays) without approval from the local enforcement agency.

###### 4.2.3 Litter

The Contractor will use due care to prevent Solid Waste from being: (a) spilled or scattered during collection and transportation, including during removal and dumping of Container's contents into the collection vehicle, and (b) tracked onto any alley, street, road or highway by vehicles. The Contractor will not transfer loads from one vehicle to another on any alley, street, road or highway unless necessitated by mechanical failure or accidental damage to a vehicle. The Contractor will immediately clean up any solid waste that it spills or scatters. Each collection vehicle will carry a broom and shovel at all times for this purpose. If the Contractor fails to clean up Solid Waste within twenty-four (24) hours of oral or written notice by the County, the County

may clean up or cause to be cleaned up Solid Waste and the Contractor shall reimburse the County for the County's clean-up costs. The County's reimbursable clean-up costs will be established by mutual agreement. The Contractor is responsible for paying any fees, surcharges or other levies for improperly covering loads charged by the operator of any Solid Waste facility or other entity.

#### 4.2.4 Fixtures and Personal Property

The Contractor's employees shall use due care in entering and exiting a Customer's property or enclosures and shall use paved walks, driveways or hard surfaces where practicable.

#### 4.2.5 Containers

The Contractor will handle Containers with due care. The Contractor will return Containers to within five (5) feet of the location from which the Contractor picked them up, in an upright position, with lids properly and fully secured. The Contractor will not place Containers where they will obstruct any passable driveway, sidewalk, street or highway.

#### 4.2.6 Property Damage Caused by Contractor

The Contractor shall be responsible for the cost of repairing any property damaged by the negligent or intentional conduct of its employees or agents.

#### 4.2.7 Missed Collection

The Contractor will provide a special pickup, or other corrective action acceptable to a Customer, within twenty-four (24) hours (Saturdays, Sundays and holidays excepted) of oral or written notice to the Contractor of a missed scheduled collection at no charge to the Customer. If the Contractor does not provide corrective action in a timely manner, the County may perform the collection or cause the collection to be performed by a third party, and the Contractor shall reimburse the County for its costs for such collection.

In cases where the Contractor has documented that the Customer's Container was not set out at the normal service time, the following conditions apply: (1) for the first occurrence each year the Contractor shall pick up the Container, within twenty-four (24) hours of oral or written notice, at no charge to the Customer, and (2) for each subsequent occurrence that year, the Contractor can charge the Customer a "return trip charge" if the Customer requests collection prior to the next scheduled service day for that Customer.

#### 4.2.8 Record of Non-Collection

When any Solid Waste is not collected by the Contractor because such Solid Waste (or setout thereof) fails to meet the requirements of the County Ordinance or the Franchise Agreement, Contractor shall leave a tag, on which is indicated the reasons for refusal to collect the Solid Waste as well as the Contractor's address, telephone number and business hours.

### 4.3 Refuse Collection

#### 4.3.1 Residential Refuse Collection

The Contractor shall provide not less than one (1) regular weekly collection of Refuse to all Residential Customers within the Service Area provided that the Premises are located on a Service Road that is passable in a safe manner year-round to regular collection vehicles, and subject to the other terms and conditions of this Agreement. Single Family Customers shall set out carts for Collection within five (5) feet of service roads. Contractor shall perform Collections to Multi-Family Customers at locations agreed upon by the Customer and Contractor.

#### 4.3.2 Commercial Refuse Collection

The Contractor shall provide not less than one (1) regular weekly collection of Refuse to all Commercial Customers. Contractor shall perform Collections from Commercial Customers at locations agreed upon by the Customer and Contractor.

### 4.4 Recyclable Materials Collection

#### 4.4.1 Single-Family Residential Recyclable Materials Collection

Upon the effective date of this Franchise Agreement, the Contractor shall provide Single Family Residential Customers, located within the unincorporated urban areas identified as Recycling Zones, not less than bi-weekly curbside Collection of Recyclable Materials. Contractor shall provide one 35, 65, or 96 gallon (approximate) Container (each "Recycling Cart") to each such Single Family residence. Customer may request up to a 96 gallon (approximate) Recycling Cart. Contractor may charge for Collection of additional Recycling Carts. On each scheduled collection day, Customers shall place Recycling Carts within five (5) feet of service roads. Contractor shall provide these recycling services as part of the basic Refuse Collection service and the charge for this service (one Recycling Cart only) shall be included in the base Refuse Collection fee.

#### 4.4.2 Commercial and Multi-Family Recyclable Materials Collection

Upon the effective date of this Franchise Agreement, the Contractor shall provide recycling Containers and not less than bi-weekly collection of Recyclable Materials to Commercial and Multi-Family Customers located in a Recycling Zone as part of the basic Collection service and the charge for this service shall be included in the base Refuse Collection fee.

For Service Area outside a Recycling Zone, each Commercial Customer that produces four (4) or more cubic yards of Solid Waste per week, and each Multi-Family Premise of five (5) or more units, shall be offered recycling Containers for Recyclable Materials. The Contractor shall provide not less than bi-weekly collection of Recyclable Materials as part of the basic Collection service and the charge for this service shall be included in the base Refuse Collection fee.

For Commercial and Multi-Family Customers receiving basic recycling Collection service, Recycling Containers shall be of equivalent size as Refuse Container(s). Commercial and Multi-Family Customers may receive Recyclable Materials Collection service levels above basic service level (i.e. more frequent Collections and/or more Containers) for an additional charge.

Non-putrescible materials which have been segregated from other wastes for the purpose of recycling and which have been properly stored or contained, may be collected less frequently than bi-weekly, as agreed to by the Contractor and Commercial customer.

As of the effective date of this Franchise Agreement, for Commercial and Multi-Family Customers located outside Recycling Zones and meeting the criteria listed above, the option to subscribe to recycling services shall be offered (1) to new Customers upon commencement of Solid Waste Collection Services, and (2) to existing Customers on an annual basis. For those such Customers that are located in areas that do not offer the density for efficient collection of Recyclable Materials, the Contractor may request, in writing, a waiver from the County Contract Manager of the requirement to offer and provide recycling services.

#### 4.5 Green Waste Collection and Processing

##### 4.5.1 Single-Family Residential Green Waste Collection

Upon the effective date of this Franchise Agreement, the Contractor shall provide Single Family Residential Customers located within the unincorporated urban areas, identified as Recycling Zones, not less than bi-weekly curbside collection of Green Waste set out in a Container provided by the Contractor for Collection within five (5) feet of service roads. Contractor shall provide this service as part of the basic Refuse Collection service and the charge for this service shall be included in the base Refuse Collection fee.

The Contractor shall provide a 96-gallon (approximate) Container, one (1) per dwelling unit, as the standard Green Waste service level. Customers can opt to subscribe to a smaller container (such as a 35 or 65 gallon Container). The Contractor may charge for additional Green Waste Containers, based on its standard price for the size of the additional Container provided.

##### 4.5.2 End Uses for Green Waste

The Contractor agrees to take reasonable steps to divert Green Waste collected pursuant to this Agreement, through mulching, composting, land application, alternative daily cover, or other programs, so as to help achieve the County's Green Waste diversion requirements. The County reserves the right to direct the Contractor in the end use of Green Waste when in the best interest of the County (e.g., so that the County receives full diversion credit for the Green Waste) and provided the Contractor would receive or pay a reasonable competitive market price for the Green Waste. Should the County direct the Contractor in the end use of Green Waste, which causes Contractor's costs to increase, the County agrees to increase Contractor's Refuse Collection rates as necessary to compensate the Contractor for the additional documented expenses.

#### 4.6 Services to Customers on Non-Service Roads

The Contractor may, but is not obligated to, provide such Collection of Solid Waste set out along Non-Service Roads and private roads, and may, in such event, require the Customer to sign a waiver of damage liability or indemnification or both in a form approved by the County. The Contractor will use reasonable efforts to reach agreement with persons owning or occupying real property along Non-Service Roads, including said person's setting Solid Waste out for Collection at a mutually acceptable location or paying extra charges. Contractor may charge reasonable extra charges to provide service to Customers on Non-Service Roads, subject to review by the County Contract Manager.

#### 4.7 Hazardous and Biomedical Waste Collection

Contractor shall not knowingly collect Hazardous Waste unless and under such conditions as permitted to do so by the State Health Department, except as expressly required by this Franchise Agreement.

#### 4.8 Bulky Waste

At the beginning of each year, the Contractor shall provide Single-Family Residential Customers subscribing to service, with five (5) coupons per year for Bulky Waste Collection at no charge (with each coupon to be used for collection of one Bulky Item). A Customer shall have the option to schedule up to two on-call Bulky Waste pickups per year, where the customer can use the five (5) coupons provided by the Contractor. The Contractor shall coordinate the schedule of these pickups with the Customer. The costs associated with Bulky Waste collection shall be an allowable expense for purposes of determining Refuse Collection rates. The Contractor is allowed to charge Single-Family Residential Customers for on-call collections in excess of two per year, and for each Bulky Item collected in excess of the five (5) Bulky Items allowed per year (by coupon). In addition, Contractor is allowed to charge Multi-Family Residential Customers and Commercial Customers for all Bulky Item collections.

#### 4.9 Emergency Services

The Contractor shall assist the County in the event of terrorist attack or major disaster, such as an earthquake, storm, fire, riot, or civil disturbance, by providing Collection vehicles and drivers normally assigned to the County, at Contractor's actual costs. The Contractor shall cooperate with County, State, and Federal officials in filing information related to regional, State, or Federally-declared state of emergency of disaster or terrorist attack as to which Contractor has provided equipment and drivers pursuant to this Franchise Agreement.

### **5. Transportation**

#### 5.1 Solid Waste Transportation Requirements

When transporting Solid Waste in the County, the Contractor transporting Solid Waste (except for processed Recyclable Materials) must do the following: (1) cover the transported load of

Solid Waste, and (2) comply with California Vehicle Code Section 23114(e) (with respect to aggregate material) and Section 23115(a) (with respect to Solid Waste such as garbage, refuse, and trash).

## 5.2 Transportation and Processing of Collected Materials

Contractor shall be responsible for, or shall arrange for, transporting all Solid Waste collected under this Franchise Agreement to the Designated Disposal or Processing Facility. Once placed in Containers for collection, such materials shall become the property of the Contractor.

## 5.3 Transportation of Other Materials

Upon request by the County, the Contractor shall modify the manner in which it provides for transporting, processing, recycling, and/or reuse of Bulky Items, White Goods, and Specialty Recyclable or Reusable Materials (excluding C&D) collected pursuant to this Franchise Agreement, provided that Contractor compensation for such change in services must first be negotiated by Contractor and County.

# 6. Operations, Equipment, and Personnel

## 6.1 Collection Hours and Schedules

### 6.1.1 Residential

The Contractor shall provide Residential Franchise Services on weekdays (i.e., Monday through Friday) on an established weekly pickup schedule between 5:30 AM and 8:00 PM exclusive of holidays, except in emergencies or with the approval of the LEA.

### 6.1.2 Commercial

The Contractor shall provide Commercial Franchise Services Monday through Saturday, on an established weekly pickup schedule between 5:30 AM and 8:00 PM, exclusive of holidays, except in emergencies or with the approval of the LEA. The County may restrict or require modifications to the hours for collection from Commercial Premises to resolve noise complaints, and, in such cases, the County may restrict the allowable operating hours.

### 6.1.3 Holiday Schedule

If Collection service is scheduled for a day that falls on a holiday, the Contractor shall have the option to collect on the holiday or on the following business day. The Contractor shall notify Customers of the holiday Collection schedule in a publication of general circulation, or via another mutually agreed method.

#### 6.1.4 Changed Schedule

The Contractor shall provide Customers with thirty (30) days advance written notice of changes in the Customer's scheduled day of regular Collection services. For changes in the Customer's bill, the Contractor shall notify the Customer by separate notice sent by first class mail thirty (30) days in advance of the change. These notification timing requirements will be waived in the event that the County does not provide the Contractor with sufficient time to provide notice to Customers for changes in the billed amount or the allowed collection schedule.

#### 6.2 Operations Standards

Contractor's implementation of the services required by this Agreement shall occur in a smooth and seamless manner so that Customers do not experience disruption in Franchise Services when services are initiated on the commencement date. Contractor shall be responsible for managing implementation of new Franchise Services and the Collection standards listed in Section 4.2. Notwithstanding any other provision of this Agreement, Contractor is relying on County to provide it with information regarding the new accounts that Contractor will begin servicing as of the Effective Date, and Contractor shall not be responsible for any disruption in or failure to provide services resulting from the inaccuracy or incompleteness of such information.

In order to facilitate a smooth transition of Franchise Services within Contractor's Service Area, it is expected that Contractor coordinate with other waste collection contractors to exchange Containers that were utilized by any previous contractor to provide regular Collection services to a Customer before the Effective Date to Contractor's Containers complying with requirements of this section. Contractor is allowed six (6) months from the Effective Date to complete the exchange of previous contractor's Containers to Contractor's Containers at Contractor's Customer locations. During this six (6) month period, Sections 6.4.1 through 6.4.4 shall not apply to Containers placed into service before the Effective Date. Contractor will not be able to charge a customer the new collection rate (as specified in Exhibit B) until the Contractor delivers that customer the containers commensurate with the level of service associated with the new collection rate.

#### 6.3 Vehicles

##### 6.3.1 General

The Contractor warrants that it shall provide a sufficient number of vehicles and equipment for the Collection and transportation services for which it is responsible under this Franchise Agreement. All vehicles used by the Contractor under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, as applicable, shall be kept clean and in good repair, and shall be uniformly painted. The Contractor shall have sufficient back-up vehicles for each type of collection vehicle (residential, commercial) used to respond to complaints and emergencies.

### 6.3.2 Vehicle Identification

Every Collection vehicle used by Contractor for collecting and disposing of Solid Waste shall be designed and/or suitable for such purpose and shall comply with the provisions of all applicable laws, including this section. All such vehicles shall be kept painted on the exterior, shall be maintained in a good, safe and clean condition. There shall be displayed on each side of each vehicle the Contractor's business name, telephone number, and the vehicle number in letters not less than four (4) nor more than twelve (12) inches in height. The LEA may suspend any collection vehicle from operating if the collection vehicle does not meet the health and safety requirements identified under the Vehicle Code, the Health and Safety Code, and this section.

Contractor shall provide a list of Collection vehicles (including make, model, and identification number) utilized for its County Collection services to the County Contract Manager and the LEA on an annual basis. The Contractor shall provide vehicle information (make, model, and identification number) to the County Contract Manager and LEA within fourteen (14) days of acquiring a new vehicle.

### 6.3.3 Cleaning and Maintenance

Collection vehicles shall be washed such that they are maintained in a reasonably clean and sanitary condition.

Collection vehicles shall be designed and operated while in route in such a manner as to prevent Solid Waste from leaking, escaping or spilling. All Solid Waste shall be transported by means of vehicles equipped with watertight bodies fitted with close fitting covers. Loads shall be kept completely covered at all times except when material is being loaded or unloaded, or when vehicles are in the process of collection.

Solid Waste shall be loaded on vehicles so that none of it falls, drops, or spills upon the ground, and it should be protected from wind and rain. A shovel, broom, and fire extinguisher shall be kept on each vehicle at all times. Any spillage of materials by the Contractor shall be immediately cleaned up by the Contractor at the Contractor's sole expense.

The equipment of the Contractor used under this Franchise Agreement shall be subject to inspection by the County.

The Contractor shall allow the LEA to inspect all collection vehicles, including newly acquired collection vehicles, at a minimum of once per year. The LEA shall submit requests for annual inspection to the Contractor at least two (2) weeks in advance of the planned inspection.

### 6.3.4 Low Emissions Requirement

If changes in federal, State or local laws mandate that the Contractor convert or retrofit its Collection fleet to use the most cost-effective means to reduce air pollutant emissions, the Contractor shall take all necessary steps to comply, and shall be in full compliance with all other federal, State, and local clean air requirements. Costs for mandated fleet conversion or

retrofitting will be spread over the useful life of the assets, and will be treated as allowable costs for rate setting purposes and included in Refuse Collection rates.

#### 6.3.5 Equipment List

Upon the County's request, the Contractor shall provide the County with a written list of all equipment (including trucks and Containers) used within the Service Area, including, for vehicles, the make and model, age, mileage or hours of operation, payload, and type of vehicle.

#### 6.3.6 Vehicle Storage

The Contractor's vehicles and equipment shall only be parked or stored at a site approved by the LEA, in compliance with all applicable zoning regulations and at such location as not to cause a nuisance to either neighbors or the general public. No vehicle used by Contractor in performance of this Franchise Agreement shall be stored on any public street or other public property in the County.

### 6.4 Containers

#### 6.4.1 General

The Contractor shall provide all Containers (i.e., carts, bins and debris boxes), as appropriate, to all Customers as part of its obligations under this Franchise Agreement. All Containers used for the collection, transportation, or storage of solid wastes or recyclable materials, including wet or liquid producing materials or materials composed of fine particles, by any person, shall be nonabsorbent, leak resistant, watertight, durable, easily cleaned and designated for safe handling, and constructed with tight-fitting lids (except roll-offs) and otherwise to prevent the harborage and propagation of insects, rodents and odors and to prevent loss of Solid Waste from the Containers during collection and transportation.

All carts shall be manufactured by injection or rotational molding methods. Carts provided to Customers shall have a useful life of ten (10) years as evidenced by a manufacturer's warranty or other documentation acceptable to the County. All Containers with a capacity of one (1) cubic yard or more shall meet applicable federal, State, and local regulations for bin safety; shall be covered with attached lids; and shall have the capability to be locked if required or requested by Customer or County. All Containers shall be maintained in a safe, serviceable, and functional condition.

Recycling bins may be either open or closed Containers. Open Containers shall not become a public nuisance, as determined by the LEA, and shall be of a proper size to accommodate the frequency of collection of Recyclable Materials.

#### 6.4.2 Container Sizes

The Container sizes to be provided to Single-Family, Multi-Family, Commercial, and governmental and institutional facility Customers shall be specified by the County with the

Contractor's concurrence. The Container sizes referenced in Exhibit B (Maximum Service Rates) shall be deemed approved by the County.

#### 6.4.3 Container Color

The colors of the Containers and/or Container lids provided to Single-Family, Multi-Family, Commercial, governmental and institutional facility Customers shall be clearly marked and shall be of the following colors:

1. Brown, black, or grey for Refuse
2. Blue for Recyclable Materials, or at a minimum clearly marked of a different color
3. Green or brown for Green Waste, or at a minimum clearly marked of a different color.

#### 6.4.4 Container Labeling

Residential. The Contractor shall label each Residential Refuse Container to include an imprint or decal identifying that the Container is for "Refuse," the Contractor's logo, and the Contractor's firm name and telephone number. Such decals shall be replaced as needed to provide that the information is legible.

Commercial. Contractor shall place and maintain on the outside of all Contractor's owned Commercial Containers of one (1) cubic yard capacity or larger, in legible letters and numerals, not less than two (2) inches in height, the Contractor's firm name and telephone number. The Contractor shall at all times keep such Containers and lids in good repair and maintained in a clean and sanitary condition to the satisfaction of the County and the LEA.

Recycling. The Contractor shall label each Residential and Commercial recycling Container to include an imprint or decal identifying that the Container is for "Recycling," the Contractor's logo, and the Contractor's firm name and telephone number. Such decals shall be replaced as needed to provide that the information is legible.

Green Waste. The Contractor shall label each Residential and Commercial Green Waste Container to include an imprint or decal identifying that the Container is for "Green Waste," the Contractor's logo, and the Contractor's firm name and telephone number. Such decals shall be replaced as needed to provide that the information is legible.

Location. The labeling shall be positioned on each Container so it is visible to the Customer and Collection vehicle drivers on the front side and top. The labeling shall be durable and weather resistant to outdoor conditions and have a minimum ten (10) year lifetime. All Containers shall prominently display information and graphics agreed upon by County and the Contractor. Final Container labeling layout, graphics and text shall be approved by the County prior to distribution to Customers.

#### 6.4.5 Cleaning and Painting

The Contractor shall be responsible for steam cleaning and repainting all Containers, except carts, to present an aesthetically pleasing clean appearance and to ensure this equipment is safely maintained and operationally sound. Upon a customer's request, the Contractor shall exchange existing Refuse and Recyclable Materials Containers with clean Containers, or clean such Containers, once annually at no charge to the Customer. Beyond the one free Container exchange, the Contractor shall offer additional cleaning (or clean Container exchange) to Customers requesting such service and shall be entitled to bill Customers for such additional cleaning (or Container exchange).

If any Container is impacted by graffiti, the Contractor shall remedy the situation within five (5) days of being notified.

#### 6.4.6 Repair and Replacement

The Contractor shall repair or replace all Containers damaged by Collection operations (e.g., vehicle apparatus interface) within five (5) business days of being notified by Customer or observing the damaged Container. If the repair or replacement cannot be completed within five (5) business days, the Contractor shall notify the Customer and provide a Container of the same size or larger until the original Container can be replaced. At no cost to Customers, Contractor shall replace Customer carts that have been stolen, lost, damaged or destroyed. However, Customers shall be responsible for replacement costs if (i) a Customer's cart has been replaced at no cost within the last five years, other than due to Contractor negligence, or (ii) if cart damage is due to Customer abuse or neglect (not including normal wear and tear). Carts will be replaced within five business days after Contractor receives notice of the request.

The Contractor shall allow the Customer to exchange Containers for a Container of a different size at no additional cost and shall replace Containers within five (5) business days of Customer request. Upon written approval from the County, the Contractor shall allow Customers to rent or purchase additional carts and shall be entitled to bill Customers.

#### 6.4.7 Rights to Containers

All Containers purchased or leased by the Contractor and put into service under this Agreement shall remain the property of the Contractor.

### 6.5 Personnel

#### 6.5.1 Driver Qualifications

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

### 6.5.2 Safety Training

The Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Franchise Services, or who are otherwise directly involved in such Franchise Services.

### 6.5.3 Employee Conduct and Uniform

The Contractor shall use its best efforts to ensure that all employees present have a neat appearance and conduct themselves in a courteous manner in their dealings with Customers and the general public. All employees engaged in collection operations shall at all times of employment be dressed in uniforms with suitable identification.

## 6.6 Hazardous Waste Inspection and Handling

Contractor agrees to establish and vigorously enforce an educational program which will train Contractor's employees in the identification and proper handling of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at a Processing or Disposal Facility.

If the Contractor determines that Solid Waste placed in any Container for Collection or delivered to any facility is Hazardous Waste, Infectious Waste, Excluded Materials, or other waste that may not legally be disposed of at the Disposal Facility or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such waste. The Customer will be contacted by the Contractor and requested to arrange proper disposal.

If the Hazardous Waste is delivered by Contractor to a Disposal Facility before its presence is detected and the Customer cannot be identified after the best efforts of the County and Contractor to identify the Customer, the County shall arrange for its proper disposal at the expense of Contractor. This expense shall be limited to the direct disposal cost of any manifested load required to remove the Hazardous Waste. Alternatively, Contractor will have five (5) business days after receipt of written notice to make its own arrangements for the removal of the Hazardous Waste subject to County review and approval of such arrangements.

## 6.7 Communication and Cooperation with County

### 6.7.1 Communications

The Contractor's general manager shall have e-mail capabilities to enable the County and the Contractor's general manager to communicate via email. The Contractor's general manager, or someone filling in during his absence, shall respond to County email correspondence within forty-eight (48) hours.

### 6.7.2 Twice Annual Meetings

Upon request from the County, the Contractor shall meet with the County to discuss operations issues of each active diversion program, quality and reliability of Franchise Services, and compliance with the terms of this Franchise Agreement. At each semi-annual (twice annual) meeting, the County and Contractor shall have the opportunity to present and discuss proposed changes in service such as changing program requirements or modifying Collection methods. Such changes shall be subject to Section 3.8.

### 6.7.3 Inspection by County

The County shall have the right, but not the obligation, to observe and inspect all of Contractor's operations under this Franchise Agreement. In connection therewith, the County shall have the right to enter facilities used by Contractor during regular operating hours, speak to any of the Contractor's district management and/or compliance management employees and receive cooperation from such employees in response to inquiries with prior twenty-four (24) hour notice and such that the inquires do not interfere with the daily functions and/or scheduling of employees. If the Contractor indicates that an inspection will interfere with its operations, the Contractor must propose a date and time within the next three (3) business days for scheduling that inspection. In addition, at any time during regular business hours, following forty-eight (48) hours notice, and without interference with Contractor's operations, the County may review and copy specific documents or records needed to evaluate annual reports, rate applications, or company performance related to this Franchise Agreement. If County so requests, the Contractor shall make specified district management and/or compliance personnel available to accompany County employees on inspections and shall provide electronic copies of such records stored in electronic media, subject to privacy laws. This data shall be available for a period of five (5) years following the close of the Contractor's fiscal year. The County's rights under this section are subject to Contractor's general rules regarding facility visitors (e.g., sign-in, wearing safety gear, etc.).

