COUNTY OF SACRAMENTO

DEPARTMENT OF WASTE MANAGEMENT & RECYCLING

# REQUEST FOR PROPOSALS

# FOR ORGANIC MATERIAL DIVERSION SERVICES

January 2019

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# TABLE OF CONTENTS

**1 PROJECT SUMMARY ..... 1**
**2 BACKGROUND ..... 2**
2.1 COLLECTION OPERATIONS ..... 2
2.2 COUNTY FACILITIES ..... 3
2.3 OTHER FACILITIES ..... 4
2.4 GREEN WASTE QUALITY ..... 4
2.5 PROJECT DESCRIPTION ..... 5
2.6 PROPOSED SERVICES ..... 5
**3 PROPOSAL SUBMISSION PROCESS ..... 7**
3.1 MANDATORY PROPOSERS CONFERENCE & COUNTY FACILITY SITE VISITS ..... 7
3.2 RFP QUESTIONS AND ANSWERS ..... 7
3.3 SUBMITTAL REQUIREMENTS ..... 8
3.4 EVALUATION AND SELECTION PROCESS ..... 8
3.5 NEGOTIATIONS AND AWARD OF CONTRACT ..... 8
3.6 PERFORMANCE BOND REQUIREMENT ..... 8
3.7 JURISDICTIONS' RIGHTS, OPTIONS, AND POLICIES ..... 9
**4 PROPOSAL CONTENT ..... 10**
4.1 COVER LETTER AND WILLINGNESS TO SIGN ..... 10
4.2 EXECUTIVE SUMMARY ..... 10
4.3 TERM AND TONNAGE COMMITMENT MATRICES ..... 10
4.4 PROPOSAL CONTACTS ..... 11
4.5 REFERENCES ..... 11
4.6 COMPANY HISTORY, PAST PROJECTS, FINANCIAL BACKING ..... 11
4.7 DIVERSION SERVICES FACILITY ..... 12
4.8 COMMERCIALLY GENERATED ORGANIC MATERIAL ..... 12
4.9 END-PRODUCT MARKETING PLAN ..... 13
4.10 AGREEMENT DEFAULT ..... 13
**5 EVALUATION OF PROPOSALS ..... 14**
5.1 SELECTION COMMITTEE ..... 14
5.2 QUALIFIED PROPOSERS ..... 14
5.3 RATING OF PROPOSERS ..... 14
5.4 DISQUALIFICATION OF PROPOSALS ..... 14

**FIGURE 1- County of Sacramento Collection Areas ..... 15**
**FIGURE 2- City of Sacramento Collection Areas ..... 16**
**FIGURE 3- City of Folsom Collection Area ..... 17**
**FIGURE 4- County of Sacramento North Area Recovery Station Map ..... 18**
**FIGURE 5- County of Sacramento South Area Transfer Station Map ..... 19**
**EXHIBIT A- County of Sacramento Sample Contract ..... 20**
**EXHIBIT B- City of Sacramento Sample Contract ..... 39**
**EXHIBIT C- City of Folsom Sample Contract ..... 59**
**ATTACHMENT 1- Near-Term and Tonnage Commitment Matrix ..... 71**
**ATTACHMENT 2- Long-Term and Tonnage Commitment Matrix ..... 72**
**ATTACHMENT 3- Agreement Default ..... 73**

# 1 PROJECT SUMMARY

The County of Sacramento Department of Waste Management & Recycling (COUNTY) is taking the lead role soliciting responses to this Request for Proposals (RFP) for DIVERSION SERVICES, described in Section 2.6, for residentially collected food waste and green waste, (defined herein as "ORGANIC MATERIAL"). The City of Sacramento (SACRAMENTO) and the City of Folsom (FOLSOM) are also participating in this solicitation; SACRAMENTO and FOLSOM will be referred to as the "CITIES" in this RFP. The terms contained in this RFP and the successful PROPOSERS' proposal will be incorporated within any agreements executed by COUNTY, SACRAMENTO, and FOLSOM ("hereinafter referred to as "JURISDICTIONS") for this work. Any reference to "PROPOSER", "SUCCESSFUL PROPOSER", and "CONTRACTOR" herein may be considered one and the same as appropriate.

The JURISDICTIONS will likely execute individual contracts with one or more CONTRACTOR. It is also possible that the JURISDICTIONS will have different contractual requirements for forms given the CITIES do not own facilities and the COUNTY does. For example, in one possible scenario, CONTRACTOR may be engaged in contract with COUNTY for delivering ORGANIC MATERIAL from transfer while the CITIES are engaged in contract with COUNTY for tipping of ORGANIC MATERIAL at a COUNTY facility. As another example, one or more CITIES and the COUNTY may be engaged in contract with CONTRACTOR for tipping ORGANIC MATERIAL directly off-route. It is possible, given that more than one CONTRACTOR is likely to be selected, that both of these scenarios take shape concurrently. This RFP is crafted to create opportunity for a wide variety of possible DIVERSION SERVICES.

The following are some key items about this RFP:

- **Important dates**:
  - Tuesday January 29, 2019 at 9:00 AM: Mandatory PROPOSERS Conference
  - Thursday February 14, 2019 at 3:00 PM: RFP Questions Submittal Deadline
  - Thursday February 21, 2019 at 3:00 PM: Written Responses to RFP Questions
  - Thursday April 18, 2019 at 3:00 PM: Proposal Submittal Deadline

- **Tonnage Commitments and Term**: PROPOSERS are given the opportunity in this RFP to propose pricing for various tonnage commitments and lengths of contract terms. A Term and Tonnage Commitment Matrix is included for PROPOSER to summarize differences in their proposed pricing under various tonnage commitment or term of contract scenarios. A completed Term and Tonnage Commitment Matrix is a required element of any proposal. Those proposing a new facility should include this cost in the price per ton.

- **Diversion Facility**: PROPOSER may submit proposals for DIVERSION SERVICES to be provided (1) at a COUNTY-owned facility (described in more detail in Section 2.2) or (2) at an <u>existing</u> facility owned or operated by the PROPOSER, or (3) at a facility owned or operated by the PROPOSER that is yet to be constructed.

# 2 BACKGROUND

## 2.1 COLLECTION OPERATIONS

The JURISDICTIONS manage independent collection operations. Each delivers refuse, single stream recyclables, and green waste to disposal and processing facilities in the Sacramento area. According to the timetable of implementation of Senate Bill (SB) 1383, food waste is presumed to be added to the green waste collection system by January 1, 2022.

The following table summarizes current estimated, approximate annual ORGANIC MATERIAL generation rates for the JURISDICTIONS. TPY means tons per year.

| Jurisdiction | Customers | Green waste | Food waste | Total organics |
|---|---|---|---|---|
| County of Sacramento | 155,000 | 80,000 TPY | 14,000 TPY | 94,000 TPY |
| City of Sacramento | 120,000 | 68,000 TPY | 13,000 TPY | 81,000 TPY |
| City of Folsom | 24,000 | 9,000 TPY | 4,000 TPY | 13,000 TPY |
| County Facility Self Haul | | 35,000 TPY (wood & brush) | | 35,000 TPY |
| Totals | 299,000 | 192,000 TPY | 31,000 TPY | 223,000 TPY |

The COUNTY'S current–system for managing green waste begins with collection of approximately 80,000 (TPY) of residential green waste from the COUNTY'S approximately 155,000 residential curbside customers. Of these, approximately 22,000 TPY are collected in the COUNTY'S South Collections area and delivered to the Kiefer Landfill for use in alternative daily coverage (ADC). The remaining 58,000 TPY are collected in the COUNTY'S North Collections area and delivered to North Area Recovery Station (NARS) and transferred to Old Durham Wood, Inc. located in Durham, CA. Figure 1 depicts the North and South collections areas and the location of the COUNTY facilities which might be used to handle organic material. The COUNTY also collects wood and brush materials from the same residential customers as part of its Bulky Waste Pickup program. Residential green waste is generated and collected with seasonal peaks; the largest peak period is from approximately October to December. A second, more modest peak season occurs in April and May. In addition to green waste, the COUNTY collects approximately 142,000 TPY of residential solid waste (88,000 TPY North; 54,000 TPY South). Assuming 10% of the residential solid waste is recoverable organics, an additional 14,000 TPY will be generated when the COUNTY begins food waste collection.

COUNTY also accepts direct hauled wood and brush from the Public at Kiefer Landfill and NARS. This material is handled in the same manner as described in the Collections paragraph above.

SACRAMENTO currently collects approximately 68,000 TPY of residential green waste from approximately 120,000 residential curbside customers. Of these, approximately 45,000 TPY are collected in SACRAMENTO'S south collections area and 23,000 TPY are

collected in SACRAMENTO'S north collections area, with the two areas roughly divided along the American River. Figure 2 depicts the SACRAMENTO'S residential collections area. SACRAMENTO offers its residents 90 gallon cans and weekly collection, as well as loose "in-the-street" collection during leaf season (November 1 through January 31). To meet the mandates of SB1383 and provide complete organics collection, SACRAMENTO envisions adding food waste to the 90 gallon cans prior to January 1, 2022. Food waste would not be allowed as part of "in the street" collection, and for as long as SACRAMENTO continues collecting green waste in the street, CONTRACTOR can expect two different streams of material upon implementation of food waste collection. This would include an ORGANIC MATERIAL mix of food and green waste in the container, and just green waste from loose "in the street" collection. Of the approximately 68,000 tons of green waste SACRAMENTO collected in 2018, approximately 41,000 came from containerized collection, and approximately 27,000 came from loose in the street collection.