## 6.8 Litter Abatement

### 6.8.1 Minimization of Spills

The Contractor shall use due care to prevent fluids from leaking, being spilled, and/or scattered during the Collection or transportation process. If any material or fluids leak or are spilled during Collection, the Contractor shall promptly clean up all such materials.

### 6.8.2 Clean Up

During the Collection process, the Contractor shall clean up litter within ten feet (10') of properly set out Containers (including within the storage areas where collection bins and debris boxes are delivered for collection) whether or not the Contractor has caused the litter and provided that Contractor can safely and legally access the litter. The Contractor shall document and discuss instances of repeated spillage not caused by it directly with the waste generator responsible, and will report such instances to the County. Following two documented instances

where the Contractor provided clean up services and the customer was notified of these instances, the Contractor can impose an extra charge to customers in cases where spillage is caused by the customer overfilling a container. The County will attempt to rectify such situations with the waste generator if the Contractor has already attempted to do so without success.

### 6.8.3 Covering of Loads

The Contractor shall properly cover all open debris boxes during transport to the Disposal or Processing Facility.

### 6.9 Equipment Yard

Storage and equipment yards shall be kept in a safe and healthful manner, reasonably free of litter and debris and shall not become a public nuisance.

Recyclable Materials shall be stored in approved storage bins. Out-of-service vehicles shall be stored away from normal work areas and out of public sight.

## **7. Facilities for Solid Waste Processing and Disposal**

### 7.1 Overall Responsibility for Disposal of Wastes

The Contractor shall deliver all Refuse it collects under this Agreement to the County's Designated Disposal Facility identified in Section 7.2. The Contractor is not obligated to dispose of the residual Solid Waste, from Recyclable Materials collected, at the Designated Disposal Facility if the Contractor's Processing Facility is located outside Butte County.

It shall be illegal for Contractor to dispose of Solid Waste at an unpermitted illegal disposal site. A violation, upon conviction, shall be punishable by a ten thousand dollar (\$10,000.00) fine and shall be grounds for immediate revocation of the license. Each day of violation shall be counted as a separate offense.

The Contractor will observe and comply with all regulations applicable to the Contractor in effect and posted at the Designated Disposal Facility or otherwise provided to the Contractor and will coordinate deliveries with the schedule of the Solid Waste facility or facilities. The Contractor will at all times deliver and discharge materials and exit in accordance with standard disposal facility practices.

The Contractor will not comingle Recyclable Materials that have been segregated by the Customer with other waste materials that are destined for disposal. As provided in Section 19.30, materials segregated by the Customer for recycling will not be considered Recyclable Materials if such materials contain unacceptable contamination.

## 7.2 Contractor Use of County Designated Disposal Facility

The County has designated the Neal Road Recycling and Waste Facility as the Designated Disposal Facility which will receive, accept and lawfully dispose of all Refuse collected from the Service Area and delivered to the Designated Disposal Facility by the Contractor, a designated transfer company, the County, or any other agent of County. This is the required Disposal Facility under the Franchise Agreement, unless the County otherwise directs the Contractor to dispose of Refuse at an alternative facility.

If the County becomes unable to accept and dispose of all Refuse generated in and collected from the Service Area at the Designated Disposal Facility, the Contractor shall be responsible for choosing and providing the facility for disposal of Refuse under this Franchise Agreement; provided, however, that any landfill utilized by the Contractor must be designed and constructed in accordance with applicable state and federal regulations. The landfill must have all required permits from federal, state, regional, county and city agencies necessary for it to operate as a Class II or III Sanitary Landfill and be in full regulatory compliance with all such permits. The Contractor will request and obtain approval from the County of the landfill it intends to use. The Contractor shall provide copies to the County of all notices of violations regarding such landfill that could affect the Contractor's ability to perform under this Franchise Agreement, or amendments to permits, including any extensions. The landfill shall not maintain the co-disposal of municipal Solid Waste and Hazardous Waste (other than Household Hazardous Waste) in the same lined cell. The additional cost to Contractor of using the landfill (including tip fees and transport costs), compared to the cost of using Neal Road, shall be an allowable expense.

If the Contractor becomes unable to accept and dispose of all Refuse generated in and collected from the Service Area at the Designated Disposal Facility as the result of causes within the control of the Contractor and which could have been avoided by the exercise of due care, then any additional costs incurred in transporting the Refuse generated in and collected from the Service Area to another disposal site, and paid to dispose of the Refuse at that disposal site, shall be a non-allowable expense in accordance with Section 11 of this Agreement. Further, the Contractor shall be required to pay the County an amount equal to the current tipping fee rate at the Designated Disposal Facility multiplied by the number of tons disposed of at the other disposal site.

If the Contractor becomes unable to dispose of the County Refuse at the Designated Disposal Facility as the result of Uncontrollable Circumstances, then the Contractor shall, to the extent it is legally able to do so and with the prior written approval of the County, dispose of Refuse collected from the Service Area at another landfill at a disposal fee equivalent to that charged for transport and disposal to Neal Road Recycling and Waste Facility (inclusive of all transfer and transport costs) then in effect at such landfill. These costs will be allowable costs in accordance with Section 11 of this Franchise Agreement. Within six months of the effective date of this Franchise Agreement, the County and Contractor will develop a mutually agreeable process to receive written authorization from County Contract Manager.

### 7.3 Fully Permitted Processing Facility and Transfer Facility

The County has the right to approve all permitted processing and/or transfer stations used by the Contractor. Any processing and/or transfer facilities utilized by the Contractor must be designed and constructed in accordance with all applicable laws and regulations. The facilities must have all required permits from federal, state, regional, county and city agencies necessary for them to operate and be in full regulatory compliance with all such permits. The Contractor shall provide copies to the County of all notices of violations respecting any such facility used by the Contractor, which could affect the Contractor's ability to perform under this Franchise Agreement, or amendments to permits, including any extensions. Any such facility must be authorized to accept, under its existing permits, and have sufficient uncommitted capacity to accept, all Recyclable Materials, Green Waste or Refuse delivered to it from the Service Area for the duration of this Franchise Agreement.

### 7.4 Disposal in Compliance with Laws and Regulations

Throughout the term of this Franchise Agreement, it shall be the Contractor's sole responsibility and duty to deliver the Solid Waste collected by virtue of this Franchise Agreement to the Designated Disposal Facility (if Refuse) or the appropriate Processing Facility (if Recyclables Materials or Green Waste). However, it is the Designated Disposal Facility's or the Processing Facility's (as applicable) sole responsibility and duty to handle and dispose of such materials after Contractor's delivery, and to do so in a safe manner and in compliance with all federal, state, and local laws and regulations.

### 7.5 Disposal of Refuse Collected within Butte County

As part of the consideration for this Franchise Agreement, effective on March 1, 2015, and continuing throughout the term of this Franchise Agreement, the Contractor shall deliver all Refuse collected by the Contractor and its affiliated companies within Butte County and any city therein to the Neal Road Recycling and Waste Facility for disposal.

This provision shall hold for cities within the County unless a city elects to direct the flow of its Solid Waste to a facility other than the Neal Road Recycling and Waste Facility, by franchise agreement between city and hauler, by city ordinance or in writing. The language in any such franchise agreement, ordinance or writing regarding delivery of Refuse collected within city limits, shall take precedence over this provision.

## 8. Other Collection-Related Services

### 8.1 Office

The Contractor shall establish and shall continue to maintain a local office for the purpose of receiving Customer payments and handling Customer inquiries, orders, and complaints. The Contractor's current office location is 2720 South Fifth Avenue, Oroville, CA 95965. Office hours shall be, at a minimum, from 8:00 AM to 5:00 PM, Monday through Friday, exclusive of holidays. The Contractor shall staff the office with at least one (1) responsible and

qualified representative of Contractor that shall be available during office hours to respond to Customer questions and complaints submitted either in person or by telephone. The Contractor shall respond to all questions or complaints no later than at the end of the business day next following the day such question or complaint was recorded.

## 8.2 Company and Service Information

Upon initiation of service the Contractor shall send or deliver to its Customer, information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), days of Collections, the amount and manner of Refuse to be Collected, service level and inquiry/complaint procedures, including the name, address and local telephone number of the Contractor. The form and content shall be subject to the review and approval of the County.

## 8.3 Customer Service

8.3.1 Office Telephone. The Contractor will maintain a local telephone number, toll-free to Customers, at least during office hours. The Contractor will list that telephone number under the Contractor's name in County telephone directories (white pages and yellow pages) and print it on Customers' bills. The Contractor will provide an answering machine or answering service to take reports of missed pick-ups and other complaints which are received outside of office hours.

8.3.2 Training. The Contractor will train its customer service representatives. The Contractor will authorize customer service representatives to resolve complaints and disputes or to have immediate access by phone or in person to someone authorized to do so.

8.3.3 Recycling Program Information. Customer service representatives shall inform all new Customers inside the Recycling Zones of the curbside recycling programs. Customer service representatives shall inform all new Commercial Customers and Multi-Family Customers within the Contractor's Service Area of the availability of Commercial recycling services. A pamphlet explaining the program and acceptable Recyclable Materials shall be provided to the Customer at time of subscribing to Refuse service.

At least once per year, information about the Contractor's recycling programs shall be distributed to Residential Customers inside the Recycling Zone areas and all Commercial Customers and Multi-Family Customers within the Contractor's Service Area. Information shall include, at a minimum, available recycling programs, acceptable materials collected by the recycling programs, rates, and disposal options for wastes not acceptable for disposal at the Neal Road Recycling and Waste Facility.

## 8.4 Customer Billing

The Contractor shall prepare, mail and collect bills, and issue written receipts for cash payments, for Franchise Services provided by the Contractor under this Franchise Agreement. The County shall have the right to stipulate the billing information to itemize certain charges including County fees imposed.

## 8.5 Website

Contractor shall maintain and publicize an up-to-date website whereby Customers can conduct business with Contractor. The Contractor is required to update the web site monthly, and more frequently if necessary. At a minimum, the website shall allow Customers with existing emails stored in the Contractor's database to make billing and chargeable service changes, such as:

1. Allow Customers to view and pay bills issued by Contractor;
2. Allow Customers to schedule services such as, but not limited to, on-call Franchise Service events, on-call Bulky Item Collections, extra Collections, service changes, service terminations, and service stops;
3. Provide answers to frequently asked questions including, but not limited to: proper Container set-out instructions; list of acceptable Recyclable Materials and Green Waste; Collection days (in response to Customer input of service address); billing issues, Customer service telephone and e-mail contact information; and the transfer and processing site hours, directions, and acceptable materials;
4. Allow Customers to file complaints and receive from the Contractor e-mail responses to complaints;
5. Provide a link to enable Customers to email the Contractor;
6. Provide a link to the County Public Works Waste Management Division webpage.

## 8.6 Customer Complaint Resolution

The Contractor shall notify Customers of the complaint procedure at the time Customers apply for or are provided service. A Customer dissatisfied with Contractor's response regarding a complaint may ask the County to review the complaint. To obtain this review, the Customer must submit a written request within thirty (30) days of the original complaint to the Contractor if the Contractor has failed to respond to the complaint. The County may extend the time to request its review for good cause.

In reviewing the complaint, the County Contract Manager shall seek a response and remedy by the Contractor. The County Contract Manager shall determine if the Customer's complaint is justified, and if so, what remedy if any shall be provided. The County Contract Manager may delegate these duties to a designee. The decision of the County Contract Manager or his/her designee shall be final on any matter under Five Hundred Dollars (\$500). In the event of a decision on a matter involving Five Hundred Dollars (\$500) or more, the Contractor may seek review by the Public Works Director.

The Contractor shall designate in writing a "company liaison" who shall be responsible for working with the County Contract Manager to resolve Customer complaints.

The Contractor shall maintain a record of all complaints received by mail, by telephone, or in person for a period of three (3) years. The Contractor shall identify the date, name, address, telephone number, and if available the email address of the Customer making the complaint, the nature of the complaint, and the action taken by the Contractor to resolve the complaint.

All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to by the Contractor within one (1) business day of receipt. The Contractor shall log action taken by the Contractor to respond to and remedy the complaint. The Contractor shall use reasonable efforts to resolve all Customer complaints within two (2) business days of receipt, unless the complaint is such that it cannot reasonably be resolved within this timeframe, and unless this timeframe is extended by mutual agreement between the Contractor and Customer.

## 8.7 Collection Locations

Contractor shall service Residential Containers that are placed within 5 feet of the curb or roadway edge, so as to be readily accessible to the armature of the automated collection truck. In cases where placement of Containers at the curb or roadway edge would present a safety hazard for motorists or pedestrians or represent a physical hardship to Customers, Company shall designate an alternate location for the placement of the Carts.

## 8.8 Failure to Collect / Service Exceptions

### 8.8.1 General

The Contractor need not collect materials as part of Franchise Services upon the occurrence of the events or in the circumstances described in this subsection. In these events or circumstances, other than non-payment, Contractor is obligated to complete and leave a non-collection notice securely attached to the Container it does not collect, describing at a minimum the date and item given, the address of the premises, the reason for the non-collection, and the manner in which materials should be prepared for collection.

Contractor need not collect Containers, and may repossess the Contractor's Containers, if Customer does not pay its bill by the last day of a billing period.

### 8.8.2 Denial of Service for Non-Compliance

The Contractor may deny Customer pickup of Containers if:

1. Containers contain Excluded Materials. The Contractor need not collect Containers if the Contractor has reason to believe they contain Excluded Materials not accepted at the Designated Disposal Facility or facilities, or other materials that present a health or safety threat to the Contractor's employees. The Contractor will promptly notify the Customer that the Container contains such waste or materials and shall provide that Customer with written information about the proper methods for handling and disposal thereof. If the Hazardous Waste or other materials could cause imminent danger to person or property, the Contractor will immediately report the matter to the Fire Department which has jurisdiction; or
2. Containers contain human waste and other potentially infectious materials, inerts (rocks, sod, concrete, bricks, asphalt and similar solid material), plaster, dirt and class I (toxic) chemicals as listed in CCR Title 23; or

3. A manually collected Container together with its contents weighs in excess of fifty-five (55) pounds. The Contractor need not manually collect Customer Containers that are cans which cannot be dumped mechanically and which, together with the contents of those Containers, weigh more than fifty-five (55) pounds; or
4. The Contractor need not collect bin or roll off Containers, which together with the vehicle, exceed the legal weight limit for vehicles under Applicable Law. The Contractor will first notify Customer, by tag attached to the Container or other means, that the Customer must remove Solid Waste to reduce the weight of those Containers to legal limits. Thereafter, Contractor may remove Solid Waste from the Contractor's Containers and charge Customer a specified fee, as listed in the Contractor's rates, a copy of which must be supplied to the Customer at or before the time of Container delivery; or
5. Materials placed in Recyclable Materials Containers do not conform to the definition of Recyclable Materials; or
6. Recyclable Materials are placed in a container that is incompatible with the Contractor's approved method to handle Recyclable Materials; or
7. Containers are not loaded properly, or are not placed for safe handling and pickup. The Contractor need not collect Containers if the Contractor determines that any condition at or near those Containers presents a health or safety threat to the Contractor's employees. The Contractor will promptly notify the affected Customer of those threats. The Contractor may discontinue collection for that Customer until the Customer eliminates those threats; or
8. The Container is placed along a Non-Service Road. The Contractor need not collect any Container placed along any Non-Service road, unless the Contractor has reached agreement with the Customer who has set the Container out for collection and the Customer is in compliance with the terms of the agreement; or
9. Carts or Containers which are not accessible for the collection vehicle to operate in a safe manner. The Contractor will work with the Customer to determine a safe cart/Container placement location and will work with the County Contract Manager to resolve disputes with Customers regarding safe cart/Container placement locations.
10. Materials are not placed in a Contractor-provided Container.

In such cases where Contractor denies service to a Customer, the Contractor shall leave a notice attached to the rejected unit that describes the reason(s) for non-service.

### 8.8.3 Billing/Cutoff Policy

Expenses related to non-payment locations will be additional costs for purposes of rate-making under Exhibit B, Maximum Service Rates. See Article 11, Compensation, for billing and cutoff policy affecting the denial of service.

### 8.9 Public Education and Awareness Outreach

The Contractor and County agree that all public education activities will be a collaborative effort between the County and the Contractor. The Contractor shall be responsible for ensuring that Customers consistently receive a high level of service and responsiveness. The Contractor acknowledges and agrees that education and public awareness are important elements of any

effort to achieve diversion. The Contractor shall submit an annual public education and promotion program to the County prior to January 1<sup>st</sup> of each year to demonstrate their commitment to educate Customers on the following:

1. The benefits of waste reduction, reuse, recycling and related programs;
2. Proper handling of hazardous and Infectious Wastes;
3. Specific services offered by the Contractor.

The Contractor shall disseminate this information to the Customers using a quarterly newsletter which is mailed with customer billing statements. The public education program shall include notification of the date when Collection services are changed during the term; and when new Collection services are implemented during the term. In addition, the public education program shall include on-going education activities throughout the term, including community outreach at special events, and presentations to schools located within the Service Area.

#### 8.10 Identification Required

Contractor's field operations personnel, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card. Upon request by the Customer or County, the Contractor's employee will display his or her employee identification card.

#### 8.11 Fees and Gratuities

The Contractor shall not permit its employees to demand, solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the work performed by those employees pursuant to this Franchise Agreement.

#### 8.12 Permits and Licenses

The Contractor shall obtain at its own expense, all permits, licenses, and approvals required under the Applicable Law, and shall maintain such permits and licenses in full force and effect throughout the term of this Franchise Agreement. Upon request by the County, the Contractor shall provide proof of such permits and licenses and shall demonstrate compliance with the terms and conditions of such permits and licenses.

#### 8.13 Non-Discrimination

Consistent with the County's policy, the County will not condone harassment and discrimination in employer-employee conduct. The Contractor agrees that harassment or discrimination directed toward a job applicant, a County employee, or a citizen by the Contractor or the Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, mental or physical disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC), cancer-related medical condition, refusal of family care leave, marital status, denial of pregnancy disability leave, veteran status, age, sex, sexual orientation or sexual

preference will not be tolerated. The Contractor agrees that a violation of this provision shall constitute a material breach of the Franchise Agreement.

#### 8.14 Performance Review

##### 8.14.1 General

From time to time, at its sole discretion, County or its agents may examine the Contractor's operation in order to evaluate whether or not the Contractor is operating at a satisfactory level of efficiency and Customer satisfaction according to industry standards. The Contractor agrees to cooperate in any such examination, and shall permit County's representatives to inspect, at the Contractor's principal place of business, such information pertaining to the Contractor's obligations hereunder as County may require, including but not limited to, such things as Customer inquiry records, collection routes and equipment records. Any records copied or obtained by the County under this Agreement shall be considered proprietary and shall not under any circumstances be disseminated to any other person or entity in any manner, subject to requirements of Section 12.4. County rights under this section are subject to Contractor's general rules regarding facility visitors (e.g., sign-in, wearing safety gear, etc.).

##### 8.14.2 Public Hearing

At the County's sole option, within ninety (90) days of the third anniversary of the effective date of this Franchise Agreement, and every three years thereafter throughout the term of the Franchise Agreement, the County may hold a public hearing at which the Contractor shall be present and shall participate, to review the Contractor's performance and quality of service. Notwithstanding the above, the County shall have the right to require more frequent public hearings if needed to address unsatisfactory performance. The reports required by this Franchise Agreement regarding Customer complaints shall be utilized as the basis for review. In addition, any Customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered to the extent that the information provided by the Customer is verifiable.

##### 8.14.3 Report on Performance

Within thirty (30) days after the conclusion of the public hearing, County shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Franchise is found, County may direct the Contractor to correct the inadequacies or, if an event of default under Article 13, initiate default proceedings in accordance with Article 13.

##### 8.14.4 Customer Surveys

The Contractor shall provide prompt, efficient, continuous and professional service to its Customers. Upon the request of the County, as part of the annual review of performance described above, the Contractor shall conduct a survey or surveys of Customers to determine their satisfaction with the Contractor's service, including, without limitation, response to Customer complaints. The survey methodology, format, and content shall be subject to the prior

review and approval of the County. A copy of the survey results shall be sent to the County within sixty (60) days of completion of the survey. Nothing in this paragraph shall limit the right of the County to conduct additional surveys at its own expense. The Contractor shall reasonably cooperate with the County in such cases. The County and Contractor shall review results of the survey and use these results to discuss improvements in service delivery. The cost of the Contractor's survey will be treated as an allowable cost for rate setting purposes.

#### 8.15 Termination of Service

If Contractor chooses to permanently terminate collection services to any or all Customers for any reason, other than nonpayment for services, Contractor shall issue a written notice to such Customer(s) no less than thirty (30) days prior to termination of service. The Contractor shall not permanently terminate services to a Customer without approval from the County Contract Manager.

### 9. Diversion

#### 9.1 Minimum Diversion Requirements

Beginning one year from the Effective Date of this Franchise Agreement, the Contractor shall divert a minimum of twenty five (25%) of Solid Waste that it collects from disposal. The Contractor shall submit an annual compliance report certifying whether it has met the minimum diversion requirement or any higher goal for the amount and type of Solid Waste that the Contractor diverted from disposal in that prior year. The County may review and/or change the minimum Solid Waste diversion percentages annually. Any additional costs that are anticipated or incurred as a result of an increase in the Minimum Diversion Requirements shall be an allowable cost, and shall be recoverable from the date the change is implemented.

The Minimum Diversion Requirement shall be based on the following schedule:

Years 1 to 3 of the Franchise Agreement:	Twenty five percent (25%)
Years 4 to 6 of the Franchise Agreement:	Thirty percent (30%)
Years 7 to 9 of the Franchise Agreement:	Thirty-two percent (32%)
Years 10+ of the Franchise Agreement:	Thirty-five percent (35%).

The diversion percentage will be calculated by applying the following formula:

Diversion % =

$$\frac{\text{Total tons of materials Collected from all Franchised Services, and not Disposed}}{\text{Total tons of materials Collected from all Franchised Services.}}$$

For purposes of calculating diversion in this section, the Contractor shall only be able to count recovered materials resulting from its own collection program within the Service Area.

## 9.2 Failure to Meet Minimum Diversion Requirements

The Contractor's failure to meet the Minimum Diversion Requirements set forth above in Article 9.1 may result in the imposition of liquidated damages pursuant to Article 13.3. In determining whether or not to assess liquidated damages, the County will consider the good faith efforts put forth by the Contractor to meet the Minimum Diversion Requirements. This consideration will include documentation provided by the Contractor regarding its activities. The final decision whether or not to assess liquidated damages will remain with the County. Within the first year of the Franchise Agreement, the County and Company shall develop a mutually agreeable appeals process to address situations where the Contractor disagrees with the County's liquidated damages assessment.

## 9.3 Assembly Bill 341 Compliance

To assist the County in complying with mandated federal and state diversion laws, such as Assembly Bill 341 (AB 341) established by the State of California, the County directs the Contractor to implement commercial recycling programs within the Service Area. The Contractor shall provide education and outreach as to the benefits of recycling, type of materials that are recyclable and availability of recycling programs. Contractor shall submit an annual compliance report certifying that it has met the education and outreach component of the mandatory commercial recycling requirements of AB 341. This report shall be included as part of the annual reporting requirements listed in Section 12.2 and on a form approved by the County Contract Manager.

# 10. Franchise Fees

## 10.1 Franchise Fee Amount

As consideration of the exclusive franchise granted to Contractor hereunder, which is a special privilege that only government has the power to bestow, Contractor shall pay the County a franchise fee. County shall use the proceeds of the franchise fee for (a) the services provided by the County to administer this Franchise Agreement, (b) for services and programs pertaining to Refuse, Recyclable Materials, and Green Waste provided by the County, and (c) maintenance of Neal Road for damage caused by heavy collection vehicles. Beginning March 1, 2015, this franchise fee shall be set initially at two (2) percent of the Contractor's Gross Annual Revenues generated from the performance of this Franchise Agreement. The franchise fee may be increased with approval of the Board of Supervisors.

## 10.2 Timing and Method of Payment

Contractor shall pay franchise fees to the County each quarter. Franchise fees shall be due and payable thirty (30) days after the end of the calendar quarter, during the entire term of the Franchise Agreement. With submission of each quarterly franchise fee payment, the Contractor shall include a statement including the amount of quarterly Gross Revenues and a calculation of the franchise fees due for that quarter.

### 10.3 Adjustment to Franchise Fees

The percentage and frequency of franchise fee payments may be adjusted by the County from time to time. Such franchise fee payments shall be considered a pass-through cost for purposes of setting collection rates. No change in the franchise fee percentage shall take effect unless and until the County approves the franchise fee change and the resulting rates, and the Contractor implements the new rates with the franchise fee change..

## 11. Compensation

The Contractor will be compensated based on the rate setting method described in **Exhibit D**.

## 12. Record Keeping and Recording

### 12.1 Quarterly Reports

The Contractor shall prepare and submit quarterly recycling reports, due by the thirtieth (30<sup>th</sup>) day following the end of the previous quarter (for example April 30 for the quarter of January through March), on a form approved by the County. The quarterly recycling report shall include, at a minimum, all of the following information:

1. Identification of the Contractor and the time period covered by the report;
2. All disposal tons by line of business (i.e. Commercial, Residential, or debris box) and place of origin;
3. A summary of all Recyclable Materials Collected, processed, and delivered to end market or intermediate processor. The summary is to separately provide the weights of each type of Recyclable Material. The Summary shall also include weight of residuals resulting from sorting of Recyclable Material at a Processing Facility, and the name of the Disposal Facility where residuals were disposed;
4. An estimate of the percentage of accounts participating in, or paying for, the recycling collection program and the basis for the estimate. The percentage (%) number of accounts that participate in the recycling collection program shall be determined as follows:

$$\% = \frac{\text{Number of accounts participating}}{\text{Total number of accounts served}} \times 100$$

; and

5. An estimate of the total percentage of the waste stream being diverted through the recycling collection program or Processing Facility and the basis for the estimate. The estimated total percentage (%) of the waste stream being diverted through the recycling collection program shall be determined as follows:

$$\text{Waste Diversion \%} = \frac{\text{Total tons of materials Collected from all Franchised Services, and not Disposed}}{\text{Divided by total tons of all materials Collected from all Franchised Services.}}$$

## 12.2 Annual Reports

Contractor shall prepare and submit annual reports to the County. Each annual report shall present the information below for each of the preceding twelve (12) months. Annual reports shall be submitted to the Director of Public Works or his/her designee on 45th day following the end of the calendar year and shall be submitted by hard copy and electronic format.

1. Summary of the quarterly reports
2. Diversion reporting
3. Operational information
  - a. Number of Refuse, Recycling, and Green Waste Residential Customers by line of business
  - b. Number of Refuse, Recycling, and Green Waste Residential Premises collected per hour, by line of business
  - c. Number of Commercial and Multi-Family accounts
  - d. Number of Cubic yards collected per hour
  - e. Number of routes by line of business
  - f. Number of missed pickups/collections per 1,000 attempts
  - g. List of accounts (Residential, Commercial, Multi-Family) by address, in a database format as an electronic file compatible of being uploaded to G.I.S.
4. Customer service operations
5. Summary of significant activities or accomplishments
6. Final determination and payment of liquidated damages
7. Public education plan
8. Special Event Reporting
9. Holiday tree collection services
10. Statement by responsible company official certifying that the company is in compliance with diversion requirements.
11. AB341 Compliance Report regarding Contractor's education and outreach efforts.

## 12.3 Defense Records Data Retention (CERCLA)

The County views the ability to defend against CERCLA and similar litigation as a matter of great importance. Therefore, the County regards the ability to prove where Solid Waste collected in the Service Area was taken for transfer or disposal, as well as where it was not taken, to be matters of concern. The Contractor shall maintain data retention and preservation systems which can establish where Solid Waste collected in the Service Area was disposed of (and therefore establish where it was not landfilled). This provision shall survive the expiration of the period during which Franchise Services are to be provided under this Franchise Agreement. The Contractor shall maintain these records for a minimum of ten (10) years after expiration of this Franchise Agreement.

## 12.4 Requirements of California Public Records Act

Notwithstanding anything herein to the contrary, the parties agree that the County shall comply with the requirements of the California Public Records Act (California Government Code section 6250 et seq.) (the “Act”).

**a. Notice of Request.** If County receives a request from a third person to review or copy non-public financial or non-public operational information of the Contractor, County will inform Contractor and allow Contractor to present arguments and facts to County in support of Contractor’s position that the material is entitled to an exemption from disclosure under the Act and should not be released.

**b. Notice of Release.** If County determines that the material is *not* entitled to an exemption and that it must be released, County will inform Contractor before releasing that material so that Contractor may seek a court order enjoining that release.

**c. Notice of Legal Action.** If County determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, County will timely inform Contractor and will not oppose a motion by Contractor to intervene in the action. Contractor must either intervene or accept the release of the material. County is not obligated to defend the action and may release the material sought without any liability, provided that County has complied with its obligations to provide Contractor with timely notice of such legal action. If County elects not to defend the action, and Contractor intervenes to oppose disclosure of the material, then County will withhold the material pending the outcome of the litigation as required by a court order in such action, and Contractor agrees to defend, indemnify, and hold harmless the County in such litigation.

## 13. Default and Remedies

### 13.1 Events of Default

Each of the following shall constitute an event of default.

#### 13.1.1 Fraud or Deceit or Misrepresentation

If the Contractor engages in, or attempts to practice, any fraud or deceit upon the County regarding material information to the County.

#### 13.1.2 False or Misleading Statements

Any intentional misrepresentation of a material fact made to the County by the Contractor in connection with or as an inducement to entering into this Franchise Agreement, or any future amendment to this Franchise Agreement, which is proven to be false or misleading as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Franchise Agreement.

### 13.1.3 Insolvency or Bankruptcy

If the Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition, or takes steps to liquidate its assets.

### 13.1.4 Attachment

The seizure of, attachment of, or levy on, the operating equipment of the Contractor, including without limits its equipment, maintenance, office facilities, or any part thereof, which would materially impair Contractor's ability to perform under this Agreement.

### 13.1.5 Failure to Maintain Coverage

If the Contractor fails to provide or maintain in full force and effect the insurance, performance bond or letter of credit required by this Franchise Agreement.

### 13.1.6 Violations of Orders

If the Contractor violates any orders of any regulatory body having jurisdiction over the Contractor relative to this Franchise Agreement, provided that the Contractor may contest any such orders by appropriate proceedings conducted in good faith, in which case no breach of this Franchise Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.

### 13.1.7 Failure to Perform

- (a) If the Contractor ceases to provide all or a segment (i.e., Refuse, Recyclable Materials, or Green Waste Collection) of the Franchise Services for a period of two (2) consecutive Business Days (i.e., Monday through Saturday, 8 AM to 5 PM) or more, for any reason within the control of Contractor, excluding labor disputes, or
- (b) If the Contractor ceases to provide all or a segment (i.e., Refuse, Recyclable Materials, or Green Waste Collection) of the Franchise Services for a period of two (2) consecutive Business Days (i.e., Monday through Saturday, 8 AM to 5 PM) or more, for any reason within the control of Contractor, including labor disputes provided, however, that in such case the Contractor shall have seven (7) days to cure such event of default prior to the County pursuing remedies available under this agreement.

### 13.1.8 Failure to Pay

If Contractor fails to make any payments required under this Franchise Agreement and/or such failure continues beyond ten (10) days after receiving written notice of such failure from the County.

### 13.1.9 Failure to Cooperate with Audits

Failure to complete, perform or cooperate with any audit as described by this Franchise Agreement, provided that County shall provide Contractor with written notice of such failure and Contractor shall have thirty (30) days to cure the deficiency.

### 13.1.10 Failure to Submit Reports or Documentation

Failure to complete or to provide required reports or documents to the County as required by this Franchise Agreement within sixty (60) days of their due date and thirty (30) days after receipt of written notice from the County that such reports have not been submitted.

### 13.1.11 Acts or Omissions

Any other act or omission by the Contractor which violates the terms, conditions, or requirements of this Franchise Agreement, AB 939, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder, and such act or omission is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

### 13.1.12 Cure of Default

With regard to default set forth in Sections 13.1.4, 13.1.5, 13.1.6, 13.1.7, 13.1.8, 13.1.9, 13.1.10 and 13.1.11 before County may pursue remedies set forth herein, such as termination under Section 13.2, it shall provide written notice to Contractor and Contractor shall have five (5) days to cure. With regard to events of default, set forth in Sections 13.1.1, 13.1.2, and 13.1.3, County may pursue remedies set forth herein, such as termination under Section 13.2 without providing Contractor an additional opportunity to cure.

## 13.2 Right to Suspend or Terminate Upon Default and Right to Specific Performance

If the Contractor commits an event of default and fails to cure pursuant to Section 13.1.12 County shall be entitled to unilaterally terminate this Franchise Agreement or seek other such legal remedies as it shall deem proper. Should the County decide to terminate this Franchise Agreement upon an uncured event of default by the Contractor, the County shall have the right to do so upon giving ten (10) days notice to Contractor, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action.)

The County's right to terminate this Franchise Agreement and to take possession of the Contractor's facility are not exclusive, and the County's termination of this Franchise Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which may have.

By virtue of the nature of this Franchise Agreement, the urgency of timely continuous and high-quality service, the time required to affect alternative service, and the rights granted by the County to the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and the County shall be entitled to seek injunctive relief and/or specific performance of any breach of this Franchise Agreement.

### 13.3 Liquidated Damages

#### 13.3.1 General

The County finds, and Contractor agrees, that as of the time of the execution of this Franchise Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the County as a result of a breach by the Contractor of certain specific damages which include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Franchise Agreement to individual members of the general public for whose benefit this Franchise Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Franchise Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Franchise Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

#### 13.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

The parties further acknowledge that consistent, reliable Franchise Services are of utmost importance to the County and that the County has considered and relied on the Contractor's representations as to its quality of service commitment in entering this Franchise Agreement with it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, the County and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the County will suffer. Therefore, without prejudice to the County's right to treat such breaches as an event of default under this Article 13, the parties agree that the liquidated damage amounts, set forth in **Table 1** on the following page, represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Franchise Agreement, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In signing this Franchise Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damages provisions at the time that the Franchise Agreement was made.

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth in the Table 1 on the following page:

**Table 1**  
**Schedule of Liquidated Damages**

Description of Failure	Amount
<b>A. Administration</b>	
1. Failure to initially respond to a Customer complaint within one business day after the complaint is received.	\$100.00 per incident per Customer.
2. Failure to maintain office hours as required by Section 8.1 of this Agreement.	\$100.00 per incident per day.
3. Failure to display Contractor's company name and customer service phone number on collection vehicles as required by Section 6.3.2.	\$100.00 per vehicle per day.
4. Failure to comply with the hours of operation as required by Sections 6.1.1 and 6.1.2 of this Agreement.	\$300.00 per day.
<b>B. Customer Service</b>	
5. Failure to commence service to a Customer within five (5) business days after request.	\$100.00 per incident per Customer.
6. Failure to notify Customers of changes in regularly scheduled collection days within the time required by Section 6.1.4.	\$50.00 per Customer per day to a maximum of \$1,000 per each occurrence.
7. Failure to exchange Containers within the time required by Section 6.4.6 of this Agreement.	\$100.00 per incident.
<b>C. Collection Services</b>	
8. Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled collection service work day.	\$300.00 for each route not completed.
9. Failure to collect Refuse, Recyclable Materials, or Green Waste which has been properly set out for collection from an established Customer account on the scheduled collection day, and not collected within two Business Days from the time Contractor is notified of the missed collection, which exceeds thirty (30) such failures quarterly.	\$100.00 per incident.
10. Failure to properly return empty Containers and documented to cause pedestrian or vehicular traffic impediments or to place Containers upright with lids secured, subject to exceptions for Containers that are blown over by wind which exceeds ten (10) such occurrences annually.	\$150.00 per incident.
11. Failure to repair damage to Customer or County property caused by Contractor.	\$300.00 per incident per location.
12. Failure to clean up spillage or litter caused by Contractor.	\$100.00 per incident per location.
13. Failure to have Contractor personnel in proper uniform, as required by Section 6.5.3.	\$100.00 per incident per day.
14. Contractor's personnel behaving in discourteous manner to any Customer documented by Customer filing a written complaint to the County.	\$50.00 per incident per day.

Description of Failure	Amount
15. Failure to have a vehicle operator properly licensed, as required by Section 6.5.1.	\$100.00 per incident per day.
16. Failure to properly cover Collected Solid Waste in Collection vehicles.	\$100.00 per incident.
17. Failure to operate within noise limitations for Collection operations as specified in Section 4.2.2.	\$100.00 per incident per day.
18. Changing Collection routes without prior notification provided to the County Contract Manager.	\$300.00 per incident.
<b>D. Operations and Maintenance</b>	
19. Failure to maintain equipment in a clean, safe, and sanitary manner as determined by the LEA (Health and Safety).	\$100.00 per incident per day.
20. Failure to repair or replace damaged Containers within the time required by Section 6.4.6 of this Agreement.	\$100.00 per incident.
<b>E. Disposal and Diversion</b>	
21. Commingling by Contractor of materials collected as non-Recyclable Materials with materials collected as Recyclable Materials.	\$300.00 per incident.
22. Disposal of materials collected as Recyclable Materials in a landfill (other than residue) without first obtaining the required permission of the County.	\$300.00 per occurrence.
23. Failure to Meet Minimum Diversion Requirements (specified in Section 9.1)	\$2,500 per calendar year (at shortfall of 0.001% to 2%).  \$5,000 per calendar year (at shortfall of above 2% per year).
<b>F. Reporting</b>	
24. Failure to submit to County quarterly and annual reports by the deadlines required under Sections 12.1 and 12.2 of this Agreement.	\$300.00 per incident.

Prior to assessing liquidated damages, the County shall give the Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Contractor may review (and make copies at its own expense) all information in the possession of County relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the County. The Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The County will provide the Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the County shall be final, subject to the Contractor's judicial appellate rights.

In order for an incident to be used as the basis for the assessment of liquidated damages, County will provide Contractor with written notice of the incident no more than twelve (12) months after the occurrence of the incident.

### 13.3.3 Amount

The County may assess liquidated damages for each calendar day or event, as appropriate, that the Contractor is determined to be liable for in accordance with this Franchise Agreement. For each event triggering liquidated damages, only one liquidated damage amount (the highest liquidated damages assessment) shall be assessed where more than one category of liquidated damages may apply.

### 13.3.4 Timing of Payment

The Contractor shall pay any liquidated damages assessed by the County within ten (10) days after they have been appealed and determined to be valid, and thereafter are assessed. If they are not paid within the ten (10) day period, the County may proceed against the performance bond required by the Franchise Agreement or find the Contractor in default and terminate this Franchise Agreement pursuant to Section 13.1 or both.

## 13.4 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of Uncontrollable Circumstances, as defined in Section 19.42.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

The interruption or discontinuance of the Contractor's services caused by one or more of the events excused shall not constitute a default by the Contractor under this Franchise Agreement or give rise to liquidated damages.

Notwithstanding the foregoing, however, if the Contractor is excused from performing its obligations hereunder for any of the causes listed in this section for a period of ten (10) days or more, the County shall nevertheless have the right, in its sole discretion, to terminate this Franchise Agreement for convenience, and without liability, by giving ten (10) days' notice

### 13.5 Notice, Hearing and Appeal of County Breach

#### 13.5.1 Administrative Hearing

Should the Contractor contend that the County is in breach of any aspect of this Franchise Agreement, it shall give notice to the County Contract Manager requesting an administrative hearing on the allegation. A hearing officer shall be appointed by the County Contract Manager, and the hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the County Contract Manager. The hearing officer shall make an advisory ruling on the Contractor's allegations, and suggest a remedy if a breach by the County is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

The hearing shall be in compliance with Butte County Code, Chapter 31, Solid Waste Collection, Management and Recycling.

#### 13.5.2 Other Remedies; Claims

The Contractor shall be entitled to all available remedies in law or equity for the County's breach of this Franchise Agreement; provided, however, the Contractor shall not file or otherwise commence any action against the County, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either the County or the Contractor has given timely written notice to the other that it will not accept the hearing officers decision.

#### 13.5.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by the Contractor against the County arising out of this Franchise Agreement, the Contractor shall present a claim to County, as required by Government Code section 910 et seq, within the legally required time frame following the date of the occurrence giving rise to the claim for damages.

### 13.6 Assurance of Performance

The County may, at its option and in addition to all other remedies it may have, demand from the Contractor reasonable assurances of timely and proper performance of this Franchise Agreement, in such form and substance as the County may require. If the Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the County, such failure or refusal shall be an event of default.

## 13.7 Mediation

### 13.7.1 Mediation Process

Any dispute concerning a material breach of this Franchise Agreement shall, upon the request of either the County or the Contractor, first be mediated between the parties; provided that the Contractor may not request mediation under this section unless it has first exhausted its administrative remedies under this Franchise Agreement. Within thirty (30) days of receiving notice from the other party of a request to mediate a dispute, the parties shall mutually agree on a mediator and shall thereafter promptly meet with the mediator in an effort to resolve any such dispute. In the event that the parties cannot agree on a mediator within thirty (30) days, the parties shall promptly apply to the Judicial Arbitration and Mediation Service or JAMS to nominate a minimum of five (5) prospective mediators. If the parties are unable to agree on a mediator from the JAMS panel within ten (10) business days after written request to do so by either party then the parties, starting with the Contractor, shall alternate in striking one (1) prospective mediator at a time until only one (1) mediator remains. Unless otherwise agreed at mediation, the costs of mediation shall be borne equally between the parties.

### 13.7.2 Post-Mediation

Either the County or the Contractor, at any time after the exhaustion of administrative remedies and mediation, may pursue all other remedies available at law or in equity.

## 14. Right of County to Perform Collection Service

### 14.1 General

In the event that the Contractor, for any reason whatsoever, fails (other than events set forth in Section 13.4 (Excuse for Performance), or ceases to provide Refuse Collection services required by this Franchise Agreement, at the time and in the manner provided in this Franchise Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Refuse, Recyclable Materials, and Green Waste should accumulate in the Franchise Service Area to such an extent, in such a manner, or for such a time that the County should find that such accumulation endangers or menaces the public health, safety or welfare, then the County shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to the Contractor during the period of such emergency as determined by the County, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Contractor; and/or (2) to take temporary possession of any or all of the Contractor's land, equipment and other property used or useful in the Collection and transportation of Refuse, Recyclable Materials, and Green Waste required by this Franchise Agreement, and to use such property to collect and transport any Refuse Recyclable Materials, and Green Waste generated within the Service Area which the Contractor would otherwise be obligated to collect and transport pursuant to this Franchise Agreement.

In advance of such a temporary possession of equipment, the Contractor shall provide a written list of Contractor's equipment and other property used by the Contractor to perform the functions

of the Franchise Agreement which are also used to conduct operations outside of the Service Area. Notwithstanding anything herein to the contrary, County shall not be entitled to take possession of any of Contractor's equipment or other property, which are also used to conduct operations outside of the Service Area, to the extent that possession thereof by the County would interfere with Contractor's ability to conduct its operations in areas outside the Service Area. However, the County should not be restricted from full access to this equipment and other property to the extent such access is necessary to fulfill the requirements of this Franchise Agreement.

The County's right to so perform services otherwise required of Contractor hereunder and to so take possession of such portion of Contractor's equipment and other property shall continue only for the period of time during which Contractor fails, refuses or is unable to collect, transport and dispose of Refuse which it is required by this Agreement to so collect, transport and dispose, and shall cease at such time as Contractor is ready and able to perform its obligations hereunder. Upon the County's possession and operation of the Contractor's equipment or property as provided in this Section, the County shall lease such equipment and property for a monthly rental fee equal to the market lease rate applicable to similar land, equipment and other property. The County shall incur all costs of operating such leased equipment, including debt service thereon and the payment of all casualty and liability insurance premiums therefor, and shall indemnify and hold harmless the Contractor from and against any damage to such equipment or liability to any third person injured or damaged as a result of the County's or its agents' use of such equipment or property.

Notice of the Contractor's failure, refusal or neglect to collect and transport Refuse, Recyclable Materials, and Green Waste may be given orally by telephone to the Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Contractor within twenty-four (24) hours of the oral notification.

The Contractor further agrees that in such event it will take direction from the County to affect the transfer of possession of equipment and property to the County for its use. The Contractor will provide route sheets and customer information.

## **15. Assignment or Subcontracting**

### **15.1 General**

The Contractor acknowledges that the experience and expertise of the Contractor were material considerations in County's decision to enter this Franchise Agreement, and the County has relied on these factors in choosing the Contractor to perform the services to be rendered by the Contractor under this Franchise Agreement.

### **15.2 County Consent Required**

The Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Franchise Agreement to any other person or entity without the prior written consent of

County. Any such assignment made without the consent of County shall be void and the attempted assignment shall constitute a Contractor default.

### 15.3 Assignment Defined

For the purpose of this Article, the term “assignment” shall also include, but not be limited to, (i) a sale, exchange or other transfer to a third party of substantially all of the Contractor’s assets dedicated to service under this Franchise Agreement; (ii) a sale, exchange or other transfer of outstanding common stock of the Contractor to a person who is not a shareholder as of the Effective Date which results in a change in control of the Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of the Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, appointment of a receiver taking possession of the Contractor’s property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Contractor. Change of ownership or control is defined as a change of over 50% of the ownership.

### 15.4 Consent Requirements

If the Contractor requests the County’s consideration of and consent to an assignment, County may deny or approve such request. No request by the Contractor for consent to an assignment need be considered by County unless and until the Contractor has met the following requirements:

1. The Contractor shall pay the County its reasonable expenses for attorneys’ fees and investigation costs necessary to investigate the suitability of any proposed assignment and assignee, and to review and finalize any documentation required as a condition for approving any such assignment; and
2. The Contractor shall furnish the County with audited financial statements of the proposed assignee’s operations for the immediately preceding three (3) operating years; and
3. The Contractor shall furnish the County with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste and recycling management experience of operations similar to those required under this Franchise Agreement; (ii) that in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, state or local Agency having jurisdiction over its operations due to an alleged failure to comply with federal, state or local laws or that the proposed assignee has provided County with a complete list of such proceedings and their status; (iii) that the proposed assignee conducts its operations in a safe and environmentally conscientious manner, in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste and all other Applicable Laws; (iv) of any other information required by County to ensure the proposed assignee can fulfill the terms of this Franchise Agreement in a timely, safe and effective manner.

The County shall not unreasonably withhold its consent to assign the Franchise Agreement if the above requirements are met.

#### 15.5 No Obligation to Consider

County shall not be obligated to consider a proposed assignment if the Contractor is in default.

#### 15.6 Franchise Transfer Fees

Contractor agrees to remit within thirty (30) days, the sum of ten thousand dollars (\$10,000) for County's approval of assignment of its rights and obligations under the Franchise Agreement.

#### 15.7 Subcontractors

The Contractor shall not engage any subcontractors to perform any of the services required in this Franchise Agreement without the prior written consent of the County. The Contractor shall notify the County no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract. The County may approve or deny any such request in its sole discretion.

### **16. Privacy**

#### 16.1 Privacy of Customer Information

The Contractor shall use all reasonable efforts to protect the rights of privacy of its employees and Customers. Information identifying individual Customers, or the composition or contents of a Customer's Refuse or Recyclable Materials shall not be intentionally revealed to any person, private agency or company, unless upon the request of federal or state law enforcement personnel, the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies which may be required by AB 939, AB 341, or any other reports requested by the County under the Franchise Agreement, or required or requested by any governmental agency.

#### 16.2 Mailing Lists

The Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers.

### **17. Indemnity, Insurance, Bond, and Guaranty**

#### 17.1 Indemnification and Hold Harmless

The Contractor agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the County, its officers, agents and employees from an against any and all actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Contractor, to the extent arising out of or in

connection with the negligent acts or omissions or willful misconduct in the performance by Contractor hereunder, whether or not there is concurrent negligence on the part of the County, but excluding liability due to the active negligence or willful misconduct of the County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Contractor or its agents under worker's compensation acts, disability benefit acts, or other employee benefit acts. The Contractor shall be liable to the County for any loss of or damage to County property arising out of or in connection with the Contractor's negligence or willful misconduct.

## 17.2 Insurance

The Contractor shall procure and maintain for the duration of this Franchise Agreement, insurance against claims and injuries to persons or damages to property which may arise from, or be in connection with the performance of services hereunder by the Contractor, Contractors' agents, representatives, employees, and subcontractors.

### 17.2.1 Types and Amounts of Coverage

The Contractor shall provide proof of a satisfactory insurance policy to the County, from an insurance company or companies licensed to do business in the State of California, and shall maintain in force at all times during the term, the types and amounts of insurance listed below.

### 17.2.2 Commercial General Liability Insurance

Insurance Services Office (ISO) "occurrence" form CG 00 01 12 07 CGL or equivalent on an "occurrence" basis, including bodily injury, property damage, contractual liability, medical expenses for any one person, personal and advertising injury, products-completed operations coverage and policy limits of no less than \$5,000,000 per occurrence. If a general aggregate applies, either the general aggregate shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

### 17.2.3 Automobile Liability Insurance

The Contractor shall maintain ISO form CA 0001 or equivalent automobile liability insurance covering all vehicles used in performing service under this Franchise Agreement with a combined single limit of not less than five million dollars (\$5,000,000) per occurrence for bodily injury and property damage.

### 17.2.4 Pollution (Environmental Impairment) Liability Insurance

The Contractor shall maintain pollution liability insurance coverage of not less than five million dollars (\$5,000,000) per occurrence covering claims for on-site, under-site, or off-site bodily injury and property damage as a result of pollution conditions arising out of its operations under this Franchise Agreement.