All SACRAMENTO green waste is currently delivered to the Elder Creek Transfer Station and is utilized for a combination of ADC, biomass fuel, and land application. SACRAMENTO also collects wood & brush materials from the same residential customers as part of its Household Junk Pickup program and delivers that material to Elder Creek Transfer Station. In addition to green waste, SACRAMENTO collects approximately 131,000 TPY of residential solid waste (44,000 TPY north; 88,000 TPY south). Residential solid waste collected in the north is tipped at NARS and residential solid waste collected in the South is tipped at Sacramento Recycling and Transfer Station on Fruitridge Road. Having a tipping location in the north and south provides efficiency to the collection service that the City would ideally like to maintain for organics services. Assuming 10% of the residential solid waste is recoverable organics, an additional 13,000 TPY will be generated when SACRAMENTO begins food waste collection.

FOLSOM currently collects approximately 9,000 TPY of residential green waste from approximately 24,000 residential curbside customers. Figure 3 depicts FOLSOM'S collection area. FOLSOM green waste is delivered to the Kiefer Landfill and is utilized for ADC. FOLSOM also collects wood and brush from the same residential customers as part of its Bulky Waste Collection program and delivers that material to Kiefer Landfill. In addition to green waste, FOLSOM collects approximately 18,000 TPY of residential solid waste. FOLSOM staff estimates an additional 4,000 TPY will be generated when the FOLSOM begins food waste collection.

## 2.2 COUNTY FACILITIES

The COUNTY manages two solid waste facilities that potentially could be used to receive, pre-process, transfer, or process ORGANIC MATERIALS. PROPOSERS are encouraged to consider and investigate the use of these facilities for siting a facility where DIVERSION SERVICES could be performed.

### 2.2.1 NORTH AREA RECOVERY STATION

The North Area Recovery Station (NARS), located at 4450 Roseville Road in North Highlands, is a 23-acre COUNTY facility that is open from 6:30 AM to 6:00 PM Monday to Friday and 8:00 AM to 6:00 PM Saturday and Sunday. NARS accepts a combined total of approximately 122,000 tons of MSW per year from COUNTY and SACRAMENTO.

Approximately 80,000 TPY of green waste, including self-haul wood and brush, is currently tipped and reloaded at an outdoor tipping area at NARS. The COUNTY is currently conducting a master planning study to support improvements at NARS. The COUNTY envisions an indoor tipping area for MSW, ORGANIC MATERIAL, and possibly single stream recyclables.

NARS has a household hazardous waste facility on site which accepts batteries, paint, oil, and many other common household hazardous materials from area residents and small businesses. COUNTY also accepts and separates concrete, tires, e-waste, cardboard, mattresses, appliances, carpet, and metals. Figure 4 is a current site plan of NARS.

### 2.2.2 SOUTH AREA TRANSFER STATION

The South Area Transfer Station (SATS), located at 8550 Fruitridge Road in Sacramento, is a 12 acre COUNTY facility that is currently not used to transfer any material. SATS is an open air transfer station. It is permitted to accept up to 348 tons per day. The site is currently shared with two private tenants, Incline Energy and Atlas Disposal. The Incline Energy facility is located on the northeastern corner of the site and includes an inactive anaerobic digester occupying 1.57 acres. Atlas Disposal leases two portions of the site, a 0.78 acre in northwestern corner of the property where Atlas Re-Fuel operates an active CNG fueling station open to commercial traffic seven days a week. Atlas Disposal also separately leases the southern third of the property approximately 3.27 acres and will be constructing a terminal yard with offices, maintenance, and CNG slow fill station for collection vehicles. Construction is expected to begin in 2019. The current functional tipping area is approximately 5 acres in size. Figure 5 is a current site plan of SATS.

Green waste is currently not tipped and processed at SATS; however the site has been used for that purpose on an emergency basis in the past. The SATS site may serve as a potential preprocessing and transfer site. PROPOSERS are encouraged to consider the possibility of utilizing this site for ORGANIC MATERIALS.

## 2.3 OTHER FACILITIES

The Sacramento Regional Solid Waste Authority (SWA), a joint powers authority formed by COUNTY and SACRAMENTO, advanced a composting project that was considered for a variety of locations. It was named Sacramento GreenCycle, a name that has been trademarked by others. An Environmental Impact Report (Control Number PNLP2009-PWE-70173 State Clearinghouse Number 2010022015) was prepared for the project, but the project was indefinitely suspended in 2015. The JURISDICTIONS will consider proposals for ORGANIC MATERIAL DIVERSION SERVICES to be provided at any of these previously evaluated locations or at other locations within or outside of Sacramento County.

## 2.4 GREEN WASTE QUALITY

In October 2018, the COUNTY conducted a two week long characterization study on COUNTY'S residentially collected green waste. The green waste characterized did not include any green waste from either SACRAMENTO or FOLSOM. SACRAMENTO and FOLSOM have not conducted a green waste characterization for the purposes of this RFP. COUNTY found a 4% (by weight) average contamination rate. This result should be

considered for informational purposes only and in no way presents a guarantee of ORGANIC MATERIAL contamination rates.

## 2.5 PROJECT DESCRIPTION

The JURISDICTIONS are soliciting proposals from PROPOSERS with demonstrated experience and qualifications in receiving, pre-processing, loading, transferring, and/or processing ORGANIC MATERIAL. JURISDICTIONS intend to select the PROPOSER(S) that provide the most efficient, economical, and best value suite of services given their needs. PROPOSERS should review the sample agreements provided by each JURISDICTION. Upon selection, the PROPOSER(S) will be required to execute an agreement with at least one of the JURISDICTIONS. Under the terms of the agreement (see sample agreements in Exhibits A, B, and C), the PROPOSER(S) will be required to receive, pre-process, load, transport, and/or process, and in all scenarios (1) take ownership of and (2) divert ORGANIC MATERIAL from landfilling. The Local Enforcement Agency (LEA) may require the selected PROPOSER(S) to obtain a Solid Waste Facilities Permit (SWFP) and other approvals related to the operation of an ORGANIC MATERIALS processing facility may be necessary. The JURISDICTIONS are requiring that the successful PROPOSER(S) obtain all required permits (e.g. local land use authority, Solid Waste Facility Permit, Regional Water Quality Control Board, Regional Air Quality Management District, etc.), as applicable, for its processing facility to be used for diverting ORGANIC MATERIAL prior to providing services of this agreement. This requirement shall be in force regardless of the processing facility location, whether in Sacramento County, or any other county within or outside of California.

PROPOSER acknowledges that JURISDICTIONS would enter these agreements with PROPOSER to, among other things, secure diversion credit according to State mandates and secure protection from environmental liability for DIVERSION SERVICES. In accepting this material for processing, CONTRACTOR assumes ownership of the material and accepts all short, medium, and long-term liability for the material and methods use to achieve DIVERSION SERVICES.

The term of this contract shall be up to 20 years, beginning July 1, 2020, the timeframe being dependent on the nature of the proposal(s) accepted.

## 2.6 PROPOSED SERVICES

CONTRACTOR is to be responsible for diversion of ORGANIC MATERIAL.

### 2.6.1 DIVERSION SERVICES

CONTRACTOR shall manage and market the JURISDICTIONS' ORGANIC MATERIAL in a manner that ensures the JURISDICTIONS will receive diversion credit under the requirements of California Code of Regulations, Title 14, Division 7, Chapter 9.3, section 18840 et seq.

### 2.6.2 PROCESSING

All ORGANIC MATERIAL processing will take place in the CONTRACTOR'S facility, even if CONTRACTOR'S facility is located within the boundaries of a COUNTY facility.

CONTRACTOR will accept ORGANIC MATERIAL in an "as is" condition from JURISDICTION at the time ORGANIC MATERIAL is delivered to CONTRACTOR'S facility.

### 2.6.3 NEAR-TERM AND LONG-TERM SERVICES

The JURISDICTIONS seek proposals for providing DIVERSION SERVICES for either the Near-Term or Long-Term or both.

#### 2.6.3.1 NEAR-TERM SERVICES

Near-term services are defined as those services that would occur through an anticipated contract term of up to 5 years, approximately from July 1, 2020 to July 1, 2025. Attachment 1, "Near-Term and Tonnage Commitment Matrix" is a table that allows PROPOSERS to provide pricing per ton for terms up to 5 years. From approximately July 1, 2020 to December 31, 2021 it is anticipated that ORGANIC MATERIAL DIVERSION SERVICES would be provided for a waste stream that consists primarily of residentially collected green waste.

The JURISDICTIONS have not selected a start date to begin collecting residential food waste and will consider commencing prior to being required to by regulations issued pursuant to SB1383, i.e. by December 31, 2021. However, by that date at the latest, the JURISDICTIONS will collect residential food waste and it is anticipated that food waste will be commingled with green waste. Some self-haul material, such as wood and brush that arrives at COUNTY facilities, could be included, but the goal for the near-term services would be for diversion of residentially collected green waste.

#### 2.6.3.2 LONG-TERM SERVICES

Long-term services are defined as those services that would occur through an anticipated contract term of up to 20 years. Attachment 2, "Long-Term and Tonnage Commitment Matrix," is a table that allows PROPOSERS to provide pricing per ton, for terms up to 20 years, with a flexible start date. Long-term DIVERSION SERVICES would be provided for a waste stream that consists of residentially collected green waste and residentially collected food waste. As mentioned above, other organic waste may become available at COUNTY facilities. The JURISDICTIONS are interested in developing long term DIVERSION SERVICES at COUNTY facilities or other locations that would meet our long term ORGANIC MATERIAL diversion needs.

The JURISDICTIONS will accept proposals for near-term and/or long-term DIVERSION SERVICES to be provided at NARS, at SATS, or at another facility, either new or existing, that is owned and operated by the PROPOSER.