### 17.2.5 Workers' Compensation and Employer's Liability Insurance

The Contractor shall maintain Workers' Compensation as required by the State of California with statutory limits and Employer's Liability Insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury and disease. The Contractor has the right to self-insure Workers' Compensation provided Contractor is compliant with statutory requirements. Any deductibles or self-insured retention for Workers Compensation policies must be declared on certificates of insurance and approved by the County. Said approval shall not be unreasonably withheld. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the County, its officers, officials, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses on such policies and related investigations, claims administration and defense expenses, as respects the County, its officers, officials, employees and volunteers.

### 17.2.6 Insurance Policy Endorsements

The policies shall contain endorsements in substantially the following form:

1. Commercial General Liability Policy; Automobile Liability Policy; Pollution Liability Policy

The County, its officers, officials, employees, and volunteers are covered as additional insured's on the CGL policy with respect to liability arising out of work performed or operations performed on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations.

For any claims related to this Franchise Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, employees and volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

The insurance afforded by this policy shall not be cancelled except after thirty (30) days prior written notice has been given to the County.

2. Workers' Compensation and Employers' Liability Policy

The contractor's Workers' Compensation Insurance policy shall contain or be endorsed to contain a waiver of subrogation in favor of the County, for all work performed by Contractor, its employees, agents and subcontractors.

### 17.2.7 Primary Coverage

For any claims related to this Franchise Agreement, the Contractor's insurance shall be the primary insurance as respects the County, its officers, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, employees and volunteers shall be in

excess of the Contractor's insurance and shall not contribute with it. However, Contractor's insurance may contribute with other additional insureds providing primary insurance coverage for the same "occurrence" offense, claim or suit.

#### 17.2.8 Notice of Cancellation

Each insurance policy required in Section 17.2.1 shall not be cancelled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the County.

#### 17.2.9 Waiver of Subrogation

Contractor hereby grants to the County a waiver of any right to subrogation that an insurer of said Contractor may acquire against the County, by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County received a waiver or endorsement form the insurer.

#### 17.2.10 Deductibles and Self Insured Retentions

Any deductibles or self-insured retentions shall be for the account of the Contractor and shall be paid entirely by Contractor without contribution from the County.

#### 17.2.11 Acceptability of Insurance Carriers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County. (A.M. Best Ratings can be accessed over the internet for no cost at [www.ambest.com](http://www.ambest.com)).

#### 17.2.12 Claims Made Policies

If any of the required policies provide coverage on a claims-made basis then the following requirements must be met:

1. The Retroactive Date of the policy must be shown and must be before the effective date of the Franchise Agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completing the Franchise Term.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Franchise Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after the completion of the Franchise Term.

#### 17.2.13 Verification of Coverage

Contractor shall furnish the County with certificates of insurance and original endorsements affecting coverage by this clause. All certificates of insurance and endorsements are to be

received and approved by the County before work under this contract has begun. The County reserves the right to require complete, certified copies, of all insurance policies required by this contract. Certificates of insurance shall state that the insuring agency agrees to endeavor to mail to County written notice 30 days before any of the insurance policies described herein are cancelled. Contractor agrees to notify County within two working days of any notice from an insuring agency that cancels, suspends, or reduces in coverage or policy limits the insurance coverages described herein.

#### 17.2.14 Subcontractors

The Contractor will require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein or cover subcontractors under their insurance policies. Upon request, the Contractor shall provide the County proof that all subcontractors are covered by their own insurance or the Contractor's insurance policies.

#### 17.2.15 Special Risk or Circumstances

The County reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or special circumstances. Increases in the costs associated with County required changes in insurance will be considered an allowable expense for rate setting purposes.

#### 17.3 Performance Bond

Unless waived by the County in writing, within seven (7) calendar days of the County's notification to Contractor that the County has executed this Franchise Agreement, the Contractor shall submit a performance bond or some other security device acceptable to the County (such as a letter of credit, or certificate of deposit) in the amount of two hundred fifty thousand dollars (\$250,000.00), which bond or security device shall be for the benefit of the public to assure compliance with the Franchise Agreement as well as performance of services that have been collected for. Performance bonds submitted in order to comply with the provisions of this section shall be maintained by the Contractor during the entire term of the Franchise Agreement and shall contain a provision that the bond will not be canceled within thirty (30) days written notice to the County.

The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the County.

#### 17.4 Company Guaranty

Prior to execution of this Franchise Agreement, the Contractor shall provide the County a Company guaranty to irrevocably and unconditionally guarantee to the County the complete and timely performance, satisfaction and observation by the Contractor of each and every term and condition of this Franchise Agreement which the Contractor is required to perform, satisfy or observe.

## 17.5 Hazardous Waste Indemnification

The Contractor shall indemnify, defend with counsel acceptable to the County, and hold harmless the County, its officers, officials, employees, agents, assigns and any successor or successors to the County's interest from and against all claims, damages (including but not limited to special, consequential and natural resources damages) injuries, Hazardous Materials response, remediation and removal costs, losses, demands, liens, liabilities, causes of action, suits (including citizens suits), legal or administrative proceedings, interest, fines, charges, penalties (including attorneys' fees for the adverse party), and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against County or its officers, officials, employees, agents, assigns, or contractors arising or resulting from any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning (i) any hazardous substance or hazardous wastes at any facility owned or operated by the Contractor or an affiliate of the Contractor where the Contractor transports, stores, or causes to be disposed Solid Waste pursuant to this Franchise Agreement; (ii) the Contractor's discharge of a pollutant in violation of the state Porter-Cologne Water Quality Act or federal Clean Water Act; (iii) the Contractor's violation of any state or federal air quality standard, law or regulation; (iv) the Contractor's violation of any other state or federal environmental law, including the Resource Conservation and Recovery Act or its state law corollary; or (v) the Contractor's discharge of any hazardous substance or Hazardous Waste that causes injury to person(s) or property, in each of clauses (ii) through (v), during the term of this Franchise Agreement, and in connection with Contractor's performance of this Agreement. The foregoing indemnity is intended to operate as an agreement to indemnify, defend, protect and hold County harmless from liability, pursuant to Section 107(e) of CERCLA, 42 U.S.C. section 9607(e) and California Health and Safety Code Section 25364, and other applicable state and federal environmental laws.

## 17.6 California Integrated Waste Management (AB 939) Indemnification

The Contractor agrees to indemnify and hold harmless the County, its officers, officials, employees and volunteers against all fines and/or penalties imposed by CalRecycle or the Local Enforcement County (LEA) based on the Contractor's failure to comply with laws, regulations or permits issued or enforced by CalRecycle or the LEA, or if (and to the extent) non-compliance was caused or contributed to by the Contractor's failure to perform its obligations under the Franchise Agreement. This indemnity is subject to limitations and conditions in Public Resource Code Section 40059.1, but it is enforceable to the maximum extent allowable by that Section. This indemnity should also state it survives the termination or earlier expiration of the Franchise Agreement, and the indemnification is applicable to any future bills or laws.

## 18. Miscellaneous Provisions

### 18.1 Governing Law

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

#### 18.2 Jurisdiction

Any lawsuits between the parties arising out of this Franchise Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Franchise Agreement is made in and shall be performed in Butte County and venue shall remain in Butte County, or where otherwise appropriate in the United States District Court.

#### 18.3 Binding on Successors

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

#### 18.4 Parties in Interest

Nothing in this Franchise Agreement is intended to confer any rights on any persons other than the parties to it and their permitted successors and assigns. There are no third party beneficiaries to this Franchise Agreement.

#### 18.5 Waiver

The waiver by either party of any breach or violation of any provisions of this Franchise Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

#### 18.6 Interpretation

This Franchise Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree that either party participated in its drafting. The term “including” and its variants as used herein shall mean “including without limitation.”

#### 18.7 Amendment

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

#### 18.8 Change in Law

“Change in Law” means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement: (a) The enactment, adoption, promulgation, issuance, modification, elimination, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or (b) The order or judgment of any governmental body, on or after the Effective

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

In the event that a Change in Law has the effect of materially altering the terms of this Agreement or preventing or precluding compliance with one or more provisions of this Agreement, such provisions of this Agreement and others may be modified or suspended by the mutual agreement of the Parties as may be necessary to comply with such Change in Law. The County and the Contractor shall enter into good faith negotiations regarding such amendments of this Agreement that reflect the extent to which the provisions hereof have been so modified or suspended. If a Change in Law precludes or reduces any Contractor rates to Customers or other revenues, then the parties will modify Contractor's services and/or County franchise fees so that Contractor can achieve, on an ongoing basis, profits that existed immediately prior to the Change in Law.

In the event of a conflict between this Agreement and the County's municipal code, the terms and conditions set forth in this Agreement shall prevail.

#### 18.9 Severability

If any provision of this Franchise Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Franchise Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

#### 18.10 Entire Agreement

This Franchise Agreement, including the Exhibits, together with that certain Memorandum of Understanding of even date herewith between the County and the Contractor, represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes any proposals previously submitted, and all prior negotiations, discussions, and agreements, either written or oral.

This Franchise Agreement expressly supersedes any pre-existing licenses and/or Franchise Agreement(s) between the parties for Refuse, Recyclable Materials, and Green Waste collection transporting, processing, and/or disposal services, whether contained in a single agreement or two or more separate agreements.

#### 18.11 Notices to County

Whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified as the place for giving

of notice in compliance with this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the County:

Manager, Waste Management Division  
Public Works Department  
Butte County  
7 County Center Drive  
Oroville, California 95965

As to the Contractor:

Company Name: Recology Butte Colusa Counties  
Street or P.O. Box: P.O. Box 1512  
City, State, Zip code: Oroville, CA 95965

Notices shall be effective when received at the address as specified above. Changes in the respective address, to which such notice is to be directed may be made by written notice. Facsimile transmission is acceptable notice, effective when received. However, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed.

#### 18.12 Transitions to the Next Franchise

At the point of transition, Contractor will take direction from the County and subsequent Contractor(s) to assist in an orderly transition, which will include Contractor providing route lists and billing information. Contractor will not be obliged to sell Collection vehicles to the next Contractor. Depending on Contractor's circumstances at the point of transition, the Contractor at its option may enter into negotiations with the next Contractor to sell (in part or all) Collection vehicles. In connection therewith, Contractor acknowledges that the provisions of Public Resources Code Sections 49520-49523 have no application to this Agreement and agrees, to the extent such sections may have application, to waive whatever rights they may afford.

## **19. Definitions**

### **19.1 Applicable Law**

All laws, ordinances, codes, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental authority having jurisdiction over the Franchise Services that are in force on the Effective Date of this Agreement and as they may be enacted, issued, or amended during the term of this Agreement.

### **19.2 Bulky Waste or Bulky Items**

Discarded large household appliances such as washers and dryers, dishwashers and other appliances without Freon (white goods), e-waste, furniture, tires, carpets, mattresses and similar large items which require special handling due to their size, but can be collected without special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned vehicles or household hazardous waste (except for E-waste).

### **19.3 CalRecycle**

California Department of Resources Recycling and Recovery (CalRecycle), the California state agency that promotes the importance of reducing waste and sets recycling and reuse goals.

### **19.4 Collect or Collection**

The process whereby Solid Waste is removed from a Premises and transported to a Disposal Facility, Processing Facility, or other facility permitted under Applicable Law.

### **19.5 Commercial**

Means of, from or pertaining to Multi-Family Premises or other non-Residential Premises where business or other activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, industrial operations, and nonprofit and governmental activities of any nature, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

### **19.6 Construction and Demolition (C&D) Debris**

Solid wastes consisting of building materials; and packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings, and other structures that are not hazardous, as defined in CCR, Title 22, section 66261.3 et seq. Title 14 section 17381(e), and that contain no more than 1% putrescible wastes by volume.

Construction and Demolition (C&D) debris includes:

1. Discarded materials generally considered to be not water soluble and nonhazardous in

nature, including, but not limited to, steel, glass, brick, concrete, asphalt material, pipe, gypsum, wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure and/or landscaping, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for a construction or demolition project.

2. Clean cardboard, paper, plastic, wood, and metal scraps from any construction or demolition project.
3. De minimis amounts of other non-hazardous wastes, that are generated at construction or demolition projects.
4. "Demolition" means the decimating, dismantling, razing, ruining, tearing down and/or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

#### 19.7 Container

Any and all types of receptacles, including carts, bins and roll-offs, used pursuant to the terms of this Agreement for the Collection of Refuse, Recyclable Materials, Green Waste, or other Solid Waste.

#### 19.8 Contractor

Contractor means the company specified in Section 1.1 that has entered into this Franchise Agreement with the County for the collection of Solid Waste, Green Waste and/or Recyclable Materials, under Article 2. Contractor shall also mean any County-approved assignee, transferee or successor in interest of Contractor.

#### 19.9 County

Means the County of Butte, a political subdivision of the State of California.

#### 19.10 County Contract Manager

The County Contract Manager is the Manager, Waste Management Division, Public Works Department, Butte County, or his or her designee.

#### 19.11 Customer

A person or entity who has subscribed for Franchise Services hereunder. With respect to a particular Premises, the Customer is deemed to be the person or entity whom Contractor submits its billing invoice to and collects payment from for Collection services provided to the Premises. The Customer may be either the occupant or owner of the Premises.

#### 19.12 Disposal Facility

The facility or facilities at which Refuse Collected under this Agreement may be disposed. As of the Effective Date, the Designated Disposal Facility shall be Neal Road Waste and Recycling Facility.

#### 19.13 E-waste

E-Waste, includes discarded items such as CRT devices including televisions and computer monitors, LCD desktop computers, laptop computers, LCD and plasma televisions, DVD players, cash registers, computers and computer peripherals, telephones, cell phones, answering machines, stereo equipment, radios, tape and CD players/recorders, phonographs, video cassette recorders, calculators, personal data assistants (PDAs), and small household and kitchen electronic equipment.

#### 19.14 Excluded Materials

Material that: (a) is prohibited from receipt at the intended disposal or processing by Applicable Law; (b) is or contains Hazardous Waste or Infectious Waste as defined below or any bio-solids (as described in Section 3.5.7); (c) Contractor reasonably believes would, as a result of or upon receipt at disposal or processing facility, be a violation of Applicable Law; or (d) in Contractor's opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor to potential liability.

#### 19.15 Food Waste

Food scraps and trimmings from food preparation, including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, and acceptable food packaging such items as pizza boxes, paper towels, waxed cardboard and food contaminated paper products.

#### 19.16 Franchise

The special right granted by the County to Contractor to exclusively provide the Franchise Services.

#### 19.17 Franchise Agreement (or "this Agreement")

This Franchise Agreement, including all exhibits and attachments, and any amendments thereto, between the County and the Contractor for collection, transfer, transportation and disposal of Refuse, Recyclable Materials, and Green Waste and other services related to reliable Refuse, Recyclable Materials, and Green Waste collection.

#### 19.18 Franchise Services

Collection, disposal, Processing or otherwise handling all Solid Waste, including Refuse, Recyclable Materials, and Green Waste generated, deposited, or accumulated in the Service Area. This definition excludes the material types and services specified in Section 3.5.

#### 19.19 Green Waste

Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter and fits in the Container utilized by the Customer. Green Waste includes plant debris, such as, ivy, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of vegetative waste and must be generated by and at the Customer's premises and segregated by the generator and placed in a container for Collection and Processing. Green Waste does not include items herein defined as Excluded Materials.

#### 19.20 Gross Annual Revenues

All payments received by Contractor from Customers for the provision of Franchise Services, in accordance with Generally Accepted Accounting Principles.

#### 19.21 Hazardous Waste

Any material, substance, waste, or mixture of wastes which is defined as a "hazardous waste," "hazardous substance", "hazardous material," "toxic waste," "toxic substance," "pollutant" or words of similar import under federal, California, and local laws and regulations, such as RCRA, CERCLA, or as defined by the California Integrated Waste Management Board or California Department of Toxic Substances Control.

#### 19.22 Household Hazardous Waste

Any Hazardous Waste generated at residential premises within the County and delivered by the owner or occupant of such premises to a drop-off site, to include:

1. Dry cell household batteries,
2. Cell phones and PDAs,
3. Used motor oil,
4. Used oil filters when contained in a sealed plastic bag,
5. Compact fluorescent light bulbs contained in a sealed plastic bag,
6. Cleaning products,
7. Pesticides, herbicides, insecticides,
8. Painting supplies,
9. Automotive products,
10. Solvents,
11. Stripes, and adhesives,

- 12. Auto batteries,
- 13. Universal Waste.

#### 19.23 Infectious Waste

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

#### 19.24 Local Enforcement Agency (LEA)

Means the Environmental Health Division of the County's Public Health Department, which is designated as such by the Board of Supervisors pursuant to Public Resources Code, Section 43202.

#### 19.25 Multi-Family

Means any Premises, other than a Single-Family Premises, with five (5) or more dwelling units used for residential purposes (regardless of whether residence therein is temporary or permanent) that receive centralized Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address.

#### 19.26 Non-Service Road

Any road which is non-accessible, private, non-County maintained, or otherwise hazardous to the safety of the driver or the Contractor's equipment.

#### 19.27 Premises

Any parcel of real property in the Service Area where Solid Waste is produced, generated, deposited or accumulated, and includes Commercial Premises and Residential Premises.

#### 19.28 Processing or Process

An operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes, that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Solid Waste and returns it to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Processing begins at the time Solid Waste is delivered to the Processing Facility and ends when the finished Processed materials are sold or reused, and the residue is properly disposed.

#### 19.29 Processing Facility

Any facility selected by Contractor which is designed, operated and legally permitted for the purpose of receiving and Processing Green Waste and/or Recyclable Materials and which is County approved.

#### 19.30 Recyclable Materials

Those materials listed below, which have been segregated by the generator and placed in a container for Collection and Processing, but not including any Excluded Materials or Unacceptable Materials. Recyclable Materials shall also include non-Recyclable Materials commingled with Recyclable Materials, so long as (a) non-Recyclable Materials constitute 10% or less of the total commingled volume and weight, and (b) the commingled materials do not contain any Excluded Materials or Unacceptable Materials. The list of Recyclable Materials may be modified upon written agreement of the parties.

1. Newspapers
2. Mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office paper, and telephone books)
3. Glass containers
4. Metal containers
5. Scrap metal
6. Plastic containers
7. Mixed plastics
8. Aluminum foil and pans

#### 19.31 Recycling Zone

Areas in which the Contractor shall provide three cart service to its customers, including one cart for Refuse, one cart for Recyclable Materials, and one cart for Green Waste. Refer to Exhibit A.

#### 19.32 Refuse

Solid Waste which is permitted for disposal in a Class III landfill and which has been placed in a Container with the intention of Collection and disposal, other than Excluded Materials.

#### 19.33 Residential

Means of, from, or pertaining to a Single-Family Premises.

#### 19.34 Service Area

The physical area encompassed within the boundaries described in Exhibit A hereto, in which Contractor is granted the Franchise.

#### 19.35 Service Road

Means public roads and highways constructed and maintained by any city, the County, State or federal government, as well as private roads and driveways meeting the standards for fire equipment access as provided by Section 4290 of the California Public Resources Code and implementing regulations in Sections 1273.01 Road Width, 1273.02 Roadway Surface, 1273.03, Roadway Grades, 1273.04 Roadway Radius, 1273.05 Roadway Turnarounds, 1273.07 Roadway Structures, 1273.08 One-Way Roads, and 1273.09 Dead-End Roads, in Title 14 of the California Code of Regulations.

#### 19.36 Single-Family

Means any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the owner or occupant of such independent unit is billed directly for the Collection service. Single-Family includes Residential units of a duplex, tri-plex, or four-plex Residential structure provided that each unit is separately billed for their specific service level.

#### 19.37 Solid Waste

All putrescible and non-putrescible solid, semi-solid, and associated liquid waste, including residential, commercial, industrial, and municipal garbage, trash, refuse, paper, rubbish, ashes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid Waste does not include Hazardous Waste, biosolids (as described in Section 3.5.7) or Infectious Waste, but (for the avoidance of doubt) does include Refuse, Recyclable Materials and Green Waste.

#### 19.38 Specialty Recyclable or Reusable Materials

Any material that is not a Recyclable Material but can be or will be Processed by any person operating under a permit issued by the County in accordance with the County Code. Such Specialty Recyclable Material includes, but is not limited to: construction and demolition debris, pallets, and plastic film.

#### 19.39 Temporary Service

Temporary Service means services that are temporary (less than 30 days) and not recurring within twelve (12) months. Note: Permanent Services includes Collection Services that generally or usually occur on a regularly, scheduled, recurring basis.

#### 19.40 Universal Waste

Universal Wastes are Hazardous Wastes that are widely produced by households and many different types of businesses. Universal Wastes include televisions, cathode ray tubes, computers and other electronic devices as well as batteries, fluorescent lamps, non-empty aerosol cans, mercury thermostats, and other mercury containing equipment, among others.

#### 19.41 Unacceptable Materials

Microwave trays, mirrors, window or auto glass, light bulbs, ceramics, porcelain, plastics unnumbered, plastic bags, coat hangers, glass cookware/bakeware, household items such as cooking pots, toasters, etc., and materials containing chemical or other properties which are deleterious or capable of causing material damage to any part of Contractor's property, its personnel or the public, or materially impairing the strength or the durability of the Contractor's structures or equipment.

#### 19.42 Uncontrollable Circumstances

Any acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, acts of government or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a party. Uncontrollable Circumstances do not include labor unrest or labor strikes.

#### 19.43 White Goods

Discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

IN WITNESS THEREOF, County and Contractor have executed this Agreement this \_\_ day of \_\_\_\_\_, 20\_\_.

COUNTY OF BUTTE, a political  
subdivision of the State of California

By \_\_\_\_\_

Doug Teeter, Chair  
Board of Supervisors  
County of Butte

ATTEST:

Paul Hahn, Chief Administrative Officer  
and Clerk of the Board of Supervisors

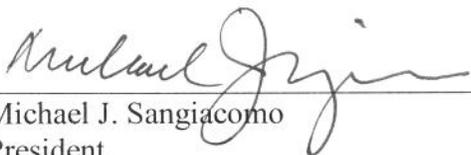
By \_\_\_\_\_

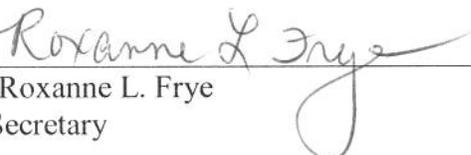
APPROVED AS TO FORM:  
BRUCE S. ALPERT  
BUTTE COUNTY COUNSEL

By \_\_\_\_\_

Contractor:

Recology Butte Colusa Counties,  
a California Corporation

By:   
Michael J. Sangiacomo  
Its: President

By:   
Roxanne L. Frye  
Its: Secretary

## MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding (this “MOU”) is entered into by and between the County of Butte, a political subdivision of the State of California (“County”) and Recology Butte Colusa Counties, a California corporation (“Contractor,” and together with County, the “Parties”).

WHEREAS, concurrently herewith, County and Contractor are entering into that certain Franchise Agreement for Refuse, Recyclable Materials and Green Waste Collection Services (the “Agreement”) covering the areas of the County specified therein;

WHEREAS, Section 7.5 of the Agreement contemplates that Contractor will deliver all Refuse collected by it and its affiliated companies within Butte County and any city therein to the Neal Road Recycling and Waste Facility (“Neal Road”) for disposal;

WHEREAS, the Parties have agreed to limit the application of Section 7.5 as set forth herein, and wish to document that understanding;

WHEREAS, the agreement set forth herein is a material part of the consideration for Contractor to enter into the Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the parties agree as follows:

1. Notwithstanding Section 7.5 of the Agreement, Contractor shall not be required to deliver to Neal Road any Refuse that is collected by Contractor or its affiliated companies from within the City of Oroville.

2. This MOU is deemed incorporated by reference into the Agreement and made a part thereof. Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

*[Remainder of this page intentionally left blank]*

IN WITNESS THEREOF, County and Contractor have executed this Memorandum of Understanding this \_\_\_ day of \_\_\_\_\_, 20\_\_.

COUNTY OF BUTTE, a political subdivision of the State of California

By \_\_\_\_\_

Doug Teeter, Chair  
Board of Supervisors  
County of Butte

ATTEST:

Paul Hahn, Chief Administrative Officer  
and Clerk of the Board of Supervisors

By \_\_\_\_\_

APPROVED AS TO FORM:  
BRUCE S. ALPERT  
BUTTE COUNTY COUNSEL

By \_\_\_\_\_

Contractor:

Recology Butte Colusa Counties,  
a California Corporation

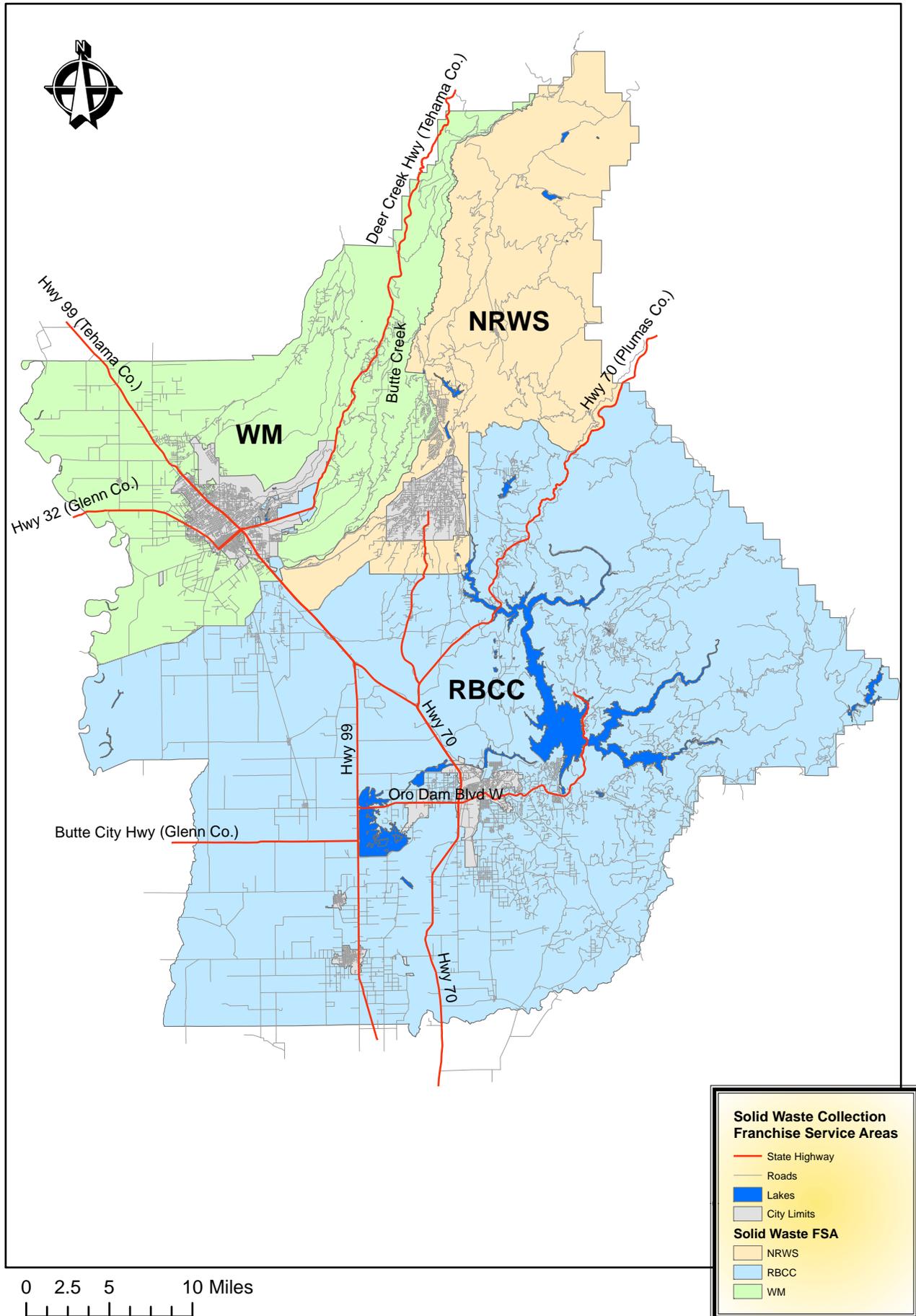
By: Michael J. Sangiacomo  
Michael J. Sangiacomo  
Its: President

By: Roxanne L. Frye  
Roxanne L. Frye  
Its: Secretary

EXHIBIT A FRANCHISE AREA MAP AND DESCRIPTION

# Solid Waste Collection Franchise Map

## Exhibit A



**Solid Waste Collection Franchise Service Areas**

- State Highway
- Roads
- Lakes
- City Limits

**Solid Waste FSA**

- NRWS
- RBCC
- WM

# Solid Waste Collection Franchise Map

## Magalia Detail Exhibit A-1

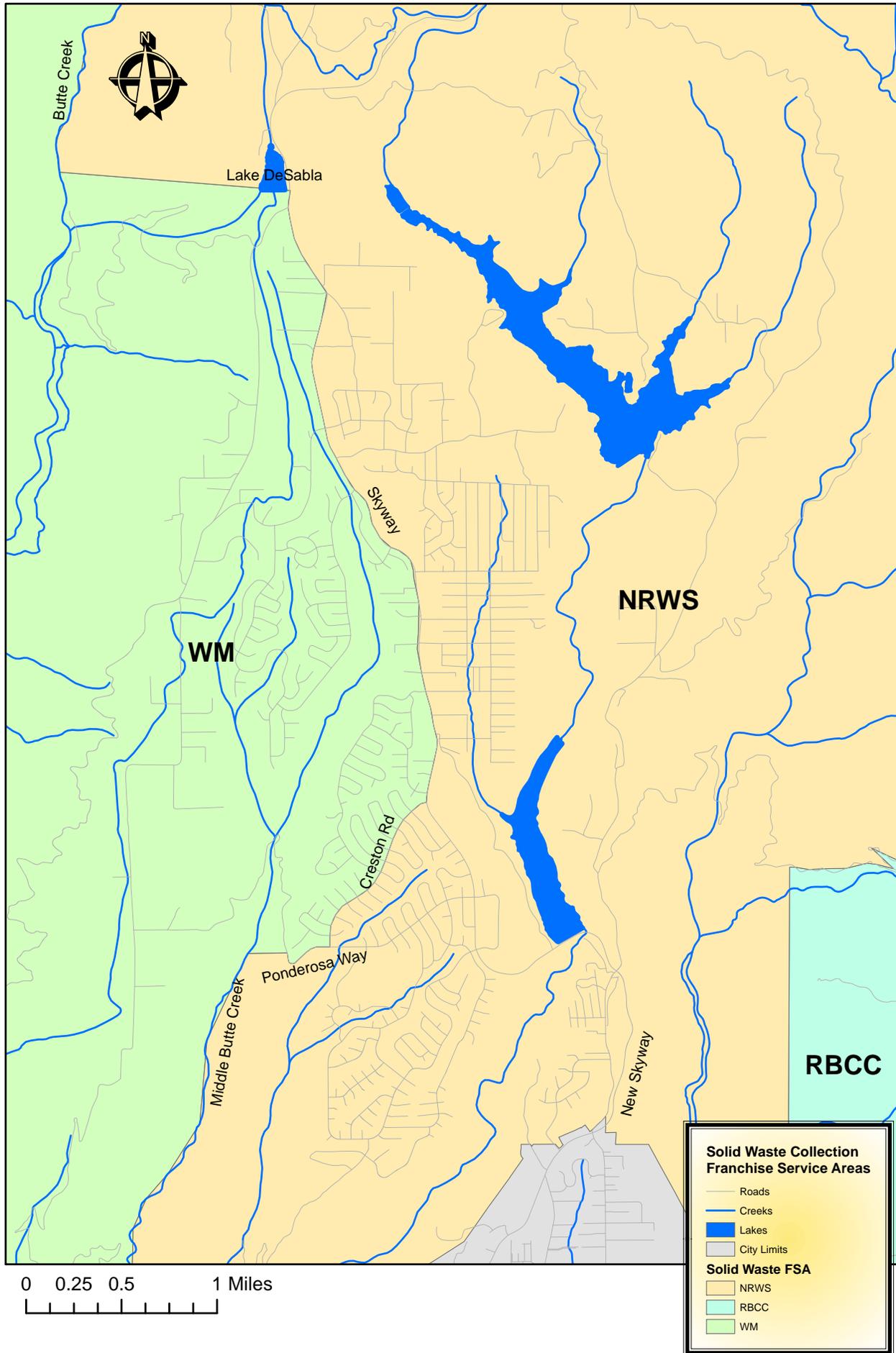


EXHIBIT B MAXIMUM SERVICE RATES

**Exhibit B**  
**Maximum Rates**

Residential Rates, per Month – For Customers Outside of Recycling Zones

Quadrant	Container Size					
	32 Gallon		64 Gallon		96 Gallon	
	Refuse with Recycling	Refuse Only	Refuse with Recycling	Refuse Only	Refuse with Recycling	Refuse Only
Quadrant One	\$21.78	\$20.94	\$25.48	\$24.74	\$31.08	\$28.78
Quadrant Two	\$21.14	\$20.33	\$24.73	\$24.01	\$30.17	\$27.94
Quadrant Three	\$23.04	\$22.15	\$26.96	\$26.17	\$32.89	\$30.45
Quadrant Four	\$23.99	\$23.07	\$28.07	\$27.25	\$34.24	\$31.70

Residential Rates, per Month – For Customers Inside of Recycling Zones

Area	Quadrant	Recycling Zone	Refuse Container Size (Service with 64 Gallon Recycling and 96 Gallon Yard)		
			32 Gallon	64 Gallon	96 Gallon
Chico, Sphere of Influence	Q1	RZ6	\$18.20	\$25.75	\$30.85
Durham	Q1	RZ4	\$21.46	\$24.68	\$30.85
Kelly Ridge	Q3	RZ5	\$20.43	\$23.50	\$29.38
Magalia	Q2	RZ1	\$20.43	\$23.50	\$29.38
S. Oroville	Q3	RZ2	\$21.46	\$24.68	\$30.85
Thermalito	Q4	RZ3	\$21.05	\$24.21	\$30.26

**Exhibit B**  
**Maximum Rates (continued)**

Multi-Family including Mobile Home Park Rates, per Month (\* considered multi-family 5+ units – centralized recycling bins (AB341 Services); \*\* curbside recycling provided)

Quadrant	Container Size					
	32 Gallon		64 Gallon		96 Gallon	
	Refuse Only*	Refuse with Recycling**	Refuse Only*	Refuse with Recycling**	Refuse Only*	Refuse with Recycling**
Quadrant One	\$14.25	\$18.25	\$16.97	\$20.97	\$20.53	\$24.53
Quadrant Two	\$14.25	\$18.25	\$16.97	\$20.97	\$20.53	\$24.53
Quadrant Three	\$14.25	\$18.25	\$16.97	\$20.97	\$20.53	\$24.53
Quadrant Four	\$14.25	\$18.25	\$16.97	\$20.97	\$20.53	\$24.53

**Exhibit B**  
**Maximum Rates (continued)**

Commercial and Multi-Family Bin Rates (per Month)<sup>1</sup>

Quadrant	1 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$70.42	\$123.24	\$215.67	\$377.42	\$660.49	\$1,155.86
Quadrant Two	\$77.46	\$135.56	\$237.23	\$415.15	\$726.52	\$1,271.40
Quadrant Three	\$76.05	\$133.10	\$232.93	\$407.62	\$713.33	\$1,248.33
Quadrant Four	\$88.03	\$154.05	\$269.59	\$471.78	\$825.61	\$1,444.82

Quadrant	1.5 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$77.46	\$135.56	\$237.23	\$415.15	\$726.52	\$1,271.40
Quadrant Two	\$85.21	\$149.12	\$260.96	\$456.68	\$799.19	\$1,398.58
Quadrant Three	\$83.66	\$146.40	\$256.20	\$448.35	\$784.61	\$1,373.07
Quadrant Four	\$96.83	\$169.45	\$296.54	\$518.94	\$908.15	\$1,589.26

Quadrant	2 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$84.50	\$147.88	\$258.79	\$452.88	\$792.54	\$1,386.95
Quadrant Two	\$92.95	\$162.67	\$284.67	\$498.18	\$871.81	\$1,525.67
Quadrant Three	\$91.26	\$159.71	\$279.49	\$489.11	\$855.95	\$1,497.91
Quadrant Four	\$105.63	\$184.85	\$323.49	\$566.10	\$990.68	\$1,733.69

Quadrant	3 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$97.18	\$170.07	\$297.62	\$520.84	\$911.47	\$1,595.07
Quadrant Two	\$106.90	\$187.08	\$327.39	\$572.93	\$1,002.63	\$1,754.61
Quadrant Three	\$104.95	\$183.68	\$321.44	\$562.52	\$984.41	\$1,722.72
Quadrant Four	\$121.48	\$212.59	\$372.03	\$651.06	\$1,139.35	\$1,993.86

<sup>1</sup> Recycling service (bin or cart) is included in these rates for Recycling Zones and customers meeting AB341 threshold.

**Exhibit B**  
**Maximum Rates (continued)**

Commercial and Multi-Family Bin Rates (per Month)

Quadrant	4 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$126.76	\$221.83	\$388.20	\$679.35	\$1,188.87	\$2,080.52
Quadrant Two	\$139.44	\$244.01	\$427.02	\$747.28	\$1,307.74	\$2,288.55
Quadrant Three	\$136.90	\$239.58	\$419.27	\$733.71	\$1,284.00	\$2,247.00
Quadrant Four	\$158.45	\$277.29	\$485.26	\$849.20	\$1,486.10	\$2,600.68

Quadrant	6 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$158.45	\$277.29	\$485.26	\$849.20	\$1,486.10	\$2,600.68
Quadrant Two	\$174.30	\$305.02	\$533.79	\$934.12	\$1,634.72	\$2,860.75
Quadrant Three	\$171.13	\$299.47	\$524.07	\$917.13	\$1,604.97	\$2,808.70
Quadrant Four	\$198.06	\$346.61	\$606.57	\$1,061.49	\$1,857.61	\$3,250.82

Quadrant	8 CY Refuse					
	1 time per week	2 times per week	3 times per week	4 times per week	5 times per week	6 times per week
Quadrant One	\$211.26	\$369.71	\$646.99	\$1,132.24	\$1,981.41	\$3,467.48
Quadrant Two	\$232.39	\$406.68	\$711.69	\$1,245.46	\$2,179.55	\$3,814.21
Quadrant Three	\$228.16	\$399.29	\$698.76	\$1,222.83	\$2,139.94	\$3,744.90
Quadrant Four	\$264.08	\$462.14	\$808.75	\$1,415.30	\$2,476.78	\$4,334.37

Commercial Cart Rates, All Quadrants

Size	Monthly Rate, per Container per Collection
32 Gallon	\$31.15
64 Gallon	\$34.33
96 Gallon	\$37.50
300 Gallon	\$86.88

Butte County  
 Refuse, Recycling, Green Waste Collection Franchise  
 Special Service Fees

	Maximum Charges
<b><u>Residential</u></b>	
<b>Extra Pickup / Return Trip <sup>1</sup> - Refuse - same day</b>	
32-35 gallon cart	\$ 10.00
64-65 gallon cart	\$ 10.00
95-96 gallon cart	\$ 10.00
<b>Extra Pickup / Return Trip <sup>1</sup> - Refuse - non-service day</b>	
32-35 gallon cart	\$ 25.00
64-65 gallon cart	\$ 25.00
95-96 gallon cart	\$ 25.00
<b>Extra Pickup / Return Trip <sup>1</sup> - Recycling - same day</b>	
32-35 gallon cart	\$ 10.00
64-65 gallon cart	\$ 10.00
95-96 gallon cart	\$ 10.00
<b>Extra Pickup / Return Trip <sup>1</sup> - Recycling - non-service day</b>	
32-35 gallon cart	\$ 25.00
64-65 gallon cart	\$ 25.00
95-96 gallon cart	\$ 25.00
<b>Extra Pickup / Return Trip <sup>1</sup> - Green Waste - same day</b>	
32-35 gallon cart	\$ 10.00
64-65 gallon cart	\$ 10.00
95-96 gallon cart	\$ 10.00
<b>Extra Pickup / Return Trip <sup>1</sup> - Green Waste - non-service day</b>	
32-35 gallon cart	\$ 25.00
64-65 gallon cart	\$ 25.00
95-96 gallon cart	\$ 25.00
<b>Additional Cart Recycling</b>	
64-65 gallon cart	\$ 5.00
<b>Additional Cart Green Waste</b>	
95-96 gallon cart	\$ 7.00
<b>Recycling Service - per month</b>	
	\$ 5.00
(Outside Recycling Zone if hauler chooses to serve)	

<b>Green Waste Service - per month</b>		\$ 7.00
(Outside Recycling Zone if hauler chooses to serve)		
<b>Cart Replacement <sup>2</sup></b>		\$ 75.00
<b>Cart Exchange <sup>2</sup></b>		\$ 35.00
<b>Additional On-Call<sup>3</sup></b>		\$ 40.00 per trip
Collection Service		plus
(incl Bulky Item)		\$ 15.00 per yard
<b>Walk-in Service</b>		
5 - 100 ft (per month up to 2 carts)	Disabled free	\$ 14.00
101 - 200 ft (per month up to 2 carts)	Disabled free	\$ 20.00

## Commercial

<b>Extra Pickup / Return Trip<sup>1</sup></b>		
Refuse per yard		\$ 25.00
Recycling per yard		\$ 25.00
Green Waste per yard		\$ 25.00
Exchange Cart <sup>4</sup>		\$ 35.00
Exchange Bin <sup>4</sup>		\$ 75.00
Clean Cart <sup>4</sup>		\$ 40.00
Clean Bin <sup>4</sup>		\$ 75.00
Additional Cart - Recycling		\$ 5.00
Additional Cart - Green Waste		\$ 10.00
Additional Bin - Recycling / Geen Waste		65% of refuse rate
Cleanup Enclosures <sup>5</sup> - per yard		\$ 50.00
Supply Lock/Key Charge - ea		\$ 25.00
Container Lock/Key Service per mo		\$ 7.00
Move bin for service (Scout/Stinger Truck)		negotiated

## Customer Service

### **Charges Associated with Delinquent Accounts / Cutoff of Service / Re-establish Service**

Cannot recover cart or cart damaged beyond reuse (each)	\$ 75.00
Re-delivery of cart(s) per event not cart	\$ 40.00

#### **Footnotes:**

- 1 After 2nd documented "not out" (Refer to section 4.2.7)**
- 2 Refer to Section 4.4.6**
- 3 Refer to Section 4.8 for bulky waste; plus \$25 per item containing refrigerant**
- 4 Refer to Section 6.4.5; charges are not cumulative.**
- 5 Refer to Section 6.8.2**

# Butte County and City of Chico

Preliminary Four Quadrant County Plus City Strawman Waste Management Model

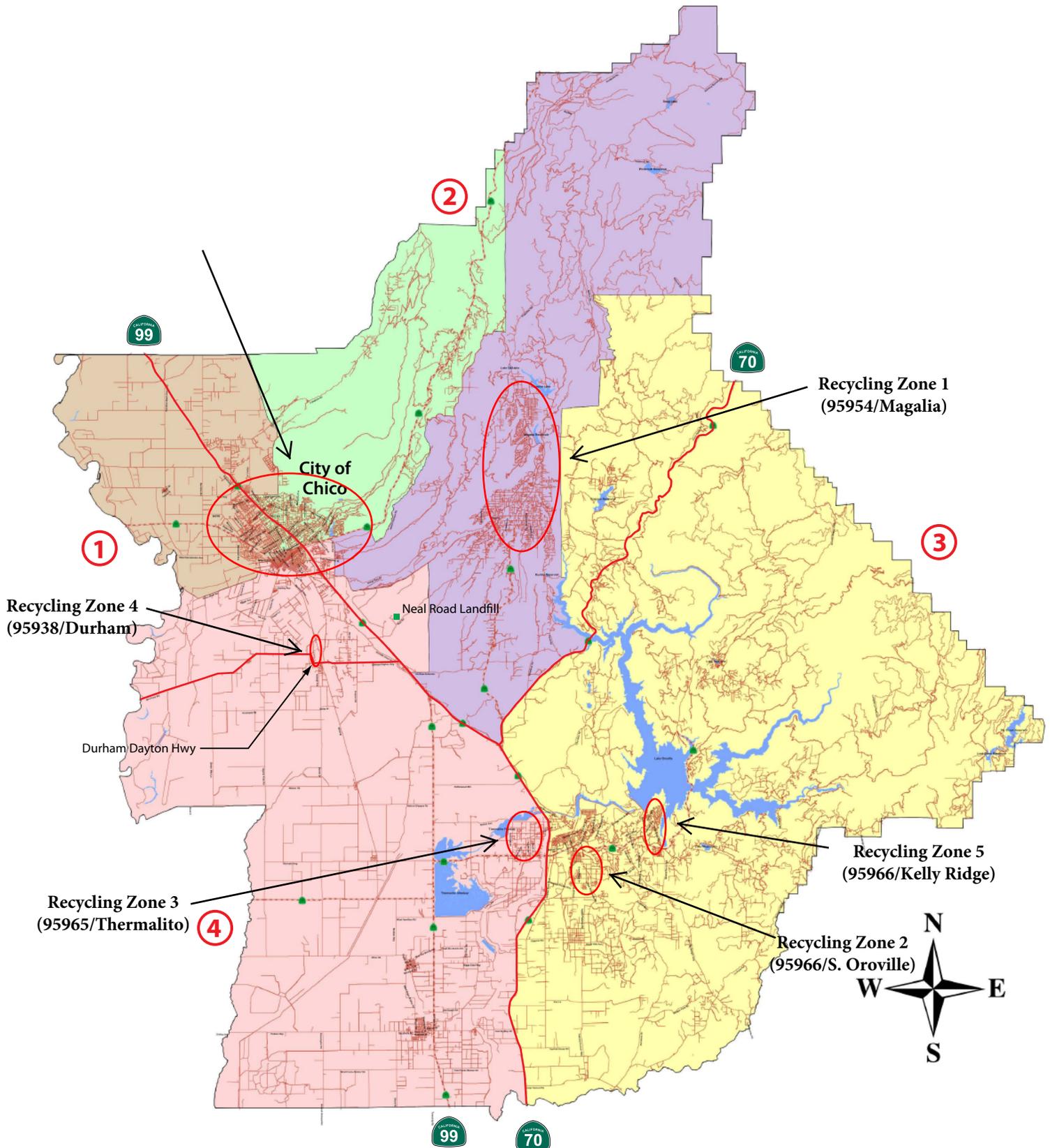


EXHIBIT C SERVICE TO COUNTY PUBLIC AREAS

[County to insert list - TBD]

EXHIBIT D RATE SETTING METHODOLOGY

The rate setting methodology is provided beginning on the following page.

# 1. Rate Setting Goals and Objectives

This section of the manual provides an overview of the rate setting process. The section includes five (5) subsections:

- A. Introduction*
- B. Rate Setting Goals*
- C. Rate Setting Policies*
- D. Rate Application Process*
- E. Allowable and Non-Allowable Costs.*

## A. Introduction

This manual is a step-by-step guide for Butte County, and its franchise haulers, to prepare and approve changes in solid waste collection rates. The manual establishes rate change policies, provides application forms, specifies reporting formats, identifies required supporting documentation, and describes the procedure for requesting, reviewing, and adopting rate changes.

## B. Rate Setting Goals

The primary goal of the rate setting process and methodology is to determine solid waste collection rates which are fair to customers and which provide a fair return to the franchise hauler. A total of six (6) rate setting process goals were considered in developing this rate setting methodology:

1. The County and franchised hauler should start with a **strong and committed partnership**. The County and franchised hauler should view this franchise as a business partnership where both parties commit to use the formal rate setting methodology, and plan continuous communication on rate setting throughout the franchise term.
2. Rates requested by the franchise hauler must be **justifiable and supportable**. A formal request to change rates, submitted by the franchise hauler, should provide the basis for all rate changes, include only allowable and necessary costs, and provide accountability for expenditures. In determining rates, the County shall consider both the need for fairness to the ratepayer and the need to compensate the franchise hauler fairly and consistently with the methodology.

3. The estimated costs of service, and resulting solid waste rates, should be **reasonable**. The County acknowledges that maintenance of quality service is related to providing adequate compensation, and financial incentives, for continued good performance. Revenues generated should be adequate to fully meet reasonable costs-of-service. The resulting monthly fees for solid waste collection service should be comparable to those charged in other jurisdictions for providing similar services.
4. The process should be kept as **simple** as possible, while ensuring that any rate request is justifiable and reasonable. The process should be easy to explain and not place an undue cost on either the County or the franchise hauler to implement. The process also should minimize administrative efforts of the County.
5. The rate setting process should **provide mechanisms for ongoing rate review and rate stability**. A periodic, formal, and thorough County review (every four years) of financial and operating data will set an expectation for the hauler and ultimately will protect the ratepayer. These reviews should be conducted consistently and in accordance with set schedules in the manual. The process should prevent large, unexpected fluctuations in rates due to changes in costs or from the need to fund a broadening scope of waste management services. This formal process also serves to meet the fiduciary responsibility of the County to its ratepayers.
6. The County and franchised hauler should strive to **maximize opportunities to improve performance and service quality** while maintaining cost competitiveness in the marketplace. In a “cost-plus-profit” contract such as exists between the jurisdiction and franchised hauler, there can be less incentive for the hauler to decrease costs because increases in allowable costs actually result in increases in allowable operating profit levels. Ideally, the County,

and the hauler, should set rates in a base year, and the hauler should attempt to reduce its costs in subsequent years.