# 3 PROPOSAL SUBMISSION PROCESS

The Proposal Submittal Deadline is 3:00 PM, Thursday, April 18, 2019.

All proposals must be received by 3:00 PM, Thursday, April 18, 2019, in the manner described in Section 3.3 of this RFP. If the submission is late or incomplete, the proposal will be rejected.

## 3.1 MANDATORY PROPOSERS CONFERENCE & COUNTY FACILITY SITE VISITS

A mandatory proposer's conference will be held to familiarize PROPOSERS with the JURISDICTIONS' goals for this project and the requirements of this RFP. Three optional site visits of COUNTY owned facilities will take place following the mandatory PROPOSER'S conference.

**Mandatory Proposers Conference:**

Date: January 29, 2019
Time: 9:00 – 10:00 AM
Location: County South Collections Administration Building
9611 Conservation Road, Sacramento, CA 95827

**Optional COUNTY facility site visits:**

Date: January 29, 2019
Time: 10:30 – 11:30 AM
Location: South Area Transfer Station
8550 Fruitridge Road, Sacramento, CA 95826
*Meet at the administrative building

Date: January 29, 2019
Time: 1:00 – 2:00 PM
Location: North Area Recovery Station
4450 Roseville Road, North Highlands, CA 95660
*Meet at the parking lot across from scalehouse

JURISDICTIONS' staff may provide verbal clarifications and responses to questions asked during the mandatory proposers conference and/or site visits. However, verbal clarifications and responses to questions provided by JURISDICTIONS' staff are non-binding.

JURISDICTIONS' staff will provide written clarifications and responses to all questions that are subsequently submitted in writing pursuant to Section 3.2 below.

## 3.2 RFP QUESTIONS AND ANSWERS

Proposers who wish to submit questions must do so in writing to Dave Ghirardelli via email only at ghirardellid@saccounty.net no later than 3:00 PM on Thursday, February 14, 2019. Written responses will be prepared and distributed to all Proposers. JURISDICTIONS reserve the right to amend and / or re-issue this RFP.

PROPOSERS must not contact other employees of the JURISDICTIONS or selection committee members regarding the contents of this RFP or the selection process. Questions regarding this RFP or the selection process must be directed to Dave Ghirardelli pursuant to the conditions above.

### 3.3 SUBMITTAL REQUIREMENTS

Proposals shall be submitted electronically to the COUNTY email address listed below no later than 3:00 PM on Thursday, April 4, 2019. Proposals received in any other form than electronically or after this deadline will not be considered. Electronic mail submission must be in Portable Document Format (PDF) not to exceed 20 pages (formatted for 8 ½ x 11" paper size, minimum font size of 12 points). PROPOSERS must note that County email filters will often block emails and/or attachments if they are over 20MB in size. It is the PROPOSER'S responsibility to minimize file size and COUNTY will not be responsible for submittals blocked because of file size. Please label message "Request for Proposals, Organic Material Diversion Services Procurement", and submit to ghirardellid@saccounty.net. Section 4 of this RFP describes the proposal content requirements in detail.

### 3.4 EVALUATION AND SELECTION PROCESS

The evaluation and selection process is described in detail in Section 5 of this RFP. All PROPOSERS will be notified in writing of the selection(s).

### 3.5 NEGOTIATIONS AND AWARD OF CONTRACT

Agreements will be negotiated following the final selection of the PROPOSER(S). If the JURISDICTIONS are unable to negotiate a satisfactory agreement with a selected firm, it may undertake negotiations with the next rated firm and so on until it has obtained satisfactory agreements.

### 3.6 PERFORMANCE BOND REQUIREMENT

If awarded an agreement with a JURISDICTION, the CONTRACTOR must secure and maintain a performance bond with the amount of the bond based on the CONTRACTOR'S estimated annual billing for performance of the agreement, to each JURISDICTION. CONTRACTOR is required to state the amount of the performance bond to be maintained as part of its RFP response.

Performance Bond Amount:

A Performance Bond shall be provided in a sum not less than one hundred percent (100%) of the annual value of the contract with each JURISDICTION to guarantee the faithful performance of all covenants and stipulations during the term of the agreement. The bond shall contain a provision that the surety thereon expressly waives the provisions of California Civil Code Sections 2819 and 2845. The required performance bond shall be annually renewable but shall allow for the Surety's non-renewal without penalty at the Surety's option.

Notification of Surety Companies:

The surety company shall be familiar with all the provisions and conditions of the agreement. It is understood and agreed that the Surety waives notice of change, extension

of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same, or any other act or acts by the JURISDICTION or the JURISDICTION'S authorized agents under the terms of the agreement; and failure to so notify the surety company of changes shall in no way relieve the surety company of its obligations under the agreement.

### 3.7 JURISDICTIONS' RIGHTS, OPTIONS, AND POLICIES

The JURISDICTIONS reserves the right to postpone selection for its own convenience, to cancel this RFP at any time, and/or to reject any and/or all proposals for any reason in its sole and exclusive discretion.

# 4 PROPOSAL CONTENT

In order to be considered, all proposals must contain each of the items described in this section 4 – Proposal Content, in the order listed herein and include all Attachments and/or forms required and provided in this RFP. Proposals not addressing all required items may be rejected.

## 4.1 COVER LETTER AND WILLINGNESS TO SIGN

All Proposers must indicate in a cover letter their willingness to sign an agreement with any or all of the JURISDICTIONS. Sample agreements are attached in Exhibits A, B, and C. Any exceptions in a proposal to the language in any of the Agreements must be explained in detail in the cover letter. Substantial differences in language or terms between a proposal and the Agreement may result in rejection of the proposal. The JURISDICTIONS reserve the right to negotiate minor modifications of the language contained within the attached agreements upon selection of the service provider(s). Insurance requirements that will be required of the PROPOSER(S) are included as part of Exhibits A, B and C.

## 4.2 EXECUTIVE SUMMARY

PROPOSER must include an executive summary of their proposal.

## 4.3 TERM AND TONNAGE COMMITMENT MATRICES

PROPOSER must complete at least one "Term and Tonnage Commitment Matrix" (Attachment 1, Near-Term Services; and/or Attachment 2, Long-Term Services), specifying their proposed cost proposal for DIVERSION SERVICES according to a range of tonnage commitments by the JURISDICTIONS and according to a range of contract term lengths. The Long-Term Services Matrix requires that the PROPOSER propose a contract start date.

Both matrices, for Near-Term Services and for Long-Term Services, are to be completed in the same manner; instructions are in Section 4.3.1 below. PROPOSER must enter at least one cost proposal in a cell in at least one Matrix. PROPOSER is encouraged to enter numerous cost proposals in any Matrix. PROPOSER is encouraged to submit both Near-Term and Long-Term Matrices. PROPOSER may submit more than one Matrix of either type. For more information on submitting multiple Matrices see Section 4.3.2 below.

### 4.3.1 MATRIX COMPLETION INSTRUCTIONS

Across the top of each matrix, labeling the columns beneath, are contract term lengths. Along the left side of each matrix, labeling the rows to the right, are annual tonnage commitment ranges. PROPOSER should enter a cost proposal (US dollars per ton) in the cell that corresponds to the tonnage commitment level and contract term length for the respective column and row. For example:

| | 1 year | 2 years | 3 years |
|---|---|---|---|
| 1,000-1,999 tons | | | |
| 2,000-2,999 tons | | | $50 |
| 3,000-3,999 tons | | | $45 |

In the completed matrix above, the PROPOSER proposes $50 per ton cost for a tonnage

commitment of 2,000 tons per year for a contract term of 3 years; and the PROPOSER proposes a $45 per ton cost for a tonnage commitment of 3,000 tons per year for a contract term of three years. Also in this example, the PROPOSER is uninterested in a contract for less than three years, no matter the tonnage commitment; and the PROPOSER is uninterested in a tonnage commitment of less than 2,000 tons per year.

### 4.3.2 COMPLETING MULTIPLE MATRICES FOR THE SAME CONTRACT TERM

PROPOSER may propose more than one near-term or long-term PROPOSAL. If so, PROPOSER must complete more than one Near-Term or Long-Term Tonnage Commitment Matrix. For example, if a PROPOSER operates a transfer and processing facility and could divert ORGANIC MATERIAL, for example, to either of *two* partnering composting facilities with different technologies and different Cost Proposal implications, PROPOSER should describe both composting facilities and technologies in detail in their PROPOSAL and complete two Term and Tonnage Commitment Matrices.

### 4.3.3 CPI ADJUSTMENT

For any cost proposal, JURISDICTIONS will presume an annual CPI adjustment to the cost proposal provided in the Term and Tonnage Commitment Matrix. The cost proposal figure provided must be the cost proposal for the first year of service by CONTRACTOR. The CPI shall be 100% of the Consumer Price Index – “All Urban Consumers, San Francisco – Oakland – Hayward, CA”, All items (1982-84=100), Not Seasonally Adjusted. The Maximum annual CPI adjustment from the previous year’s cost for providing DIVERSION SERVICES shall be three percent (3%).

## 4.4 PROPOSAL CONTACTS

PROPOSER must include professional resumes of 3 (three) key personnel who will be responsible for providing DIVERSION SERVICES. Personnel may be employed by separate companies if the proposal is submitted on behalf of a multi-company partnership. Professional summaries must describe the roles each of these personnel will perform under the proposal. The proposal must indicate 1 (one) primary contact and include phone number and email contact information for each. Professional summaries of personnel must not exceed 1 page each (3 pages total.)