### C. Rate Setting Policies

The County will use the following five (5) policies when setting rates:

1. **Use the Operating Ratio Method to Determine Profit** – The County will use the operating ratio (OR) method to establish revenue requirements for setting rates. The operating ratio establishes revenue requirements based on allowable expenses and is defined as follows:

$$\text{Operating ratio} = \frac{\text{Allowable expenses}}{\text{Allowable expenses} + \text{Profit}}$$

The operating ratio effectively determines the profit allowed to the franchise hauler on operating costs. Total revenue requirements then are determined as the sum of:

- (1) allowable operating costs, (2) allowable profit, and (3) pass-through costs (for which the franchise hauler receives no profit).

In the first base year, the OR will be set at 90 percent. In each succeeding base year (once every four years), the operating ratio will range from 87 to 92 percent, which will help stabilize rate changes and afford the franchise hauler an incentive to reduce costs. In any succeeding base year, if the franchise hauler earns an operating ratio outside this 87 to 92 percent range, then 90 percent is reestablished. This operating ratio range also will prevent automatic rate changes for smaller changes in revenues, expenses, and material volumes.

2. **Do Not Allow Retroactive Rate Increases** – There will be no allowance for a retroactive increase in rates, except by special agreement, or by party default. Retroactive reimbursements can move rates out of alignment with the actual costs of providing service. This process and methodology codifies strict rate review timelines and responsibilities. If the County

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and hauler adhere to these timelines for submission and rate change approval, and no party defaults on these timelines, all future rates should be established such that there is no need for retroactive rate increases.

3. **Do Not Allow Balancing Accounts** – This rate setting process is based on projecting results during base years. Thus, actual base year results likely will differ from base year projections. In some regulatory environments, these differences are “balanced” in subsequent years by using a balancing account. After 2017, there will be no balancing accounts for purposes of truing up projected and actual results.

As part of its 2017 Base Year Rate Application, the County will allow each franchised hauler the option of submitting to the County a separate revenue “true up” request to account for differences between the franchise hauler’s actual calendar year 2014 revenues (prior to signing the current 2015 franchise agreement) and calendar year 2015 and 2016 revenues (occurring after signing the current 2015 franchise agreement). The dollar value of this two-year revenue “true up” shall be calculated as (1) actual unincorporated County calendar year 2015 revenues less actual unincorporated County calendar year 2014 revenues, plus (2) estimated unincorporated County calendar year 2016 revenues (annualized based on year-to-date 2016 revenues available at the time the 2017 Base Year Application is submitted) less actual unincorporated County calendar year 2014 revenues escalated by the allowed 2015 interim year rate adjustment (if applicable). Should this revenue “true up” be less than zero, the County will allow the franchise hauler to recoup this one-time revenue “true up” amount by spreading the amount equally in rates charged over the four (4) years between 2017 and 2020. For example, if the amount equaled \$100,000, the County would include \$25,000 (\$100,000 divided by 4) in unincorporated County rates for 2017, 2018, 2019, and 2020. This revenue true up would be included as a “pass through” expense for rate setting purposes in the 2017 base year rate

application. The County would remove this revenue “true up” in the 2021 base year and the franchised hauler would not be allowed any further revenue “true ups” or balancing accounts thereafter.

4. **Do Not Allow Fuel Surcharges** – There will be no separate “fuel surcharges” added to rates to account for increases in fuel costs.
5. **Analyze Related Party Transactions** – The company may have certain related-party transactions with affiliates. The company must disclose all related party transactions as part of the rate setting process.

The County will allow only those transactions with these related parties which are “market based.” The County will assess whether related party transactions are conducted on an “arms length” basis, equivalent to terms as with an unrelated party in the conditions of a competitive, free market, environment.

During its review, the County may request that franchise hauler provide the following information in support of related party transactions:

- Allocation methods used, if applicable
- Nature, extent, and magnitude of the relationship
- Terms of the related party transaction (e.g., timing of payments, term length)
- Historical information (e.g., ownership)
- Date of acquisition (if applicable)
- Purchase price of item (if applicable)
- Financing terms for item (if applicable).

The County may require the franchise hauler to provide up to three (3) comparable lease rates for leases of facilities and equipment. For related party company leases, the County may require franchise hauler to identify financing charges, or profit components, within these lease rates. The

## 1. Rate Setting Goals and Objectives

franchise hauler should be prepared to support the business purpose for each related party transaction.

The County will consider all of the above factors in determining whether the related party transaction is an allowable cost and is charged at a reasonable amount.

### D. Rate Application Process

#### 1. Base Year Process

The County requires that the franchise hauler submit a detailed *Base Year Rate Application* once every four (4) years. With the *Base Year Rate Application*, the franchise hauler provides detailed financial and operating information which is carefully reviewed and analyzed by the County. These detailed reviews are referred to as “base year reviews” in the methodology.

With the *Base Year Rate Application*, the franchise hauler submits financial statements for

the previously completed fiscal year. These statements serve as the base documents for the application. The franchised hauler should reconcile financial information contained in the *Base Year Rate Application* with the audited financial statements to provide assurance that all of the company’s activities are accounted for.

The timing of the base year process is shown in **Figure 1-1**, below. The schedule is expected to start with submission of the *Base Year Rate Application* on June 30th of the year proceeding each base year. The process targets an implementation date of January 1<sup>st</sup> of the base year.

The *Base Year Rate Application* requires three (3) years of data, including a year of actual data (based on audited information), a year of estimated data (based on year-to-date information available at the time the application is submitted), and the projection, or base year. The required years, and types, of data for upcoming base year reviews are

**Figure 1-1**  
Timing of Base Year Process

Step	Description	Preparation		30-Day Review	Review Process					
		April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1	Prepare and Submit Rate Application									
2	Verify Completeness of Rate Application									
3	Review Rate Application and Prepare Response									
4	Survey Comparative Rates									
5	Prepare Draft Report and Final Report									
6	Present Final Report to County									
7	Notify Customers and Implement New Rates									

**Figure 1-2**  
Timing of Interim Year Process

Step	Description	Preparation	Review Process			
		Aug.	Sep.	Oct.	Nov.	Dec.
1	Prepare and Submit Rate Application					
2	Prepare Draft Report and Final Report					
3	Receive Approval from County					
4	Notify Customers and Implement New Rates					

displayed in **Table 1-1**. For example, for the 2017 base year, the franchise hauler would prepare the *Base Year Rate Application* using actual 2015 data, estimated year-to-date 2016 data, and entirely projected 2017 data.

**Table 1-1**  
Base Year Financial Statement Requirements

Base Year	Prior Year (Audited)	Current Year (Estimated)	Base Year (Projected)
2017	2015	2016	2017
2021	2019	2020	2021
2025	2023	2024	2025
...	...	...	...
...	...	...	...

## 2. Interim Year Process

In each of the “interim” years (i.e., all years other than the specified “base” years), should the franchised hauler want to increase rates, the County requires that the franchise hauler submit an *Interim Year Rate Application* for an interim year rate change. The scope and content of the *Interim Year Rate Application* is much more limited than a base year request. The franchised hauler is not obligated to request an increase in rates and can instead request to leave rates

unchanged.<sup>1</sup> Interim year rate changes are based on a simple two-part formula that includes:

- (1) One hundred (100) percent of the annual percentage change in the most recent actual, not forecasted, West Urban Consumer Price Index for All Urban Consumers, All Items (Series CUUR0400SA0) applied to costs other than landfill disposal costs, plus
- (2) projected changes in landfill disposal costs.

For the first part of the calculation (noted as (1) above), the County and franchised hauler will use the percentage change in the West Urban Consumer Price Index (All Items) for the prior June to June twelve-month period. This June to June CPI data will be available at the time the franchised hauler submits the *Interim Year Application* in August.

<sup>1</sup> In cases where the *Interim Year Rate Application* would result in a rate reduction to County ratepayers, the company must submit and the County must review an *Interim Year Rate Application*. In cases where the interim year process would result in a rate reduction, the effective amount of the rate reduction (i.e., the ratepayer credit) will be carried over into the next year (either a subsequent interim year or a base year) and used to offset rate changes in that year. This credit approach is consistent with a rate setting process that maximizes rate stability and minimizes rate changes. The County will determine the amount of this one-time credit, on a percentage basis, based on completing the *Interim Year Worksheet*. There will be no additional interest calculated and accrued on this one-time credit.

## 1. Rate Setting Goals and Objectives

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The timing of the interim year process is shown in **Figure 1-2**, above. The schedule is expected to start with submission of the *Interim Year Rate Application* on August 31<sup>st</sup> of the year proceeding the interim year. The process targets an implementation date of January 1<sup>st</sup> of the interim year.

Notwithstanding Section 3 (Interim Year Rate Setting Process), for purposes of the interim year rate adjustment effective January 1, 2016, (i) prior year landfill tipping fees and tons shall be annualized 2015 year-to-date figures, (ii) the base year revenue requirement shall be annualized 2015 year-to-date revenue, and (iii) base year operating costs (other than landfill disposal costs) shall be the amount in clause (ii) above, less the the prior year landfill disposal costs, calculated using the figures in clause (i) above.

### 3. Special Extraordinary Adjustments

Special extraordinary adjustments may be allowed outside of the annual base year and interim year schedules. Both the County, and the franchise hauler, shall be able to initiate the extraordinary rate adjustment process.

For three (3) specific types of extraordinary occurrences, (1) a change in law, (2) County-directed changes to services or programs provided by the franchised hauler, or (3) the County increases the Neal Road Landfill tipping fee charged to the hauler at a time such that the hauler cannot request reimbursement through the interim year rate change process, the franchised hauler is allowed to submit a separate request for rate reimbursement. For extraordinary occurrences (1) and (2) above, the hauler should submit this extraordinary application at the same time that an interim year rate application is due. For extraordinary occurrence (3) above, the hauler can submit an extraordinary application at

any time.<sup>2</sup> The County will evaluate these separate reimbursement requests in addition to determining the interim year rate change, as described in Section 3 of this manual.

The extraordinary adjustment shall only be considered in a case where the County, or the franchise hauler, can demonstrate that the extraordinary event results in a change (either positive or negative) in one of the aggregate categories of allowable costs (shown as lines 3 through 7 of the *Base Year Application*) in excess of two (2) times the most recent annual change in the West Urban Consumer Price Index (All Items), at the time the request is made.

Extraordinary adjustments will be considered on a case-by-case basis. For these adjustments, the franchise hauler shall provide necessary information and documentation so the County can make a judgment as to the reasonableness of such a rate adjustment. An extraordinary adjustment shall only be made with County Administrative Officer approval.

If the franchise hauler demonstrates that it has incurred or will incur increased costs as a result of one of the above-mentioned extraordinary occurrences, in an amount that exceeds the above-mentioned threshold, and that such costs are reasonable, the franchise hauler shall be entitled to a rate adjustment sufficient to compensate it for such increased costs regardless of when incurred, plus profit calculated using the then-applicable OR on all such costs that are allowable.

The review process for extraordinary adjustments will follow a 4-month timeline similar to that shown in Figure 1-2 for the interim year process.

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<sup>2</sup> Increases in County Neal Road tipping fees will be considered a pass-through expense if the increase does not coincide with the rate application timeframe.

**Table 1-2**  
**Allowable Depreciation Methods and Useful Lives**  
**for Franchise Hauler Assets Purchased After**  
**January 1, 2015**

Category	Method	Useful Life (Years)
Carts	SL <sup>3</sup>	10
Office Equipment	SL	5
Vehicles and Equipment	SL	8
Buildings and Leasehold Improvements	SL	20

## E. Allowable and Non-Allowable Costs

Rates are established for each base year based on the hauler’s projected revenue requirement. The revenue requirement is defined as the sum of the following:

- Allowable costs
- Allowable operating profits
- Pass through costs.

For purposes of computing the revenue requirement, it is necessary to determine which of the franchise hauler’s costs are (1) allowable costs, (2) pass through costs, and (3) non-allowable costs.

### 1. Allowable Costs

When a cost is said to be “allowable,” that cost, plus a profit component associated with that cost, is included in rates charged to the ratepayers. Allowable are often those costs that are integral to the hauler’s operation and/or are associated with actual activity performed by the hauler.

The hauler is allowed to earn a profit on certain costs. The majority of allowable costs are direct labor, equipment and facility costs, landfill disposal costs, office salaries, and general and administrative costs. These allowable costs are defined in **Exhibit 1-1**. **Exhibit 1-2**, following Exhibit 1-1, includes a

chart of expense accounts for allowable costs, which serves to further clarify categories of allowable costs.

The following costs are clarified because of their special treatment for rate setting:

- **Depreciation**—**Table 1-2** shows depreciation methods and useful lives, by asset type, recommended for rate setting purposes. Useful lives in Table 1-2 are for new capital purchases (i.e., those made during and after 2015).

### 2. Pass Through Costs

Pass through costs are costs included in rates charged to customers, however these costs do not have an associated profit component. Pass through costs are generally transactional in nature and often are thought of as costs not associated with any significant effort performed by the hauler. The following pass through costs do not earn a profit, but are included in determining the total revenue requirement used to establish solid waste rates:

- Interest expense
- Franchise fees.

### 3. Non-Allowable Costs

Non-allowable costs are not allowed in rates charged to ratepayers. These costs are disallowed because (1) they may not be associated with the core business, (2) they may be included implicitly in the profit level allowed by the County, or (3) they may unnecessarily complicate rate regulation (e.g., income taxes). Costs shown in **Exhibit 1-3** are not allowable for rate setting, and as a result will not be passed onto ratepayers.

### 4. Cost Allocations and Methodologies

The franchised hauler should provide supporting documentation and rationale for the allocation of expenses between the franchised areas covered by this manual and non-County

<sup>3</sup> Represents straight-line depreciation.

## 1. Rate Setting Goals and Objectives

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areas serviced by the franchised hauler. Examples of the types of expenses which may require justification for allocations may include:

- Billing costs
- Disposal costs
- Equipment costs
- General and administrative costs
- Loans to or from affiliates
- Loans to or from officers
- Management fees.

**Exhibit 1-1**

**Definition of Financial Terms**

Application Line Number/Item	Definition
<b>Allowable Operating Costs</b>	
<b>1. Direct Labor</b>	Wages, and related benefits, paid to refuse collection staff, including wages, overtime, payroll taxes, health and welfare benefits, workers compensation, and pension benefits.
<b>2. Equipment Costs and Facility Costs</b>	Includes cost of equipment depreciation, equipment leases, equipment insurance, equipment repair and maintenance, fuel, and other miscellaneous equipment expenses. Facilities expenses consist of building rent, building depreciation, and building repair and maintenance.
<b>3. Landfill Disposal and Green Waste Processing Costs</b>	Costs to dispose of solid waste and recycling residue at landfills. This category also includes green waste processing costs in situations where the company processes green waste material for sale, or for use as ADC. <sup>4</sup>
<b>4. Recyclables Processing Costs</b>	In the case where the company processes County recyclables at its own facility, in Butte County, then recyclable processing costs are allowable.
<b>5. Office Salaries</b>	Wages, and related benefits, paid to office and administrative staff, including wages, overtime, payroll taxes, health and welfare benefits, workers compensation, and pension benefits.
<b>6. General and Administration Costs</b>	<p>General and administrative (G&amp;A) costs including:</p> <ul style="list-style-type: none"> <li>■ Advertising</li> <li>■ Contract labor</li> <li>■ Employee education</li> <li>■ Office repair and maintenance</li> <li>■ Professional fees</li> <li>■ Office expense</li> <li>■ Supplies</li> <li>■ Utilities.</li> <li>■ Collection fees</li> <li>■ Dues and subscriptions</li> <li>■ General insurance</li> <li>■ Officer salaries and benefits</li> <li>■ Property taxes</li> <li>■ Licenses</li> <li>■ Travel</li> </ul> <p>G&amp;A costs are allowed up to a capped limit set by the County. The hauler is allowed actual G&amp;A costs up to a cap of fourteen (14) percent of total expenses for the combination of corporate, regional, and local G&amp;A in the initial base year.</p>
<b>Allowable Operating Profit</b>	
<b>Operating Ratio (OR)</b>	A profit is allowed, based on a targeted operating ratio ranging between 87 and 92 percent. In the base year, if rates remain unchanged at an operating ratio within the range of 87 to 92 percent, and the franchise hauler is projected to actually realize an operating ratio within this range for the base year, then that same operating ratio resulting in no rate change is used, and no rate change occurs. Otherwise, a 90 percent operating ratio is used for the base year calculation.
<b>Allowable Operating Profit</b>	Established by the allowable operating ratio and equal to total allowable costs divided by the allowable OR, less total allowable costs.
<b>Pass Through Costs</b>	
<b>Interest Expense</b>	Interest on debt used to finance all franchise hauler operations.
<b>Franchise Fees</b>	Equal to a percent of gross residential, commercial, and recycling revenues. <sup>5</sup>

<sup>4</sup> Green waste revenues also are considered as part of recycled materials sales.

<sup>5</sup> This franchise fee amount is subject to change by the County.

## 1. Rate Setting Goals and Objectives

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### Exhibit 1-2

#### Chart of Accounts for Allowable Operating Costs

Category	Description
<b>Direct Labor</b>	<ul style="list-style-type: none"> <li>■ Direct Labor</li> <li>■ Direct Labor Benefits</li> <li>■ Direct Labor Insurance</li> <li>■ Direct Labor Workers Compensation</li> <li>■ Direct Labor Pension</li> <li>■ Direct Labor Payroll Taxes</li> </ul>
<b>Equipment Costs and Facility Costs</b>	<ul style="list-style-type: none"> <li>■ Equipment and Facility Depreciation</li> <li>■ Property Rent</li> <li>■ Equipment Rent</li> <li>■ Fuel</li> <li>■ Repairs and Maintenance</li> </ul>
<b>Landfill Disposal Costs</b>	<ul style="list-style-type: none"> <li>■ Tipping Fees</li> </ul>
<b>Office Salaries</b>	<ul style="list-style-type: none"> <li>■ Office Staff Salaries</li> <li>■ Office Staff Benefits</li> <li>■ Office Staff Insurance</li> <li>■ Office Staff Workers Compensation</li> <li>■ Office Staff Pension</li> <li>■ Office Staff Payroll Taxes</li> </ul>
<b>General and Administrative Costs</b>	<ul style="list-style-type: none"> <li>■ Advertising</li> <li>■ Contract Labor</li> <li>■ Dues and Subscriptions</li> <li>■ Employee Education</li> <li>■ General Insurance</li> <li>■ Office Expense</li> <li>■ Officer Salaries</li> <li>■ Other Administrative Costs</li> <li>■ Licenses and Fees</li> <li>■ Property Taxes</li> <li>■ Supplies</li> <li>■ Travel</li> <li>■ Utilities</li> </ul>

**Exhibit 1-3****Non-Allowable Costs**

<b>Category</b>	<b>Description</b>
<b>Amortization of Franchise Purchases</b>	Consistent with the waste management industry, the County disallows amortization of franchise purchases because the operating ratio is designed to provide a return to the company sufficient to compensate for the company's investment in the business.
<b>Charitable and Political Donations</b>	<ul style="list-style-type: none"><li data-bbox="748 443 1464 548">■ Costs associated with attempting to influence the outcome of any federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities.</li><li data-bbox="748 558 1464 663">■ Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purposes of influencing the outcomes of elections.</li></ul>
<b>Entertainment Expenses</b>	Costs incurred in hosting social events for clients or suppliers. Examples include costs of tickets, concerts, athletic events, or other performances; room rentals; cruises; entertaining guests at athletic, social, or sporting clubs and on vacation or other similar trips.
<b>Fines and Penalties</b>	Costs associated with violations of, or failure of, the hauler to comply with federal, state, local, or foreign laws and regulations. This category of non-allowable costs can also include costs in connection with alteration or destruction of records, or other false or improper charging or recording of costs.
<b>Income Taxes</b>	The operating ratio is provided on a pre-tax basis. To allow income tax expense would unnecessarily add complexity to the rate review process.
<b>Cost of Repairs Due to Operator Negligence</b>	Costs of negligence on the part of the hauler which could include accidents or property damage, over an allowance of \$7,500 per year.
<b>Costs Incurred to Serve Other Jurisdictions (i.e., for non-County areas served by franchise hauler)</b>	The franchised hauler will be compensated for only those costs that can be directly attributable to operations within the franchised boundaries. The franchised hauler should have a clear basis for allocating shared costs to the franchise areas covered by this manual, and those franchised areas not covered by this manual.

## 1. Rate Setting Goals and Objectives

The franchised hauler should be prepared to provide a reasonable and supportable methodology for these cost allocations. **Table 1-3** provides recommended allocation methods for various costs which may be shared between County and non-County jurisdictions.

The County will assess reasonableness of the revenue and cost projections provided by the franchised hauler in its *Base Year Rate Application*. Examples of types of factors the County will consider when assessing reasonableness of projected revenues and costs are shown in **Table 1-4**.

**Table 1-3**  
Recommended Franchise Hauler Allocation Methods For Costs Shared with Other Non-County Serviced Jurisdictions

Cost Category	Allocation Method
Billing costs	Number of bills processed
Disposal costs	Actual tonnage
Equipment costs (e.g., rental, leases, parts, fuel, supplies, tires, repair and maintenance, licenses, permits)	Truck usage (over representative period)
Franchise fees	Revenues multiplied by fee percentage
General and administrative costs, management fees	Direct labor hours
Loans	Revenues

**Table 1-4**  
Base Year Rate Review  
Revenue and Cost Projection Factors

Description	Factors to Consider in Developing Revenue and Cost Projections
<b>Revenues</b>	
<b>Residential and commercial revenues</b>	<ul style="list-style-type: none"> <li>■ Projected account growth based on historical account trends, or population trends</li> <li>■ Historical changes in tonnage (particularly for the industrial sector)</li> </ul>
<b>Recycled materials sales revenues</b>	<ul style="list-style-type: none"> <li>■ Historical changes in recycled materials volumes</li> <li>■ Recycled commodity pricing trends (may be highly volatile)</li> </ul>
<b>Costs</b>	
<b>Direct labor</b>	<ul style="list-style-type: none"> <li>■ Projected increases in wage rates</li> <li>■ Planned changes in insurance rates</li> <li>■ Planned changes in benefit rates</li> </ul>
<b>Equipment costs and facility costs</b>	<ul style="list-style-type: none"> <li>■ Historical average trends in costs (last three years)</li> <li>■ Inflation rates</li> <li>■ Fuel price history</li> <li>■ Depreciation schedules</li> <li>■ Equipment replacement plans</li> </ul>
<b>Landfill disposal fees</b>	<ul style="list-style-type: none"> <li>■ Historical changes in refuse tonnage</li> <li>■ Tipping fee rate increases, per contract</li> </ul>
<b>Office salaries</b>	<ul style="list-style-type: none"> <li>■ Projected increases in wage rates</li> <li>■ Planned changes in insurance rates</li> <li>■ Planned changes in benefit rates</li> </ul>
<b>General and administrative costs</b>	<ul style="list-style-type: none"> <li>■ Historical average trends in costs (last three years)</li> <li>■ Inflation rates</li> </ul>
<b>Interest expense</b>	<ul style="list-style-type: none"> <li>■ Borrowing rates</li> <li>■ Loan documents</li> </ul>
<b>Franchise fees</b>	<ul style="list-style-type: none"> <li>■ Projected changes in revenues multiplied by the fee amount</li> </ul>

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## 2. Base Year Rate Setting Process

This section describes each of the seven (7) steps of the base year rate setting process. Each step includes an overview of the step and a detailed description of the tasks required to complete the step. The section includes seven (7) subsections:

- A. *Step 1 – Prepare and Submit Rate Application*
- B. *Step 2 – Verify Completeness of Rate Application*
- C. *Step 3 – Review Rate Application and Prepare Response*
- D. *Step 4 – Survey Comparative Rates*
- E. *Step 5 – Prepare Draft Report and Final Report*
- F. *Step 6 – Present Final Report to County Chief Administrative Officer (CAO)*
- G. *Step 7 – Notify Customers and Implement New Rates.*

### A. Step 1 – Prepare and Submit Rate Application

**Responsibility:** Franchise hauler

**Timing:** Completed seven (7) months prior to the date new rates become effective

- Tasks:**
- a. Prepare Cost Information
  - b. Prepare Revenue Information
  - c. Prepare Operating Information
  - d. Calculate Allowable Operating Profit
  - e. Determine Franchise Fee
  - f. Calculate Revenue Requirement
  - g. Calculate Net Surplus/Shortfall and Percent Change in Rates
  - h. Calculate New Percentage Rate Change and Rates
  - i. Prepare and Submit Rate Application.

#### Overview

During this step, the franchise hauler prepares the *Base Year Rate Application*. This three-page form includes detailed financial and operating information and is used to determine the actual costs and revenues of the franchise hauler. Blank copies of the *Base Year Rate Application* are provided in **Appendix A (Exhibit A-1)**.

Several lines in the application contain three columns. These columns are intended to show the relationship between the most recently completed year, the current year, and projections for the new "base" year. These columns are organized as follows:

- **Column one** includes actual information for the franchise hauler's prior fiscal year. This is the most recent year that financial information is available and that actual costs and revenues can be verified.
- **Column two** is for estimating performance during the current fiscal year. The “current year” is the franchise hauler's fiscal year prior to the new base year. The *Base Year Rate Application* is prepared during the course of the current year. Data in this column should include year-to-date performance plus estimated performance during the remaining months of the current fiscal year.
- **Column three** is used to report projected performance during the new base year. This information is entirely a projection and is utilized to determine any rate changes. Projected information should be developed by estimating anticipated service levels during the base year, and determining the revenues and expenses which will be incurred to provide these services. Each cost element in the application should be reviewed and any anticipated change in specific line items should be included in the base year projection. For example, if labor rates are scheduled to change, or if landfill disposal costs are expected to change, these changes should be included in projections for the base year.

The relationship between these three (3) columns for any given line item should be consistent. Any substantial difference between each of the three (3) years should be explained by the franchise hauler and considered by the County during the review process.

The franchise hauler should provide a copy of financial statements for the prior fiscal year. Financial information from these statements is consolidated into specific categories identified in the application. All financial information shall be in accordance with generally accepted accounting

principles. The franchise hauler should prepare supplemental documentation which reconciles the financial statement for the most recently completed fiscal year to information provided in the application. This documentation should be included in the application package.

### a. Prepare Cost Information

Cost information from the franchise hauler is provided in the *Base Year Rate Application*. Cost information is reported for the most recently completed fiscal year, the current fiscal year, and the new base year. Information reported in each line item represents the total combined costs for residential, curbside recycling, yardwaste, and commercial services. Segregation of costs by residential, curbside recycling, yardwaste, and commercial services is not required.

Cost information includes:

#### ■ Allowable Costs

- Direct Labor
- Equipment Costs and Facility Costs
- Landfill Disposal Costs
- Office Salaries
- General and Administration Costs

#### ■ Pass Through Costs

- Interest Expense
- Franchise Fees.

Definitions and specific components of these cost categories are described in Exhibits 1-1 and 1-2, in Section 1.

By aggregating costs into these line items, the County, and franchised hauler, can focus on major changes without becoming distracted by large changes in insignificant cost components. For example, if licenses and fees doubled from \$10,000 in the current year to \$20,000 in the base year (i.e., a 100 percent increase), this might only

cause General and Administrative Costs to increase by one percent, resulting in little impact on the overall rate. Minor components of General and Administrative Costs may decrease between the current year and the base year, while others may increase.

If one of the major cost line items in the application changes at an unusual rate, then the franchise hauler should be able to explain the change. An unusual change in cost is any change which is greater than the change in the Consumer Price Index (CPI). The CPI used in the analysis should be based on the most current actual information for the West Urban CPI, All Consumers, and All Items. This information is available from the United States Department of Labor, Bureau of Labor Statistics, and is prepared monthly.

Cost information for the current year, and base year, must account for any increases or decreases in the number of customers served, or tons of waste and recyclable material collected. Actual increases in costs also must be included. For example, if health benefit costs will increase in the base year as a result of increases in premiums, this additional cost should be included.

Cost information provided in the application is used with operating profit to calculate the franchise hauler's revenue requirement. The revenue requirement is equal to the sum of the following three categories:

- Total allowable operating costs
- Allowable operating profit
- Total pass through costs.

This revenue requirement is compared to anticipated revenues. The County uses the operating ratio (OR) method to establish revenue requirements for setting rates.

## b. Prepare Revenue Information

Revenue information is provided in this task. Similar to cost information, revenues are reported for the most recently completed fiscal year, the current fiscal year, and the projected base fiscal year. Revenues are reported in three (3) separate categories:

- Residential
- Commercial
- Recycled material sales (net of the cost of processing recycled materials).

Revenues in the base year are projected without any changes in rates. Revenue projections are prepared based on existing rates and the number of customers which the franchise hauler anticipates serving in the base year.

### 1. Determine Residential Revenues.

To calculate projected residential revenues for the base year, enter the current monthly rates by service type in the first column of cells in lines 14-18, on page 2. Then enter the projected number of accounts by service type in the second column of cells in lines 14-18, on page 2. Total revenues for each service type are calculated based on the following:

$$\begin{array}{r}
 \text{Current rate per month} \\
 \text{Multiplied by} \quad \text{Twelve months} \\
 \hline
 \text{Equals} \quad \text{Rate per year} \\
 \\
 \text{Multiplied by} \quad \text{Projected residential accounts} \\
 \text{Equals} \quad \text{Revenues by service type.}
 \end{array}$$

Residential revenues should reflect all revenues generated for providing curbside collection services of refuse, recyclables, and yardwaste.

The number of accounts in each service category may change throughout the year. For example, some customers may request one can service part of the year and an additional can during the remainder of the year. The average number of accounts by service type should be used in these

calculations. In addition, the number of accounts identified for these calculations must agree with operating data provided in Section VIII (page 3) of the application.

Multi-family can and cart services, and mobile home park can and cart services, should be included in residential revenues.

### 2. **Determine Commercial Revenues.**

Commercial revenue information is entered in line 24 of page 2 of the application. In the first column of this line, actual revenues generated by commercial accounts during the prior year are reported. This year amount must reconcile with the financial statement for that same year. Commercial revenues for the current year are based on actual revenue to-date plus an estimate of the revenues that will be received through the end of the fiscal year. Commercial revenues in the current year should be comparable to revenues in the prior year, after taking into changes in accounts and service levels.

Projected commercial revenues for the new base year are entered in the third column. This amount, net of any projected uncollectible accounts, is based on the estimated annual revenues received during the current fiscal year plus any additional revenues generated from additional accounts. Operating data provided in Section VIII (page 3) of the application should support any service level changes.

In order to analyze changes in commercial rates, the hauler must provide current and comprehensive rate information for all commercial services with its rate application. In the columns of lines 43-47, the franchise hauler enters the rate for these selected services for the prior year, the current year, and the base year, respectively. Percentage changes then are entered in columns 3 and 5. This information substantiates previously approved changes in commercial rates.

Multi-family and mobile home park bin services should be included in commercial revenues.

3. **Determine Allowance for Uncollectible Accounts.** The franchise hauler likely will not be paid by all customers served. While this amount is expected to be relatively small, it must be accounted for in the calculation of base year net revenues. These amounts are reported in two places for each service type: on line 20 for the allowance for uncollectible residential accounts, and line 23 for the allowance for uncollectible commercial accounts.

These amounts can be calculated based on a formula, such as one percent of anticipated revenues, or based on actual experience. Assumptions related to the projection of uncollectible accounts must be documented and included as a supplement to the application.

4. **Determine Net Revenues from Recycled Material Sales.** In addition to revenues generated through residential and commercial services, additional revenues are generated by selling recyclable materials and yardwaste revenues (if applicable) collected through the curbside recycling program. The amount of recycling revenues generated through the sale of these materials is dependent upon the quantity of material collected and the market price for these materials. Both of these factors are outside direct control of the franchise hauler. Therefore, revenues generated by recycled material sales are not subject to an across-the-board rate changes. Revenues generated from charging residential customers for curbside recycling services should not be included here, but should be included as part of residential revenues (#1 above).

The number shown in this recycled materials sales row should be a net revenue figure (i.e., net of the costs of processing recycled materials and yardwaste materials collected through activities associated with the franchise agreement with the County). This net figure may be either positive or negative.

In the first column of line 25, actual revenues received during the most recently completed fiscal year are reported. In the second column of line 25, estimated

revenues for the current year are reported. For the base year, revenues from recycled material sales are determined by projecting prices for recycled materials (e.g., scrap value, CRV, processing payments) and the anticipated quantity of materials sold. The projected scrap prices are multiplied by the projected volume of materials to be sold to determine projected recycled materials sales revenues. These projected revenues are reported in the third column of line 25 of the application.

5. **Calculate Total Revenues.** The calculation of total revenue (for all of the activities associated with the franchise) is as follows:

	Total residential revenues	
<i>Plus</i>	Total commercial revenues	
<i>Plus</i>	Recycled material sales	
<i>Equals</i>	Total revenues.	

Total revenues are entered on line 26.

### c. Prepare Operating Information

During this task, non-financial operating information is compiled by the franchise hauler. Operating information, requested in the application, provides an important indicator of the franchise hauler's performance. If costs are changing at an unusual rate, operating data may provide some explanation of these changes. For example, cost increases could be attributed to the increased level of service provided (i.e., accounts served). The franchise hauler should provide the following information:

- Number of accounts
- Quantity of refuse tonnage collected
- Quantity of recycling tonnage collected
- Quantity of yard waste tonnage collected
- County bins provided.

Similar to cost data, the first year is “historical,” the second year is the “current” year, and the third year is the “base” year. Historical data are based

on actual annual operating statistics during the most recently complete fiscal year and reflect the same year used in the financial sections of the application. Current year performance is based on performance to-date plus estimated performance for the remaining months of the current year. Projected base year data represents the franchise hauler's best projection of service levels during the new base year.

Year-to-year percentage changes then are determined for each set of operating metrics. The franchise hauler should be able to explain any significant changes. A significant change in an operating characteristic is an increase or decrease of more than two (2) percent.

This information allows both the County, and the franchise hauler, to monitor changes in the service characteristics, estimate total revenues at existing rates, and compare these to changes in total costs.

### d. Calculate Allowable Operating Profit

For the historical year of actual data, the franchise hauler will calculate the actual operating ratio based on the formula below:

	Total allowable costs	
	Total allowable costs plus	
<i>Divided by</i>	Operating profit	
<i>Equals</i>	Operating ratio.	

These actual operating ratios on allowable costs will reveal how well past base year projections corresponded to actual results. Similarly, the formula estimated above is used to calculate the operating ratio for the current year (column 2). The actual operating profit received by the franchise hauler in the most recently completed fiscal year is entered on line 10, column 1. The estimated operating profit for the current fiscal year also is entered on line 10, column 2.

## 2. Base Year Rate Setting Process

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To calculate the allowable operating profit in the base year, the equation below is utilized:

$$\begin{array}{r} \text{Allowable operating costs} \\ \textit{Divided by} \quad \text{Operating ratio} \\ \hline \textit{Equals} \quad \text{Allowable operating revenues} \\ \\ \textit{Minus} \quad \text{Allowable operating costs} \\ \hline \textit{Equals} \quad \text{Allowable operating profit.} \end{array}$$

The allowable operating profit is entered on line 10, column 3 of the application.

In the first base year, the operating ratio will be 90 percent. In each succeeding base year, the operating ratio will be allowed to fluctuate in accordance with the OR methodology described in Section I.

### e. Determine Franchise Fee

The calculation of the franchise fee is not a straightforward exercise because as revenue is increased (e.g., via a rate change), so does the amount of franchise fees increase because franchise fees are based on a percent of total franchise gross revenues (including rate revenues and recycled materials sales). To calculate the franchise fee for the base year requires the hauler to calculate the franchise fee to be paid to the County based on the revenues after a rate change is applied. Projected franchise fees should be entered on line 28, column 3 of the application.

### f. Calculate Revenue Requirement

The revenue requirement establishes the level of revenues needed to meet all allowable costs and operating profit. This includes residential and commercial waste and recycling costs, and assumes a reasonable profit margin based on the operating ratio calculation.

The total revenue requirement (before franchise fees) is determined as the sum of:

- Allowable operating costs (Line 8)

- Allowable operating profit (Line 10)
- Pass through costs (Line 12).

The revenue requirement (before franchise fees) is entered on line 13 of the application.

### g. Calculate Net Surplus/Shortfall and Percent Change in Rates

The net surplus/shortfall is determined based on the following calculation:

$$\begin{array}{r} \text{Revenue requirement (Line 13)} \\ \textit{Less} \quad \text{Total revenues (Line 26)} \\ \hline \textit{Equals} \text{ Net surplus/shortfall without franchise} \\ \text{fee} \quad \quad \quad \text{(Line 27).} \end{array}$$

The projected amount of revenue generated during the base year from the sale of recycled materials was calculated in Step 1, #5 of subsection b.; therefore, any increase or decrease in revenues required must come from an increase or decrease in collection rates.

If applicable, the percent change in existing rates is calculated as follows:

$$\begin{array}{r} \text{Net surplus/shortfall with franchise fee (Line} \\ \text{29)} \\ \textit{Divided by} \quad \text{Total collection revenues without} \\ \text{change} \\ \hline \quad \quad \quad \text{(Line 30)} \\ \textit{Equals} \quad \text{Percent change in rates (Line 31).} \end{array}$$

The percent change in rates is entered on line 31 of the application.

### h. Calculate New Percentage Rate Change and Rates

If applicable, the percentage rate change identified on page 2 of 3, line 31 should be entered on page 1 of 3, line 1 of the *Base Year Rate Application*. Current residential rates for solid waste collection should be entered on page 1 of 3. The adjusted rates for each jurisdiction then are

calculated by multiplying the current rate by one plus the rate change identified in line 1.

To determine new residential rates on page 1 of 3, column one should be added to column two and the result should be entered in column three. This column provides the new rate schedule. Complete current and revised commercial rate schedules should be provided by the hauler as an attachment to the application.

### i. Prepare and Submit Rate Application

The franchise hauler submits the completed *Base Year Rate Application* to the County. The application should include the following items:

- **Management Representation Letter.** The management representation letter transmits the application to the County, and should provide a listing of included documents. The letter should identify the requested adjustment in rates and include a discussion of specific issues which impact new rates (e.g., significant increases in labor costs). The letter should state (under penalty of voiding the franchise agreement) that:
  - Management reviewed and accepts responsibility for the rate application
  - The application is based upon management's judgment of the most likely set of conditions and course of action
  - All significant relevant information are made available
  - Revenues and costs included in this rate change request represent only those revenues and costs associated with activities provided under the franchise agreement with the County
  - Assumptions are reasonable and are accurate.

An authorized representative from the franchise hauler should sign and date the application. This signature provides a certification of the franchise hauler that the application is

complete, accurate, and consistent with the instructions provided in this manual.

- **Base Year Rate Application.** The franchise hauler should provide a *Base Year Rate Application*, including completed application forms and supporting documentation. Supporting documentation includes the current and proposed rate schedules for residential and commercial customers.

- **Supplemental Financial Information.** Financial statements for the most recently completed fiscal year should be included, as well as other documentation which support operating and financial data provided in the application. Because financial statements serve as base documents for the application, statements of revenues, expenses, and other reports contained in the application shall be reconciled to the financial statements to provide assurance that all activities are accounted for.

Once the application materials have been prepared, the franchise hauler submits three (3) reproducible hard copies and one disk copy formatted to the County's specifications. They are submitted to the County. The thirty (30) day review for completeness will begin upon receipt of the application.

## B. Step 2 – Verify Completeness of Rate Application

**Responsibility:** County

**Timing:** Completed within thirty (30) days after the rate application is submitted

- Tasks:**
- a. Verify Financial Data and Format
  - b. Verify Supporting Documents and Schedules
  - c. Notify Franchise Hauler.

### Overview

During this step, the County ensures that the application has been fully completed by the

franchise hauler and that the data provided are consistent. During the 30-day period, the County will obtain from the franchise hauler any information necessary to complete the application.

### a. Verify Financial Data and Format

The County staff reviews the application package to determine if it is complete and ready for analysis. Detailed analysis of the contents of the application occurs during Step 3.

The County reviewer should determine the following:

- Has the applicant included all required forms?
- Are all forms complete?
- Are financial statements included?
- Are all financial calculations mathematically correct?

### b. Verify Supporting Documents and Schedules

Various documents may be included in the application package to support the rate change. The purpose of these supporting documents should be clearly identified by the franchise hauler.

### c. Notify Franchise Hauler

If the application is complete, the County will notify the franchise hauler that it will begin the process of evaluating the application. If incomplete, the County will attempt to obtain from the hauler additional required information within the 30-day verification period. A revision of rates shall not be authorized until the 1<sup>st</sup> day of the first calendar month following a five (5) month period from the date that an application is verified to be complete.

## C. Step 3 – Review Rate Application and Prepare Response

**Responsibility:** County

**Timing:** Completed within one and one half (1½) months after determining that the application package is complete

- Tasks:**
- a. Review Actual and Projected Revenue Requirements
  - b. Review Actual and Projected Revenues
  - c. Review and Verify Operating Ratio
  - d. Determine Components of Requested Change in Rates
  - e. Review Performance Data
  - f. Request Additional Data and Clarification, if Necessary
  - g. Document Staff Review.

### Overview

During this step, County staff evaluates the entire rate application. This review includes examining significant changes in costs or operating performance and evaluating explanations of these changes provided by the franchise hauler.

#### a. Review Actual and Projected Revenue Requirements

In this task, costs and operating profits are reviewed and analyzed for reasonableness. Reconciliations of costs to financial statements are checked for consistency. Explanations are sought from the franchise hauler for items significantly different than would otherwise normally be expected.

Percentage changes in costs for the three years identified on the application should be calculated and reviewed. Projections prepared from previous years in prior *Base Year Rate Applications* are compared with actual results. Costs are correlated with operating collection efficiency statistics provided by the franchise hauler.

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Any unusual trends or variances in aggregate areas should be explained by the franchise hauler. An unusual increase would be a change in cost which is greater than the change in the West Urban CPI, published by the Bureau of Labor Statistics, and which cannot be attributed to changes in the number of customers serviced or tons of waste or recyclable materials collected. If these unusual changes are not adequately explained in the application, the County should request additional clarification from the franchise hauler.

The County should review the allocation methodology used by the franchise hauler to allocate costs between (1) franchise areas that are the subject of this manual, and (2) non-County areas serviced by the hauler. At a minimum, the County should check that allocations used to assign costs to franchise area customers are reasonably consistent with other operating metrics such as average number of accounts and tons collected.

#### **b. Review Actual and Projected Revenues**

The County should review actual and projected revenues in this task. Current rates provided in the application are verified. Any changes in the number of customers serviced should be identified and explained by the franchise hauler.

The application requires the franchise hauler to report three years of revenues: (1) actual prior year, (2) estimated current year, and (3) projected "base" year. The County should reconcile the most recent year revenues with financial statements. Revenues for the current year are compared with year-to-date financial statements and documentation supplied by the franchise hauler. Projected revenues for the third, or "base" year, are evaluated by the County for reasonableness. Assumptions made by the hauler in preparing these projections are reviewed. Revenues reported by the franchise hauler should not include any rate changes in the base year

(year 3). Account information included in the application is reviewed to determine changes in the number of accounts served.

Allowances for uncollectible accounts also are reviewed. These figures should be deducted from total revenue projections. These allowances may be based on a fixed percentage of total revenues or on actual experience. Assumptions related to allowances for uncollectible accounts should be reviewed with the franchise hauler.

Revenues from recyclable material sales are provided in the application. Amounts identified in the prior (first) year provided should reconcile with the financial statement. Amounts identified in the current (second) year, the base (third) year should be documented by the franchise hauler. The County will review these projections to ensure they are consistent with trends in recycling collection costs, scrap values, processing costs, as well as estimated diversion rates and tonnage.

#### **c. Review and Verify Operating Ratio**

The operating profit must be determined for the base year. The County should calculate the projected operating profit for the base year using the first formula provided in subsection d. of Step 1 in this section. If the operating ratio falls outside the 87 to 92 percent range, then the operating ratio should be reset to 90 percent. If there are any errors by the hauler in calculating the operating ratio, or allowable operating profits, these deficiencies are noted.

#### **d. Determine Components of Requested Change in Rates**

The County evaluates all costs, revenues, and operating profits provided in the application to determine components of the requested adjustment in rates. This would include determining the proportion of the requested

adjustment in rates which is due to changes in each of the following:

- Costs
- Residential revenues
- Commercial revenues (not including debris box revenues as these revenues are not part of the County's exclusive franchise with the company that is the subject of this Rate Manual)
- Recyclable material sales revenues
- Operating profit (or loss).

### e. Review Performance Data

The County reviews and analyzes performance data, which are included in the application (the number of accounts and tons collected). Operating statistics are reviewed to explain past historical trends and justify future expenses. Both actual and percentage increases are examined and any unusual changes in performance are investigated to determine their cause and effect on future cost performance. Changes in accounts served, the number of routes, tons collected, or direct labor hours generally should correspond to changes in costs and revenues.

### f. Request Additional Data and Clarification, if Necessary

Throughout the analysis of the application, The County may request clarification and/or additional data from the franchise hauler to explain any unusual changes in costs or operating performance. The County may have identified missing information, or changes in the financial or operating data between the three years which require clarification or further explanation. The franchise hauler should respond to the County's request for additional information within two weeks. Responses will vary depending on the specific requirements of the County.

### g. Document Staff Review

During this task, the County prepares workpaper documentation of the review of the *Base Year Rate Application*.

## D. Step 4 – Survey Comparative Rates

**Responsibility:** County

**Timing:** Conducted concurrently with the application review (Step 3)

**Tasks:**

- a. Survey Residential and Commercial Rates in Similar Service Areas
- b. Summarize Survey Results
- c. Prepare Survey Summary Report.

### Overview

The County conducts a survey of solid waste rates in communities similar in size and location to the County franchise areas. The purpose of this survey is for comparison purposes to benchmark the rates proposed by the franchise hauler, assess how County rates compare with the surveyed data, and prompt questions to the hauler to explain why rates may be different from comparative jurisdictions. Rate surveys are not intended, however, to be used to directly set actual County rates. The survey should cover the following topics:

- Residential services
- Commercial services.

The survey is not meant to be used as a basis for determining new rates.

### a. Survey Residential and Commercial Rates in Similar Service Areas

In this task, the survey of rates in other areas, which are similar to the County franchise areas, is conducted. In order to avoid mailing and response delays, the survey is conducted by telephone. A minimum of six (6) other

jurisdictions should be surveyed. Jurisdictions selected should be located in Northern California and have operating environments, which are similar to, the County franchise areas.

### b. Summarize Survey Results

After the survey has been conducted, the results are tabulated and compared. Rates proposed in the rate application should be compared to rates in other jurisdictions. If the rates proposed in the application are significantly higher than in other jurisdictions, then County staff should request the franchise hauler's assistance in explaining the differences.

### c. Prepare Survey Summary Report

The County then prepares a summary report, which makes conclusions about how rates and services provided by the current franchise hauler compare with those in other jurisdictions. The summary report should document residential refuse, curbside recycling, yardwaste, and commercial refuse collection services and rates. It should include the following information:

- Number of agencies surveyed
- Average and median monthly charges for comparable residential can services
- Average and median charges for comparable commercial services.

The report should compare the proposed County rates with averages and median results from the survey. The report should summarize in a matrix format all results of the survey listed by the jurisdiction surveyed.

The County may require an explanation and/or clarification from the franchise hauler about how the proposed rates compare to rates in the survey. This summary is included as an attachment to the Final Report. This information also is used in the evaluation of the franchise hauler's application.

## E. Step 5 – Prepare Draft Report and Final Report

**Responsibility:** County

**Timing:** Completed approximately three (3) months after determining the application package is complete

- Tasks:**
- a. Prepare Draft Report
  - b. Provide Franchise Hauler with Copy of Draft Report and Receive Comments
  - c. Prepare Final Report.

### Overview

A draft report with recommendations from County staff is prepared and submitted to the franchise hauler for review. The franchise hauler will review the draft report. The franchise hauler will have an opportunity to provide written comments regarding the draft report. The County will address these comments and prepare a Final Report.

#### a. Prepare Draft Report

In this step, the County prepares a Draft Report including recommendations for a rate change. The draft report includes the following sections:

- **Executive Summary.** This is a one or two-page summary of the review process and may include a chart showing current and proposed rates, and the recommended rate change.
- **Introduction and Background.** The section identifies any proposed changes in services provided by the franchise hauler. The section also identifies the review goals, objectives, scope, and other relevant background information. This section of the report may provide a brief overview of the rate change process and a discussion of significant historical rate issues. If

applicable, this report will document the rate change proposed by the County.

### ■ **Analysis and Discussion of Rate**

**Application.** This section of the report will include a review of the analysis work completed by County staff. This section might include the following subsections:

- *Review of Rate Changes*, including a discussion of interim year rate changes since the last base year, the relationship of these changes to changes in the CPI, and an analysis of the significant components of the change in rates (e.g., changes in labor costs.)
- *Analysis of Projected Costs*, including a discussion of any unusual changes in costs which were discovered and unresolved during the review process.
- *Discussion of Service Issues*, including changes in frequency or type of curbside service. If significant service issues are not involved with a rate change, this subsection would be omitted.

- **Recommendations.** County staff would present its recommendations regarding specific changes in rates in this section of the document. The staff's recommendations shall be consistent with the provisions of the Franchise Agreement.

- **Appendices.** Appendices to the report would include:

- Rate application
- Revised rate schedule
- Financial statements of the franchise hauler
- Other relevant supporting materials provided by the franchise hauler
- Results of the rate survey.

### **b. Provide Franchise Hauler with Copy of Draft Report and Receive Comments**

During this task, the franchise hauler will review the draft report. Each section of the report should be reviewed to ensure that correct data are included, the County's analysis is consistent with

the methodology, and if applicable the proposed rate change is determined accurately.