## 4.5 REFERENCES

PROPOSER must include a current list of at least 3 (three) references and contacts for which similar services have been, or are being, performed. Local government references are preferred. The list should include the contracted entity name, contact person and their phone number and email address, the type of service provided, the length of time the services have been provided, and the tons per year processed for each contact. References must not exceed 3 pages.

## 4.6 COMPANY HISTORY, PAST PROJECTS, FINANCIAL BACKING

PROPOSER must include a description of the company history, including a brief summary of past projects of similar nature to the proposed facility (if applicable).

The Proposer must provide a written statement of its financial qualifications to perform the work described in the PROPOSAL. The statement must thoroughly describe and provide

documentation of the PROPOSER'S ability to secure financing for all trucks, facilities, other equipment and labor required to perform DIVERSION SERVICES to the JURISDICTIONS, and must include the total estimated amount of expense and financing that is expected to be incurred and utilized in performing the work.

The PROPOSER must provide copies of audited financial statements for each entity that is proposed to sign the Agreement, for the most recent three (3) fiscal years. In the event that a PROPOSER does not have audited financial statements, three years of business tax returns, with supporting schedules, may be provided. However, tax returns are not an alternative to providing audited financial statements; if the PROPOSER has audited financial statements, those must be provided.

The JURISDICTIONS reserve the right to require submission by PROPOSER, at no cost to the JURISDICTIONS, an opinion by a Certified Public Accountant with regard to the financial status of such PROPOSER, including ownership of, or interest in, equipment and facilities prior to award of an Agreement.

As is set forth in this RFP, the JURISDICTIONS will make reasonable efforts, but makes no representation, that it will be able to maintain total confidentiality of PROPOSER'S financial information. A PROPOSER that submits financial information that it asks to have treated as confidential must submit a statement justifying the request, reference it in the PROPOSAL and label it as a separate attachment, clearly identifying it as confidential. At all times, the JURISDICTIONS will comply with the provisions of the California Public Records Act.

### 4.7 DIVERSION SERVICES FACILITY

PROPOSER must describe the location(s) where DIVERSION SERVICES are to be performed. Description of location(s) must include street address, parcel number (even if the parcel is located outside the boundaries of Sacramento County), and zoning or General Plan designation.

PROPOSER must describe in detail the technology that will be utilized for diverting the JURISDICTIONS' ORGANIC MATERIAL and what facility type and tier it is/will be regulated as, by the pertinent Local Enforcement Agency.

PROPOSER must describe in detail the entitlements, permits, clearances, and all other regulatory approvals necessary, including a timeframe for acquiring said permits and entitlements, to commence providing DIVERSION SERVICES to the JURISDICTIONS.

PROPOSER should note that obtaining all the entitlements necessary, even if the proposal is for providing DIVERSION SERVICES at a COUNTY facility, will be the responsibility of the PROPOSER. Obtaining entitlements includes stakeholder and neighbor involvement.

The description of the DIVERSION SERVICES facility must not exceed 4 (four) pages.

### 4.8 COMMERCIALLY GENERATED ORGANIC MATERIAL

The purpose of this RFP is to obtain DIVERSION SERVICES for the JURISDICTIONS' residentially collected ORGANIC MATERIAL. However, many businesses operating within

the JURISDICTIONS generate ORGANIC MATERIAL that is or will be required to be diverted from landfilling. Commercially generated ORGANIC MATERIAL will likely consist of a higher concentration of food waste than residential ORGANIC MATERIAL.

The PROPOSER must include a statement whether their facility can accept commercially generated ORGANIC MATERIAL (likely to consist of a higher concentration of food waste as opposed to green waste). The PROPOSER must also describe what limits on food waste they have, in the form of percent, by weight, of each delivery.

### 4.9 END-PRODUCT MARKETING PLAN

PROPOSER must include a description of the end-product(s), company history of successful end-product marketing, and an end-product marketing plan for products produced from ORGANIC MATERIAL.

One anticipated provision in rules promulgated pursuant to SB 1383 is the mandated purchase of compost by JURISDICTIONS. If one of the end-products of the PROPOSER is finished compost, PROPOSERS are required to PROPOSE a cost per ton of finished compost to JURISDICTIONS as a part of their end-product marketing plan. PROPOSERS are encouraged to submit a nutrient analysis of their finished compost. End-product marketing plan should not exceed 3 (three) pages.

### 4.10 AGREEMENT DEFAULT

PROPOSER must include a list of all agreement defaults or early agreement terminations experienced by the PROPOSER or any of the PROPOSER'S subcontractors, with an explanation of circumstances surrounding said agreement defaults or early agreement terminations within the past 10 years, on a completed copy of Attachment 3. For large, publicly traded, corporations, PROPOSERS must develop a list that covers any agreement defaults or early terminations within the States of California, Oregon, Washington, Nevada, or Arizona.

# 5 EVALUATION OF PROPOSALS

## 5.1 SELECTION COMMITTEE

A Selection Committee will be convened to qualify and then rank all proposals. All three JURISDICTIONS will be represented on the Selection Committee.

## 5.2 QUALIFIED PROPOSERS

A PROPOSER will be deemed qualified based upon the information provided in the proposal submitted in response to all requirements of this RFP and attendance at the Mandatory Proposers Conference described in Section 3.1.

## 5.3 RATING OF PROPOSERS

PROPOSERS will be rated based on the proposal that best suits the needs of the JURISDICTIONS collectively. The JURISDICTIONS may consider, but are not limited to considering, the following when determining which PROPOSER(S) to select.

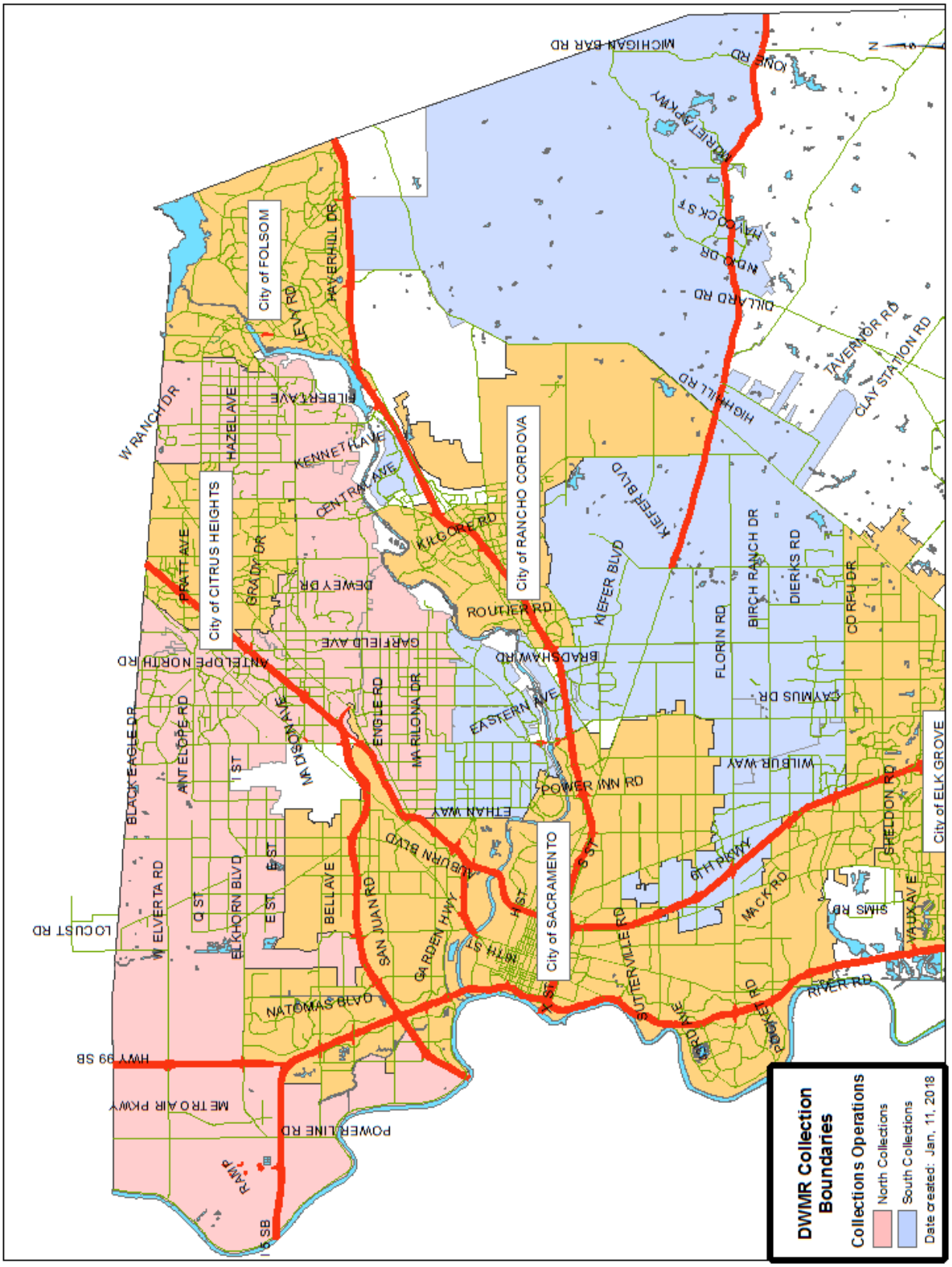
- Per ton costs for ORGANIC MATERIAL DIVERSION SERVICES;
- Facility capacity
- Related costs to JURISDICTIONS for preparing, processing, and delivering/transporting ORGANIC MATERIAL to PROPOSER;
- The proven, reliable nature of PROPOSER'S technology and product marketability;
- The proven and predictable nature of the regulatory framework for the PROPOSER'S technology;
- The overall feasibility of proposal;
- Company financial capabilities;
- Compatibility with JURISDICTIONS' needs;
- Facility readiness according to the JURISDICTIONS' timeframes;
- Greenhouse gas emissions impact;
- Ability to provide DIVERSION SERVICES to commercial generators of ORGANIC MATERIAL, such as source separated food waste
- Impacts to current County Solid Waste Facilities Permits

The JURISDICTIONS reserve the right to request additional information from all PROPOSERS. Additional information requested may include, but is not limited to, additional information to inform the Selection Committee regarding the PROPOSER'S financial capabilities. After the Selection Committee completes rating the PROPOSALS, the JURISDICTIONS will begin Agreement negotiations with PROPOSER(S) in the manner described in Section 3.5 of this RFP.