If any issues are identified during this step, the franchise hauler works with County staff to fully explore and resolve these outstanding issues. The franchise hauler then will prepare a written response to the draft report. The response may cover one or more of the following topics:

- If data discrepancies exist in any of the areas noted in the prior task, the County should be notified of these discrepancies.
- If the analysis conducted by the County can be clarified or considered differently, this information should be provided to the County.
- If the report is acceptable and no clarification or comments can be offered, this should be relayed to the County.

If no written response is received by the County within two weeks of delivering the County's Draft Report, then the County will assume that the franchise hauler has no issues with the report.

### **c. Prepare Final Report**

Any additional or outstanding comments or issues raised during the franchise hauler's review of the draft report are addressed. If necessary, meetings are conducted with representatives from the County and the franchise hauler. Final solutions to outstanding issues are included in the report. After final comments from the franchise hauler have been considered, the Final Report package is prepared. A copy of the Final Report is submitted to the franchise hauler. The Final Report is provided to the Public Works Director for review and, if no errors are noted, recommendation to the County CAO.

---

## F. Step 6 – Present Final Report to County Chief Administrative Officer (CAO)

**Responsibility:** County

**Timing:** Completed two (2) months prior to the expected implementation of new rates

**Tasks:** a. Distribute Final Report and Summary to County CAO's Office  
b. Obtain County CAO's Approval.

### Overview

During this step, the Final Report and Public Works Director's recommendation is presented to the County CAO for review, comment, and approval.

#### a. Distribute Final Report and Summary to County CAO

In this task, the Final Report is provided to the County CAO. If the CAO's office requires additional information, staff will request information from staff and/or the franchised hauler.

#### b. Obtain County CAO Approval

Upon concurrence with the Public Works Director's recommendation, the County CAO can approve and implement new base year rates. If no errors are noted in the Final Report, the County CAO approves and implements the recommended base year rates. The County CAO will not unreasonably withhold approval of the base year rates set forth in the Final Report.

## G. Step 7 – Notify Customers and Implement New Rates

**Responsibility:** Franchise hauler

**Timing:** Conducted following County CAO approval of the new rates

**Tasks:** a. Prepare Notification of Rate Change  
b. Implement Rate Change.

### Overview

During this final step, the franchise hauler implements new rates, if applicable.

#### a. Prepare Notification of Rate Change

Once the report is approved, a notification of a rate change is mailed by the franchise hauler to all customers. This notification may be included with a regular billing or may be mailed separately. The notification must be performed at least 30 days prior to the effective date of the rate change. The franchise hauler should provide a copy or facsimile of the notice to the County at the time of customer notification.

#### b. Implement Rate Change

During this final task, the new rates are entered into the franchise hauler's billing system and included in the billing cycle. If a rate change occurs during the middle of a billing cycle, unbilled or overbilled amounts are calculated and included in the next billing cycle.

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# 3. Interim Year Rate Setting Process

This section describes each of the four (4) steps of the interim year rate setting process. Each step includes an overview of the step and a detailed description of the tasks required to complete the step. The section includes four (4) subsections:

- A. Step 1 – Prepare and Submit Rate Application
- B. Step 2 – Prepare Draft Report and Final Report
- C. Step 3 – Receive Approval from County Public Works Director
- D. Step 4 – Notify Customers and Implement New Rates.

## A. Step 1 – Prepare and Submit Rate Application

**Responsibility:** Franchise hauler

**Timing:** Completed four (4) months prior to the implementation of the new rates

**Tasks:** a. Prepare an Interim Year Rate Application  
b. Submit Application to County.

### Overview

During this first step, the franchise hauler prepares the *Interim Year Rate Application*. Blank application forms are provided in **Appendix A (Exhibit A-3)**. Similar to the base year forms, these forms identify all areas to be completed with double outlined boxes. If data are to be entered in the form, the box has no shading. If a calculation is required, the box has light shading.

#### a. Prepare an Interim Year Rate Application

1. **Report Changes in Landfill Disposal Costs.** The first task is to provide prior year landfill disposal costs. Prior year actual landfill tipping fees per ton should be entered on line 1. Prior year actual landfill tonnage should be entered on line 2. The values entered on lines 1 and 2 should then be multiplied together and entered on line 3. Prior year actual landfill tipping fees and tonnage means annualized year-to-date data for the year in which the application is submitted (i.e. the year preceding the interim year)..

The franchise hauler estimates what landfill tipping fees and landfill tonnage will be for the next interim year. Projected interim year landfill tipping fees, per ton, are entered on line 4, and projected interim year landfill tonnage is entered on line 5. The values entered on lines 4 and 5 then are multiplied together and entered on line 6.

The percent change in landfill disposal costs is determined as follows:

$$\frac{\text{line 6} - \text{line 3}}{\text{line 3}}$$

The result of this equation, rounded to the nearest one decimal place, is entered on line 7.

**2. Explain Changes in Landfill Disposal Costs.** Any changes in either landfill tipping fees or tonnage should be fully explained in this task. For example, if a landfill closes and the franchise hauler begins using a new landfill with higher tipping fees, this information should be disclosed. Documents which support or further explain any change in costs are provided, as appropriate.

**3. Certify Application.** An authorized representative from the franchise hauler should sign and date the application. This signature provides certification by the franchise hauler that the application is complete, accurate, and consistent with the instructions provided in this manual.

At this point, the application should be complete. The application is submitted to the County for review and calculation of the rate change, as described in the following subsection.

#### b. Submit Application to County

The completed application is sent to the County for review and calculation of new rates. The franchise hauler's application does not include any new rates; these are determined by the County during Step 2.

## B. Step 2 – Prepare Draft Report and Final Report

**Responsibility:** County

**Timing:** Completed within two (2) months of receiving a completed Interim Year Rate Application

- Tasks:**
- Identify Consumer Price Index
  - Complete Interim Year Rate Change Worksheet and Determine New Rates
  - Request Additional Data and Clarification, if Necessary
  - Prepare Draft Report
  - Receive Comments from Franchise Hauler
  - Prepare Final Report.

### Overview

The *Interim Year Rate Change Worksheet* is used to calculate new interim year rates. This document is prepared by the County after the franchise hauler has submitted an *Interim Year Rate Application*. Interim year rate changes are based on a weighted increase in operating and landfill disposal costs. Inflation for this process include changes in the Consumer Price Index and changes in landfill disposal costs (documented by the franchise hauler in the *Interim Year Rate Application*). **Exhibit A-4** in Appendix A includes a sample of the two-page worksheet to be completed by County staff.

#### a. Identify Consumer Price Index

The annual change in the West Urban CPI provides the single largest factor for determining new rates during interim years. The actual change in this index during the twelve months prior to the date the *Interim Year Rate Application* is submitted to the County is used for the actual change in the methodology. Because a projected change in the CPI is not produced, the actual change in CPI for the prior twelve months is used as the CPI for the interim year. The period used by the County and

franchise hauler will be June to June. This information is available from the United States Department of Labor, Bureau of Labor Statistics, and is prepared every monthly.

**b. Complete Interim Year Rate Change Worksheet and Determine New Rates**

County staff prepares the *Interim Year Rate Change Worksheet* and calculates new rates during this task. This worksheet requires information from the most recent *Base Year Rate Application* and the current *Interim Year Rate Application*. This worksheet also requires the West Urban CPI information collected in task a. The worksheet is used to calculate the new rate change.

- 1. Identify Prior Base Year Operating Costs (Other Than Landfill Disposal).** Operating costs, excluding landfill disposal costs, are those items which can be reasonably managed by the franchise hauler in order to minimize future rate increases. Changes in these costs should approximate the change in the West Urban CPI.

In order to streamline the interim year process, operating costs are adjusted based on an annual change in the CPI instead of projected changes in each cost item. This eliminates the need to conduct a detailed review of the franchise hauler's financial statements.

Landfill disposal costs are included in total allowable costs (line 1). Because of this, landfill disposal costs must be deducted to determine total operating costs (other than landfill disposal) in the base year (line 1 plus line 2 plus line 3 minus line 4). This total then is entered on line 5 of the worksheet and is used to calculate the weighted change in operating costs (other than landfill disposal).

- 2. Identify Prior Base Year Landfill Disposal Costs.** Landfill disposal costs are those items over which the franchise hauler has little or no control. Adjustments to landfill disposal costs during an interim year are based on the franchise hauler's projections, not projected

changes in the CPI. Total landfill disposal costs in the prior base year must be calculated to determine the weighting of operating costs to landfill disposal costs. Landfill disposal costs from the base year are entered in line 6.

- 3. Calculate Weightings.** Total operating costs (other than landfill disposal) (line 5) plus total landfill disposal costs (line 6) equals the total base year revenue requirement. This total is entered on line 7 of the worksheet.

A weighting for both operating costs (other than landfill disposal) and landfill disposal costs is calculated as follows:

**Operating Costs (Other Than Landfill Disposal):**

$$\begin{array}{r} \text{Total operating costs (Line 5)} \\ \text{Divided by} \quad \text{Base year revenue} \\ \quad \quad \quad \text{requirement (Line 7)} \\ \hline \text{Equals} \quad \text{Operating costs (other than} \\ \quad \quad \quad \text{landfill disposal), as a percentage of} \\ \quad \quad \quad \text{base year revenue requirement.} \end{array}$$

This percentage figure is entered on line 5, column 2, and line 16.

**Landfill Disposal Costs:**

$$\begin{array}{r} \text{Total landfill disposal costs (Line 6)} \\ \text{Divided by} \quad \text{Base year revenue} \\ \quad \quad \quad \text{requirement (Line 7)} \\ \hline \text{Equals} \quad \text{Landfill disposal costs, as a percentage} \\ \quad \quad \quad \text{of base year revenue requirement.} \end{array}$$

This percentage figure is entered on line 6, column 2, and line 19.

- 4. Calculate Projected Change in Consumer Price Index.** The percent change in the prior year June to June West Urban CPI is entered on line 8. This change in CPI is then entered on line 8. This change in CPI also is entered on line 17 of the worksheet.
- 5. Enter Landfill Disposal Cost Information from Application.** The figures on lines 1 through 7 of the application (actual and projected landfill disposal costs) are entered

in lines 9 through 15, respectively, of the worksheet. Any significant changes in these costs are documented by the franchise hauler. A significant change would be any increase greater than the change in the CPI, or a decrease of any amount. If a significant change has not been adequately explained, additional information is requested from the franchise hauler.

- 6. Review Mathematical Accuracy.** The mathematical accuracy of the franchise hauler's totals for Total Prior Year Landfill Disposal Costs (line 11), and Total Projected Interim Year Landfill Disposal Costs (line 14) are checked during this task. The percent change in landfill disposal costs should be calculated as follows:

$$\frac{\text{line 14} - \text{line 11}}{\text{line 11}}$$

After the percentage change in landfill disposal costs has been verified, this figure is entered in lines 15 and 20 of the worksheet.

- 7. Calculate Weighted Change in Operating Costs (Other Than Landfill Disposal).** Figures should have been entered on line 16, operating costs (other than landfill disposal) as a percent of base year revenue requirements, and line 17, the projected change in CPI, based on calculations completed in previous tasks. To obtain the weighted change in operating costs (other than landfill disposal), line 16 is multiplied by line 17 and the result entered on line 18.
- 8. Calculate Weighted Change in Landfill Disposal Costs.** Line 19, landfill disposal costs, as a percent of base year revenue requirements, and line 20, projected change in landfill disposal costs, should now have an entry based on calculations completed in previous tasks. To obtain the weighted change in landfill disposal costs, line 19 is multiplied by line 20 and the result entered on line 21.
- 9. Calculate Total Change in Cost.** To calculate the total percentage change in costs, line 18, the weighted change in operating costs (other than landfill disposal), is added

to line 21, the weighted change in landfill disposal costs, and the result entered on line 22, total percent change in costs.

- 10. Calculate Franchise Fee Adjustment.** In order to account for changes in the franchise fee resulting from a change in rates, an adjustment is made to the percentage change in total costs which was entered on line 22. The adjustment factor is equal to one minus the franchise fee ( $1.00 - \text{_____} = \text{_____}$ ). This value should be entered on line 23.
- 11. Calculate Percent Change in Existing Rates.** The final task in this step is to calculate the percent change in existing rates. To determine this change, line 22 (total percent change in costs) is divided by line 23 (franchise fee adjustment), and the result is entered on line 24. The value on line 24 should be greater than the value on line 22. The difference accounts for the change in franchise fees.
- 12. Enter Rate Change.** The rate change identified in line 24 should be entered on Page 1, line 1 of the worksheet.
- 13. Calculate New Residential Rates.** Current rates for residential solid waste collection are entered in column one on page 1. The new rates (in column three) then are calculated by multiplying the current rate by one plus the percentage rate change identified on line 1. The rate adjustment (or the difference between the rate in column one and the rate in column three) is entered in column two.

To verify new rates, column one, lines 2 through 4, should be added to column two and the result should equal the rate in column three. This third column provides the new schedule of residential rates.

The County should separately calculate new commercial rates using the percentage change in rates.

---

**c. Request Additional Data, and Clarification, if Necessary**

If necessary, County staff requests clarification and/or additional data from the franchise hauler. The request is to clarify the franchise hauler's assumptions for projected changes in landfill disposal costs and to indicate the expected change in rates.

**d. Prepare Draft Report**

The County staff prepares a high level draft report with recommendations for new rates. This report should be brief and include the following sections:

- **Executive Summary.** This is a summary of the review process and includes a chart showing current and proposed rates, and the recommended rate change.
- **Background.** This section of the report provides a brief overview of the rate change process and discussion of any significant historical issues.
- **Analysis and Discussion of Issues.** This section includes a review of the analysis work completed by County staff. This section also includes a discussion of any significant changes in landfill disposal costs and an identification of the change in CPI assumed by the County.
- **Recommendation.** The County staff presents its recommendation regarding any change in rates in this section. The staff's recommendations shall be consistent with the provisions of the Franchise Agreement.
- **Attachments.** Attachments to the report would include:
  - Rate application
  - Revised rate schedule(s)
  - *Interim Year Rate Change Worksheet.*

After the draft report and recommendations have been prepared, the document should be

submitted to the franchise hauler for comment and review.

**e. Receive Comments from Franchise Hauler**

The franchise hauler reviews the draft report to ensure that any calculations and analyses completed by County staff are fair, reasonable, and justified. The franchise hauler reviews the draft report to ensure the following:

- Correct data are included
- County staff analysis is accurate and fair
- Rate changes are reasonable and acceptable.

If any issues are identified during this step, the franchise hauler works with County staff to fully explore and resolve these outstanding issues. A written response to the draft report is then prepared. The response may cover one or more of the following topics:

- Data discrepancies in any of the areas noted in the prior task
- Clarification for the County or alternative analysis of the application
- Responses to the County's request for additional information.

**f. Prepare Final Report**

The County prepares the Final Report incorporating comments from the franchise hauler, as appropriate. Any comments or issues raised during the franchise hauler's review of the draft report are addressed. If necessary, representatives from the County and the franchise hauler should meet to resolve issues. The report should reflect final solutions to outstanding issues.

After final comments from the franchise hauler have been considered, the County prepares the Final Report. The County should submit a copy of the Final Report to the franchise hauler.

### C. Step 3 – Receive Approval from County Public Works Director

**Responsibility:** County

**Timing:** Completed one month prior to expected implementation of new rates

- Tasks:** a. Distribute Final Report to County  
b. Obtain County Approval.

#### Overview

During this step, the County reviews and approves the Final Report.

#### a. Distribute Final Report to County

In this task, the County Franchise Contract Manager and Public Works Director review the Final Report and recommended rate changes. If errors are identified, Step 3 is repeated.

#### b. Obtain County Approval

If no errors are noted in the Final Report, the County Public Works Director approves and implements the recommended rate changes.

### D. Step 4 – Notify Customers and Implement New Rates

**Responsibility:** Franchise hauler

**Timing:** Conducted following the approval of the new rates by the County

- Tasks:** a. Notify Customers  
b. Implement Rate Change.

#### Overview

After new rates have been approved by the County, the final step in the process is to implement the new rates.

#### a. Notify Customers

After the report is approved, a notification of a rate change should be mailed to all customers.

#### b. Implement Rate Change

During this final task, the franchise hauler enters the new rates into their billing system and includes the new rates on the next appropriate customer invoice. If a rate change occurs during the middle of a billing cycle, unbilled or overbilled amounts are calculated and included in the next billing cycle.

# Appendix A

## Blank Forms and Worksheets

**Exhibits A-1** through **A-4**, on the following pages, include blank base year rate application forms, solid waste fee survey forms, interim year rate application forms, and interim year rate change worksheets. This appendix is organized as follows:

- **Exhibit A-1** – *Base Year Rate Application*
- **Exhibit A-2** – *Solid Waste Rate Survey*
- **Exhibit A-3** – *Interim Year Rate Application*
- **Exhibit A-4** – *Interim Year Rate Change Worksheet.*

Exhibit A-1  
Sample Base Year Rate Application

Base Year Rate Application

Summary

Rate Change

1. Percent Rate Change Requested  %

Residential Rate Schedule

Rate Schedule (per customer, per month)	Current Rate	Rate Adjustment	New Rate
2.1. 1, 32-gallon cart	\$		\$
2.2. 1, 64-gallon cart			
2.3. 1, 96-gallon cart			
2.4. One extra cart			
2.5. Residential - All other services			

Certification

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by Butte County.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Fiscal Year: \_\_\_\_\_

## Base Year Rate Application

	Actual Prior Year	Estimated Current Year	Projected Base Year
<b>Section I--Allowable Operating Costs</b>			
3. Direct Labor	\$	\$	\$
4. Equipment Costs and Facility Costs			
5. Landfill Disposal Costs			
6. Office Salaries			
7. General and Administrative Costs			
8. <b>Total Allowable Operating Costs</b>	\$	\$	\$
<b>Section II--Allowable Operating Profit</b>			
9. Operating Ratio	%	%	%
10. Allowable Operating Profit	\$	\$	\$
<b>Section III--Pass Through Costs without Franchise Fees</b>			
11. Interest Expense	\$	\$	\$
11a. Two-Year Revenue True Up (Applicable for the 2017 Base Year Only)			
12. <b>Total Pass Through Costs</b>	\$	\$	\$
<b>Section IV--Revenue Requirement without Franchise Fees</b>			
13. Total Allowable Operating Costs (Line 8) plus Allowable Operating Profit (Line 10) plus Total Pass Through Costs (Line 12)	\$	\$	\$
<b>Section V--Revenues without Rate Change in Base Year</b>			
Residential Revenues	Current Rate/Month	Months	Projected Accounts
14. 1, 32-gallon cart	\$	12	\$
15. 1, 64-gallon cart		12	
16. 1, 96-gallon cart		12	
17. One extra cart		12	
18. Residential - All other services		12	
19. Residential Revenues Subtotal			\$
20. Less: Allowance for Uncollectible Residential Accounts			
21. Total Residential Revenues (without Rate Change in Base Year)			\$
22. Commercial Revenues			\$
23. Less: Allowance for Uncollectible Commercial Accounts			
24. Total Commercial Revenues (without Rate Change in Base Year)			\$
25. Recycled Material Sales			\$
26. <b>Total Revenues (Lines 21 + 24 + 25)</b>			\$
<b>Section VI--Net Shortfall (Surplus)</b>			
27. Net Shortfall (Surplus) without Franchise Fees (Line 13 - Line 26)			\$
28. Residential and Commercial Franchise Fees			\$
29. Net Shortfall (Surplus) with Franchise Fees (Lines 27 + 28)			\$
<b>Section VII--Percent Change in Rates</b>			
30. Total Residential and Commercial Revenues Prior to Rate Change (Line 21 + 24)			\$
31. Percent Change in Existing Residential/Commercial Rates (Line 29 + Line 30)			%

**Fiscal Year:**

Exhibit A-1

Sample Base Year Rate Application (continued)

## Base Year Rate Application

**Operating Information**

	Prior Year Information	Current Year Estimated Information	Percent Change	Base Year Projected Information	Percent Change
<b>Section VIII--Operating Data</b>					
32. Residential Accounts			%		%
33. Multi-family Accounts			%		%
34. Commercial Accounts			%		%
35. Total Accounts			%		%
36. Residential Refuse Tons			%		%
37. Residential Recycling Tons			%		%
38. Residential Yard Waste Tons			%		%
39. Commercial Refuse Tons			%		%
40. Commercial Recycling Tons			%		%
41. "Free" Drop Boxes Provided (Monthly)			%		%
42. "Free" Bins Provided			%		%
<b>Section IX--Change in Commercial Rates</b>					
43. 2 Yard Bin--Once per Week			%		%
44. 3 Yard Bin--Once per Week			%		%
45. 4 Yard Bin--Once per Week			%		%
46. 5 Yard Bin--Once per Week			%		%
47. 6 Yard Bin--Once per Week			%		%

**Fiscal Year:**

To be developed as part of base year rate review.

**Exhibit A-3**

**Sample Interim Year Rate Application**

## Interim Year Rate Application

Change in Landfill Disposal Costs			Total
1.		Prior Year Landfill Tipping Fees Per Ton	\$
2.	<i>Multiplied by:</i>	Prior Year Landfill Tons	
3.	<i>Equals:</i>	Total Prior Year Landfill Disposal Costs	\$
4.		Projected Interim Year Landfill Tipping Fees Per Ton	\$
5.	<i>Multiplied by:</i>	Projected Interim Year Landfill Tons	
6.	<i>Equals:</i>	Total Projected Interim Year Landfill Disposal Costs	\$
7.		Projected Change In Landfill Disposal Costs	%

Provide an explanation of any changes in landfill disposal costs (i.e., landfill tipping fees paid by the franchise hauler, landfill tonnage). Attach supporting documentation to this application as appropriate.

**Section III--Certification**

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by Butte County.

Name:

Title:

Signature:

Date:

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## Interim Year Rate Change Worksheet

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**Summary**

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1. Percent Rate Change Requested %

	Rate Schedule (per customer, per month)	Current Rate	Rate Adjustment	New Rate
2.	<b>Butte County</b>			
2.1	1, 32-gallon cart	\$		\$
2.2	1, 64-gallon cart			
2.3	1, 96-gallon cart			
2.4	Residential - All other services			

---

**Year:** *Page 1 of 2*

Exhibit A-4

Sample Interim Year Rate Change Worksheet (continued)

## Interim Year Rate Change Worksheet

**Financial Information**

**Section I—Base Year Costs**

**Base Year Operating Costs (Other Than Landfill Disposal)**

1.		Total Allowable Operating Costs		
2.	<i>Plus:</i>	Allowable Operating Profit		
3.	<i>Plus:</i>	Total Pass Through Costs		
4.	<i>Minus:</i>	Landfill Disposal Costs		
5.	<i>Equals:</i>	Total Operating Costs (Other Than Landfill Disposal)		%

**Base Year Landfill Disposal Costs**

6.		Total Landfill Disposal Costs		%
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7.	<b>Base Year Revenue Requirement</b>			%
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**Section II—Changes in Costs**

**Change in Operating Costs (Other Than Landfill Disposal)**

8.		Projected Change in Consumer Price Index		%
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**Change in Landfill Disposal Costs**

9.		Prior Year Total Landfill Tipping Fees Per Ton		
10.	<i>Multiplied by:</i>	Prior Year Total Landfill Tons		
11.	<i>Equals:</i>	Total Prior Year Total Landfill Disposal Costs		

12.		Projected Interim Year Total Landfill Tipping Fees Per Ton		
13.	<i>Multiplied by:</i>	Projected Interim Year Total Landfill Tons		
14.	<i>Equals:</i>	Total Projected Interim Year Total Landfill Disposal Costs		

15.		Projected Change In Total Landfill Disposal Costs		%
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**Section III—Calculation of Percent Change in Rates**

**Weighted Change in Operating Costs (Other Than Landfill Disposal)**

16.		Operating Costs as % of Base Yr. Revenue Requirement		%
17.	<i>Multiplied by:</i>	Projected Change in Consumer Price Index		%
18.	<i>Equals:</i>	Weighted Change in Operating Costs		%

**Weighted Change in Total Landfill Disposal Costs**

19.		Total Landfill Disposal Costs as % of Base Yr. Revenue Requirement		%
20.	<i>Multiplied by:</i>	Projected Change in Total Landfill Disposal Costs		%
21.	<i>Equals:</i>	Weighted Change in Total Landfill Disposal Costs		%

**Total Change**

22.		Total Percent Change in Costs		%
23.	<i>Divided by:</i>	Adjustment for Franchise Fee (1 - ____%) <sup>1</sup>		%
24.	<i>Equals:</i>	<b>Percent Change in Existing Rates</b>		%

Year:

<sup>1</sup> In a year where the County increases the percentage franchise fee from current levels (i.e., 2%), this formula does not apply. The County will need to adjust the proposed percent change in costs (i.e., line 26) to cover the increase in franchise fees within the rate.