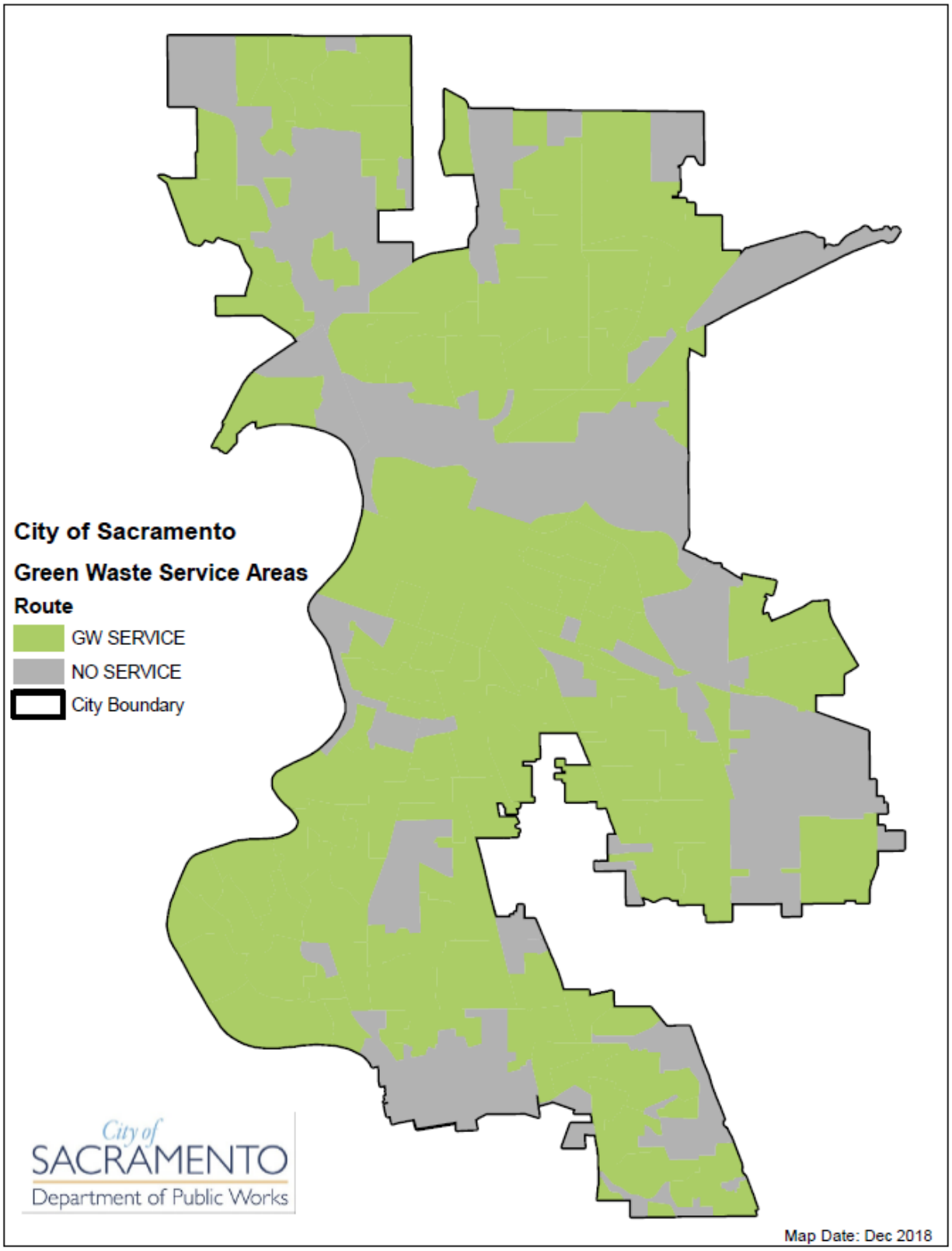
## 5.4 DISQUALIFICATION OF PROPOSALS

A PROPOSER failing to meet any of the requirements of this RFP may be disqualified.
At the sole discretion of the Selection Committee, a proposal may be disqualified if it is considered fatally flawed in any way. That is, a proposal may rate well in all categories except one, but if that category is determined to be non-responsive to the JURISDICTIONS' needs, the proposal may be disqualified at the JURISDICTIONS' discretion.

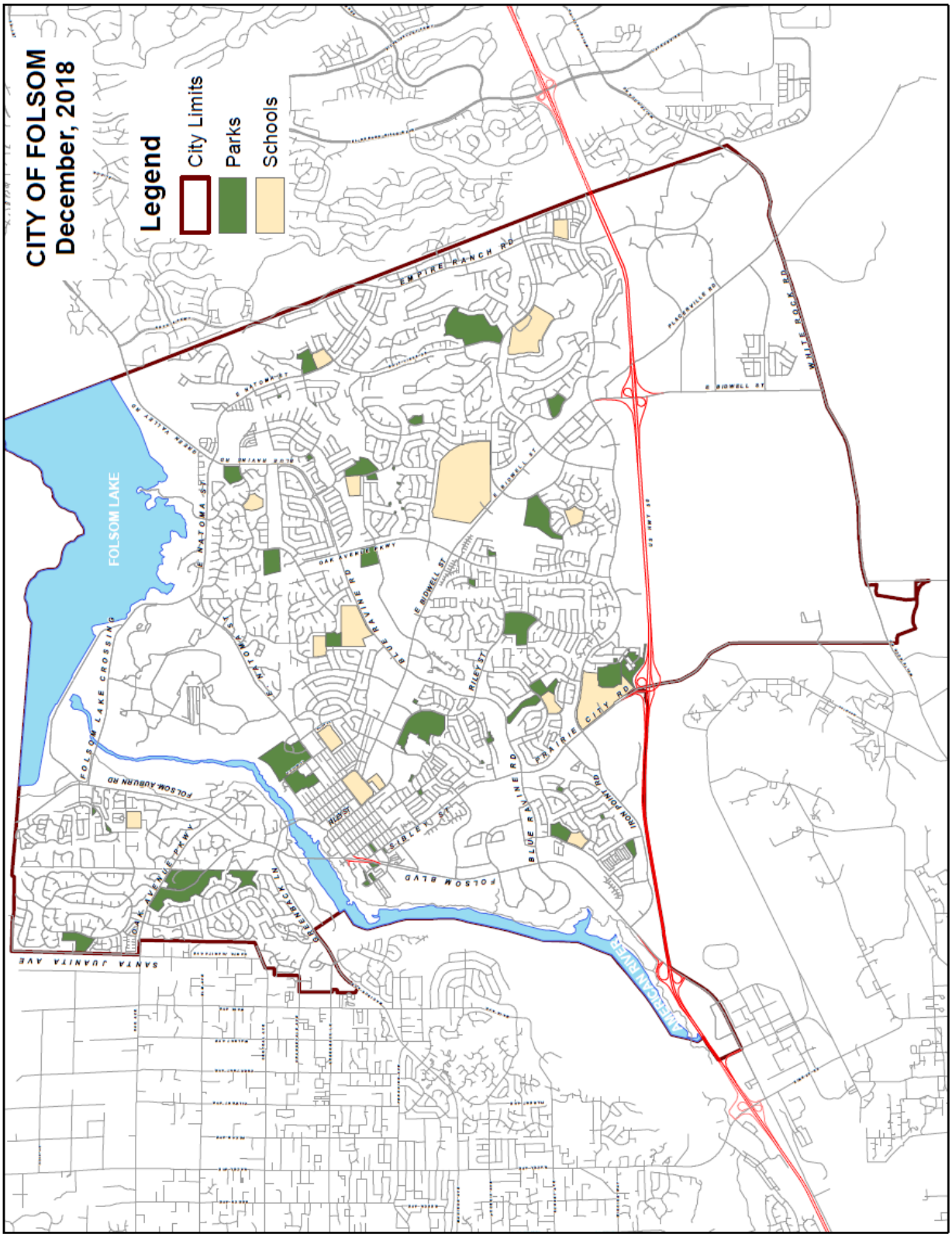
# FIGURE 1- COUNTY OF SACRAMENTO COLLECTION AREAS



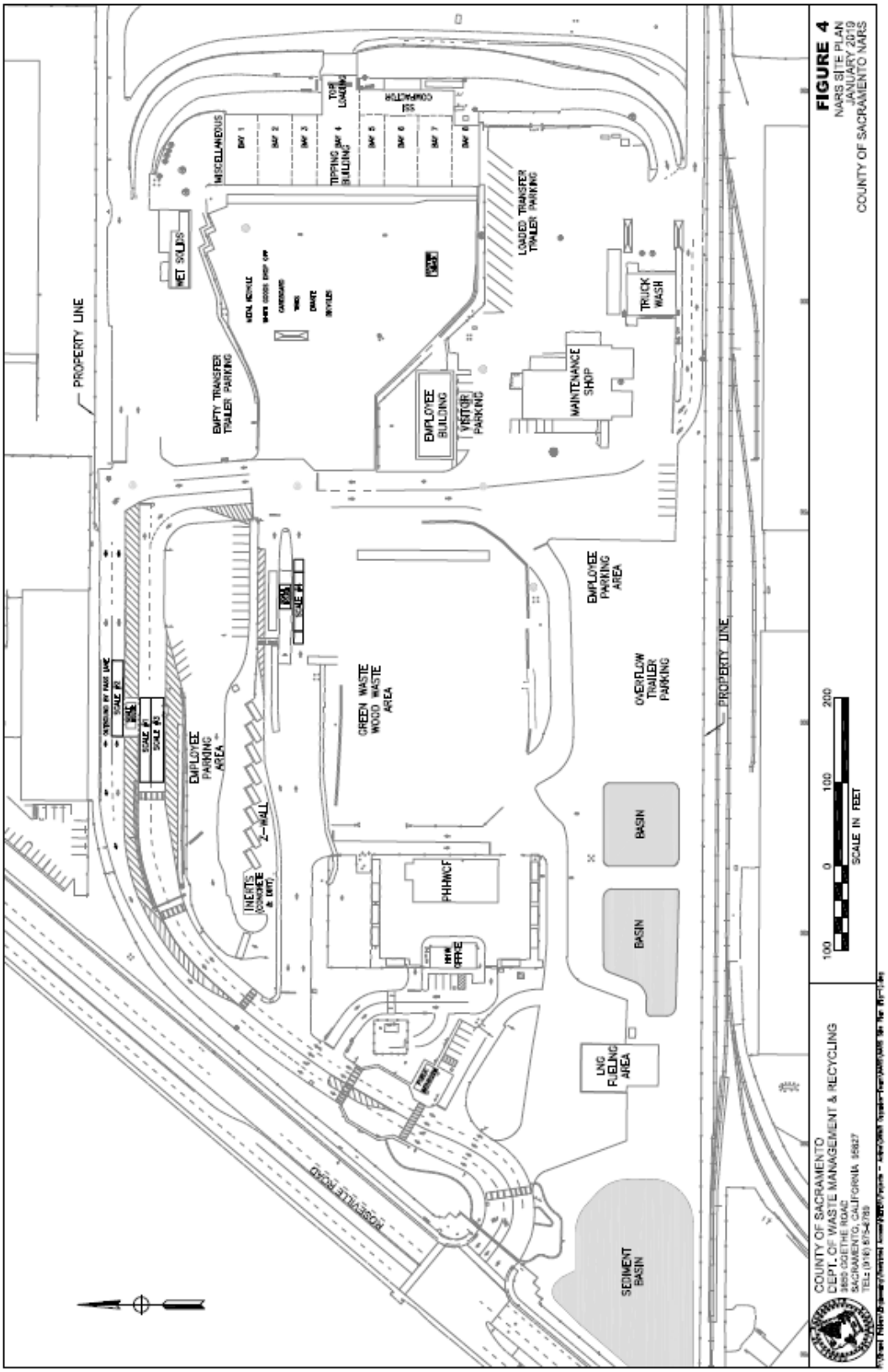
## FIGURE 2- CITY OF SACRAMENTO COLLECTION AREAS



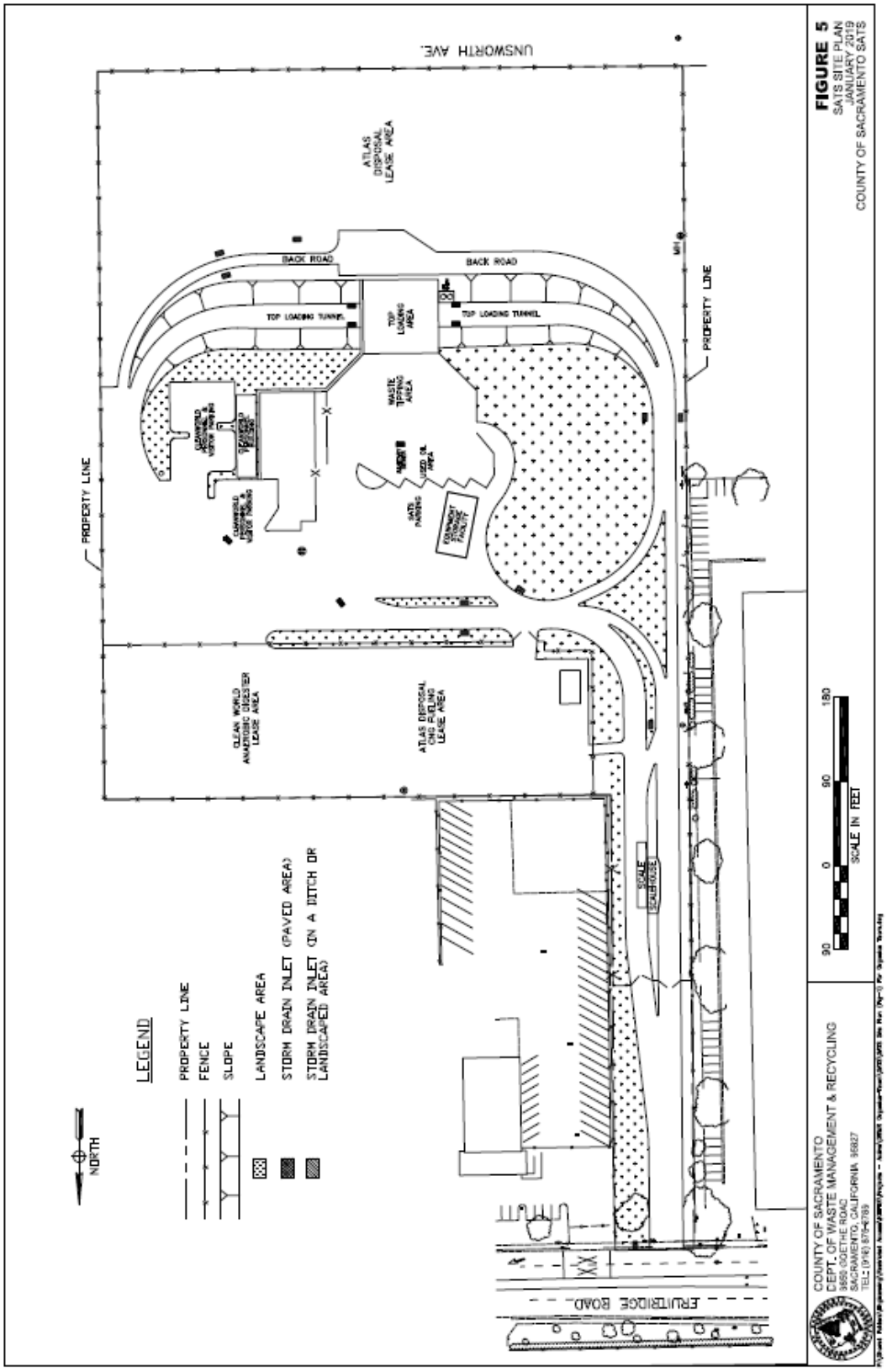
# FIGURE 3- CITY OF FOLSOM COLLECTION AREA



# FIGURE 4- COUNTY OF SACRAMENTO NORTH AREA RECOVERY STATION MAP



# FIGURE 5- COUNTY OF SACRAMENTO SOUTH AREA TRANSFER STATION MAP



# EXHIBIT A- COUNTY OF SACRAMENTO SAMPLE CONTRACT

**COUNTY OF SACRAMENTO**
**PUBLIC WORKS AND INFRASTRUCTURE**

**AGREEMENT FOR**
**ORGANIC MATERIAL DIVERSION SERVICES**

THIS AGREEMENT is made and entered into on _____, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and _____, hereinafter referred to as "CONTRACTOR."

## RECITALS

WHEREAS, COUNTY has determined that it is necessary to retain CONTRACTOR to divert COUNTY'S Organic Material; and

WHEREAS, CONTRACTOR has proposed to divert COUNTY'S Organic Material as stated herein; and

WHEREAS, the Organic Material Diversion is not a service provided by COUNTY employees and, therefore, not subject to the requirements of Sacramento County Charter Section 71-J; and

WHEREAS, COUNTY issued a Request for Proposals for Diversion of Organic Material on_____, and CONTRACTOR was selected from among respondents on the basis of CONTRACTOR'S qualifications and proposal best meeting the needs of COUNTY; and

WHEREAS, COUNTY and CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

**1. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**2. TERM**

This Agreement shall be effective and commence on _____ and shall remain in effect until_____ 20___. Up to _____ extensions may be approved by mutual agreement of both parties. COUNTY’S Director is authorized to amend this Agreement with CONTRACTOR to extend the term under this provision.

**3. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

| TO COUNTY: | TO CONTRACTOR: |
|---|---|
| Waste Management & Recycling | Firm Name |
| County of Sacramento | Address |
| 9850 Goethe Road | Attn: |
| Sacramento, CA 95827-3561 | |
| Attn: Doug Sloan, Director | |

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**4. COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**5. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**6. LICENSES AND PERMITS**

A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.

B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

**7. PERFORMANCE STANDARDS**

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

## 8. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR provided hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR'S services and are not designed for use other than what is intended by this Agreement.

## 9. STATUS OF CONTRACTOR

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR'S assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement; and as an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.

C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.

D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement as a COUNTY employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall

CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.

E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR'S assigned personnel under the terms and conditions of this Agreement.

**10. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR'S name, address, telephone number, social security number or federal tax identification number, and whether dependent health insurance coverage is available to CONTRACTOR.

**11. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS**

A. CONTRACTOR's failure to comply with state and federal child, family and spousal support reporting requirements regarding CONTRACTOR's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.

B. CONTRACTOR's failure to cure such default within 90 days of notice by COUNTY shall be grounds for termination of this Agreement.

**12. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**13. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR'S officers and employees shall not have a

financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

## 14. LOBBYING AND UNION ORGANIZATION ACTIVITIES

A. CONTRACTOR shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

B. If services under this Agreement are funded with state funds granted to COUNTY, CONTRACTOR shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

## 15. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.

C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

## 16. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents, (collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, resulting from injuries to or death of any person, including employees of either party hereto, and damage to or destruction of any property, or loss of use or reduction in value thereof, including the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of CONTRACTOR, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of CONTRACTOR, or for which CONTRACTOR is legally liable under law. CONTRACTOR understands and agrees that this indemnity obligation shall apply regardless of whether any loss, damage or cost arises from, whether in whole or in part, any acts or omissions, or any other negligence, concurrent or otherwise, on the part of COUNTY, or any other party indemnified hereunder, except only those Claims caused by the sole negligence or willful misconduct of an Indemnified Party.

This indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by CONTRACTOR or CONTRACTOR's subcontractor at any tier.

Nothing in this indemnity obligation shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this indemnity obligation shall survive the expiration or termination of the Agreement.

## 17. INSURANCE AND PERFORMANCE BOND

A. Insurance. Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONTRACTOR to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. It is understood and agreed that COUNTY shall not pay any sum to CONTRACTOR under this Agreement unless and until COUNTY is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

B. Performance Bond. In the event of CONTRACTOR's failure to perform, CONTRACTOR shall secure and maintain a Performance Bond throughout the term of this Agreement. The bond amount shall be in a sum not less than one hundred percent (100%) of the estimated annual value of the Agreement to guarantee the faithful performance of all covenants and stipulations during the term of the agreement. The bond shall contain a provision that the surety thereon expressly waives the provisions of California Civil Code Sections 2819 and 2845. The required performance bond shall be annually renewable but shall allow for the Surety's non-renewal without penalty at the Surety's option. Performance Bonds shall be renewed annually by _____ of each year.

## 18. GOOD NEIGHBOR POLICY

A. CONTRACTOR shall comply with COUNTY'S Good Neighbor Policy. CONTRACTOR shall establish good neighbor practices for its facilities that include, but are not limited to, the following:

1. Provision of parking adequate for the needs of its employees and service population;
2. Provision of adequate waiting and visiting areas;
3. Provision of adequate restroom facilities located inside the facility;
4. Implementation of litter control services;
5. Removal of graffiti within seventy-two hours;
6. Provision for control of loitering and management of crowds;
7. Maintenance of facility grounds, including landscaping, in a manner that is consistent with the neighborhood in which the facility is located;
8. Participation in area crime prevention and nuisance abatement efforts; and,
9. Undertake such other good neighbor practices as determined appropriate by COUNTY, based on COUNTY'S individualized assessment of CONTRACTOR'S facility, services and actual impacts on the neighborhood in which such facility is located.

B. CONTRACTOR shall identify, either by sign or other method as approved by the DIRECTOR, a named representative who shall be responsible for responding to any complaints relating to CONTRACTOR'S compliance with the required good neighbor practices specified in this Section. CONTRACTOR shall post the name and telephone number of such contact person on the outside of the facility, unless otherwise advised by DIRECTOR.

C. CONTRACTOR shall comply with all applicable public nuisance ordinances.

D. CONTRACTOR shall establish an ongoing relationship with the surrounding businesses, law enforcement and neighborhood groups and shall be an active member of the neighborhood in which CONTRACTOR'S site is located.

E. If COUNTY finds that CONTRACTOR has failed to comply with the Good Neighbor Policy, COUNTY shall notify CONTRACTOR in writing that corrective action must be taken by CONTRACTOR within a specified time frame. If CONTRACTOR fails to take such corrective action, COUNTY shall take such actions as are necessary to implement the necessary corrective action. COUNTY shall deduct any actual costs incurred by COUNTY when implementing such corrective action from any amounts payable to CONTRACTOR under this Agreement.

F. CONTRACTOR'S continued non-compliance with the Good Neighbor Policy shall be grounds for termination of this Agreement and may also result in ineligibility for additional or future contracts with COUNTY.

## 19. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by COUNTY in accordance with express provisions in this Agreement.

B. CONTRACTOR shall submit an invoice in accordance with the procedures prescribed by COUNTY. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day following the invoice period, and COUNTY shall pay CONSULTANT within forty five (45) days after receipt of an appropriate and correct invoice.

C. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

D. Notwithstanding anything to the contrary contained in this Agreement, during the term of this Agreement, the per ton Tipping Fees shall automatically be adjusted lower to match the lowest per ton tipping fee charged to any customer of CONTRACTOR under (i) any new agreement (written or oral) entered into after the date of this Agreement, and (ii) under any extension, modification or amendment (written or oral) of any existing agreement (written or oral) entered into after the date of this Agreement.

## 20. SUBCONTRACTS, ASSIGNMENT

A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.

B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

## 21. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

## 22. SUCCESSORS

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

## 23. TIME

Time is of the essence of this Agreement.

## 24. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

## 25. DIRECTOR

As used in this Agreement, "Director" shall mean the Director of the Department of Waste Management and Recycling for County of Sacramento or his/her designee. Director shall administer this Agreement on behalf of the COUNTY, and has authority to make administrative amendments to this Agreement on behalf of the COUNTY including, but not limited to, scope of services, pricing, management practices, etc. so long as it does not change the maximum payment. Unless otherwise provided herein or required by applicable law, Director shall be vested with all the rights, powers, and duties of COUNTY herein. With respect to matters herein subject to the approval, satisfaction, or discretion of COUNTY or Director, the decision of the Director in such matters shall be final.

## 26. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONTRACTOR shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. COUNTY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

## 27. TERMINATION

A. Termination by CONTRACTOR/Payment of Penalty: CONTRACTOR may terminate this Agreement by providing the COUNTY with a minimum of six (6) months written notice accompanied by the CONTRACTOR's payment to the COUNTY of an early termination penalty equal to $50.00 per ton multiplied by the minimum tonnage commitment multiplied by six (6) months.

B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause.

C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.

D. The Director has authority to terminate this Agreement under paragraphs (A), (B), or (C), above.

**28. REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR'S activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

**29. AUDITS AND RECORDS**

Upon COUNTY'S request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR'S premises, CONTRACTOR'S financial and program records as COUNTY deems necessary to determine CONTRACTOR'S compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY'S request at COUNTY'S expense. COUNTY shall have the right to withhold any payment under this Agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

**30. PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**31. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

**32. FORCE MAJEURE**

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically

provided herein).

**33. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**34. AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

**35. COUNTERPARTS**

This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

**(SIGNATURE PAGE FOLLOWS)**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO,** a political subdivision of the State of California

By: _____
Douglas A. Sloan, Director
Department of Waste Management and Recycling

"COUNTY"

Date: _____

By: _____

Name: _____

Title: _____

"CONTRACTOR"

Date: _____

_____

Agreement approved by Board of Supervisors:

Agenda Date: _____

Item Number: _____

Contract Reviewed and Approved by County Counsel

By: _____ Date: _____
Katrina Nelson
Deputy County Counsel

Prepared by: _____
Kelli Sequest, Solid Waste Planner II
Department of Waste Management and Recycling
Phone: (916) 876-5393

## EXHIBIT A to Agreement

## SCOPE OF SERVICES

### 1. REQUEST FOR PROPOSAL AND CONTRACTOR'S PROPOSAL

The scope of services to be provided by this Agreement are those services identified in COUNTY'S Request for Proposal (RFP) dated _____, and CONTRACTOR'S Proposal dated_____. Both the RFP and the Proposal are hereby incorporated into this Agreement as Appendix 1 and Appendix 2, respectively, and made a part of this Agreement. In the event of any inconsistencies or ambiguities, the Proposal shall govern over the RFP, and this Agreement shall govern over all. CONTRACTOR agrees to perform all services stated in this Agreement for the compensation described herein.

### 2. CONTRACTOR CONTACTS

In the performance of the services hereunder, CONTRACTOR shall provide, and update as necessary, the primary contact person and an alternate contact person responsible for regular communications related to these services under this Agreement. These contacts shall be as follows:

PRIMARY: NAME:
PHONE:
FAX:
E-MAIL:

ALTERNATE: NAME:
PHONE:
FAX:
E-MAIL:

## EXHIBIT B to Agreement

## COUNTY OF SACRAMENTO
## INSURANCE REQUIREMENTS

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by CONTRACTOR, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of COUNTY Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require CONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

**1. Verification of Coverage**

CONTRACTOR shall furnish COUNTY with certificates evidencing coverage required below. **Copies of required endorsements must be attached to the certificates provided.** COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that CONTRACTOR provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

**2. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by COUNTY Risk Manager.

AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.

Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. The Contractor's commercial automobile policy shall be specifically endorsed to include coverage for the transportation of pollutants and/or hazardous materials. If there are no owned or leased vehicles, symbols 8 and

9 for non-owned and hired autos shall apply.

Personal Lines automobile insurance shall apply if vehicles are individually owned.

WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

ENVIRONMENTAL IMPAIRMENT LIABILITY (POLLUTION LIABILITY): Insurance which includes coverage arising out of the handling, remediation, cleanup or transport of hazardous materials or hazardous wastes.

UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

**3. Minimum Limits of Insurance**

CONTRACTOR shall maintain limits no less than:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate: $2,000,000
Products Comp/Op Aggregate: $2,000,000
Personal & Adv. Injury: $1,000,000
Each Occurrence: $2,000,000
Fire Damage: $ 100,000

Automobile Liability:

a. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, $2,000,000 Combined Single Limit.
b. Personal Lines Automobile Liability for Individually owned vehicles, $250,000 per person, $500,000 each accident, $100,000 property damage.

Workers' Compensation: Statutory.

Employer's Liability: $1,000,000 per accident for bodily injury or disease.

Environmental Impairment Liability (Pollution Liability): $2,000,000 per claim or occurrence and aggregate.

**4. Deductibles and Self-Insured Retention**

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY.

**5. Claims Made Environmental Impairment Liability (Pollution Liability) Insurance**

If Environmental Impairment Liability (Pollution Liability) coverage is written on a Claims Made form:

a. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONTRACTOR.
b. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
c. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

**6. Other Insurance Provisions**

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

**7. All Policies:**

a. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. COUNTY Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected.

b. MAINTENANCE OF INSURANCE COVERAGE: CONTRACTOR shall maintain all insurance coverages and limits in place at all times and provide COUNTY with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

CONTRACTOR is required by this Agreement to immediately notify COUNTY if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. CONTRACTOR shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

**8. Commercial General Liability and/or Commercial Automobile Liability:**

a. ADDITIONAL INSURED STATUS: COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as

respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to COUNTY, its officers, directors, officials, employees, or volunteers.

b. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

c. PRIMARY INSURANCE: For any claims related to this agreement, CONTRACTOR'S insurance coverage shall be endorsed to be primary insurance as respects COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it.

d. SEVERABILITY OF INTEREST: CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. SUBCONTRACTORS: CONTRACTOR shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONTRACTOR'S subcontractor.

**9. Workers' Compensation:**

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by CONTRACTOR. Should CONTRACTOR be self-insured for workers' compensation, CONTRACTOR hereby agrees to waive its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers.

**10. Notification of Claim**

If any claim for damages is filed with CONTRACTOR or if any lawsuit is instituted against CONTRACTOR, that arise out of or are in any way connected with CONTRACTOR'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, CONTRACTOR shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

## EXHIBIT C to Agreement

## COMPENSATION

**1. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is: **$**

**2. COMPENSATION COMPONENTS**

*TBD depending on the nature of the successful proposal.*

**3. SUBMISSION OF INVOICES**

CONTRACTOR shall address and submit all monthly invoices associated with this Agreement by U.S. mail or personal delivery to the following address:

Waste Management and Recycling
9850 Goethe Road
Sacramento, CA 95827-3561
Attn: Accounting

CONTRACTOR shall include the following information on all monthly invoices:

1. Contract Number: 8XXXX
2. Date of invoice submission
3. Any other information deemed necessary by CONTRACTOR and/or COUNTY

**4. PAYMENTS**

In accordance with the Compensation and Payment of Invoices Limitations provision of this Agreement, COUNTY shall address and submit payments to CONTRACTOR at address in the Notice provision of this Agreement.

CONTRACTOR may change the address to which subsequent payments shall be sent by giving written notice designating a change of address to COUNTY, which shall be effective upon receipt.

# EXHIBIT B- CITY OF SACRAMENTO SAMPLE CONTRACT

PROJECT NAME:
AGREEMENT TERM:
AUTHORIZED RENEWALS:
DEPARTMENT:
DIVISION:

CITY OF SACRAMENTO

## NONPROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is made at Sacramento, California, as of_____, by and between the **CITY OF SACRAMENTO,** a municipal corporation ("CITY"), and

*Name of Contractor*
*Address*
*Phone/Fax/E-mail*

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

   Invitation to Bid
   Instructions to Bidders
   Contractor's Bid Proposal Form
   Technical Specifications
   Local Business Enterprise (LBE) Requirements*
   Living Wage Requirements for Nonprofessional Service Agreements*
   Requirements of the Non-Discrimination in Employee Benefits Code*
   Ban-The-Box Requirements*

   *The above documents followed by an asterisk (*) can be viewed at*
   **http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements**

2. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide the services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of the services: (a) CONTRACTOR notifies CITY and CITY agrees that the services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.

3. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for CONTRACTOR to perform services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

5. **General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over those terms or conditions.

6. **Wage Requirements.** This Agreement may be subject to the provisions of Sacramento City Code Chapter 3.58, Living Wage. A summary of the requirements of Sacramento City Code Chapter 3.58, entitled "Living Wage Requirements for Nonprofessional Service Agreements," can be viewed at: ***http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements.*** By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.58. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.58 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies. CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.58, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.58. In addition, for services that constitute "public works" under California Labor Code section 1720 et seq., payment of the prevailing rate of wages is required as indicated in Exhibit A, Section 4 of this Agreement. If both prevailing wage and living wage requirements apply, CONTRACTOR shall pay the higher of the two rates.

7. **Non-Discrimination in Employee Benefits.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. A summary of the requirements of Sacramento City Code Chapter 3.54, entitled "Requirements of the Non-Discrimination in Employee

Benefits Code," can be viewed at: ***http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements.*** By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.54. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.54 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies.

8. **Considering Criminal Conviction Information in the Employment Application Process.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements of Sacramento City Code Chapter 3.62, entitled "Ban-The-Box Requirements," can be viewed at: ***http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements.*** By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.62 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies. CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.

9. **Authority.** The person signing this Agreement for CONTRACTOR represents and warrants that he or she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

10. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**
A Municipal Corporation

By:_____

Print name:_____

Title:_____

For: Howard Chan, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

**Attachments**

Exhibit A Scope of Services
Exhibit B Fee Schedule/Manner of Payment
Exhibit C Facilities/Equipment Provided
Exhibit D General Provisions

**CONTRACTOR:**

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

_____
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY *(check one)*:

_____Individual/Sole Proprietor
_____Partnership
_____Corporation *(may require 2 signatures)*
_____Limited Liability Company
_____Other (*please specify:*_____*)*

_____
**Signature of Authorized Person**

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

# EXHIBIT A
# NONPROFESSIONAL SERVICES AGREEMENT

## SCOPE OF SERVICES

1. **Representatives.**

The CITY Representative for this Agreement is:

*Name/Title*
*Address*
*Phone/Fax/E-mail*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Name/Title*
*Address*
*Phone/Fax/E-mail*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address or e-mail address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. **Scope of Services.**
[*Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:*]

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

3. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the Scope of Services.

4. **Public Works Requirements.** *[To be completed by the City Representative:]*

The services provided under this Agreement constitute "public works" under California Labor Code section 1720 *et seq.* and are either ***[check one if applicable]***:

_____ Construction work in an amount exceeding $25,000; or

_____ Alteration, demolition, repair, or maintenance work in an amount exceeding $15,000.

**If either line is checked above**, this Agreement is subject to the following requirements:

A. Payment of Prevailing Wages: The provisions of Sacramento City Code section 3.60.180 require, among other things, that CONTRACTOR and every lower-tier subcontractor pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. CONTRACTOR and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically when and as required by CITY. CONTRACTOR is responsible for compliance with Sacramento City Code section 3.60.180, and shall include these requirements in every subcontract. This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

B. DIR Registration: California Labor Code Section 1725.5 requires the CONTRACTOR and all lower-tier subcontractors performing public works services to be currently registered with the California Department of Industrial Relations (DIR), as specified in California Labor Code Section 1725.5. California Labor Code Section 1771.1 provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the California Public Contract Code), or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5. The CONTRACTOR shall list the CONTRACTOR's current DIR registration number, and the current DIR registration number of all lower-tier subcontractors, below:

CONTRACTOR's DIR No._____
Subcontractor name:_____ DIR No. _____
Subcontractor name: _____ DIR No. _____
Subcontractor name: _____ DIR No. _____

Further information can be found on DIR's website at http://www.dir.ca.gov/Public-Works/Contractors.html. The above summary is provided solely for informational purposes, and does not in any way affect the CONTRACTOR's and subcontractors' obligation to comply in all respects with all other applicable laws and regulations. The CONTRACTOR shall disseminate these provisions to every lower-tier subcontractor.

# EXHIBIT B
# NONPROFESSIONAL SERVICES AGREEMENT

## FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of $_____.

2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

4. **Payments to CONTRACTOR.**

   A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

   B. All invoices submitted by CONTRACTOR shall contain the following information:

      (1) Job/Project Name
      (2) CITY's current Purchase Order Number
      (3) CONTRACTOR's Invoice Number
      (4) Date of Invoice Issuance
      (5) Work Order Number (if applicable)
      (6) CITY representative identified on the Purchase Order
      (7) CONTRACTOR's remit address for payment
      (8) Description of services billed under Invoice
      (9) Amount of Invoice (itemize all authorized Reimbursable Expenses)
      (10) Total Billed to Date under Agreement

   C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described above.

D. Submitting Invoices:

(1) **Email.** Submit email invoices and any attachments to: apinvoices@cityofsacramento.org

(2) **Postal mail.** If emailing invoices and attachments is not an option, mail to:

A/P PROCESSING CENTER
CITY OF SACRAMENTO
915 I ST FL 4
SACRAMENTO CA 95814-2608

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing the Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform the Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make the records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of the payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

# EXHIBIT C
# NONPROFESSIONAL SERVICES AGREEMENT

## FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

_____ Not furnish any facilities or equipment for this Agreement;

or

_____ Furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

# EXHIBIT D
# NONPROFESSIONAL SERVICES AGREEMENT

## GENERAL PROVISIONS

1. **Independent Contractor**.

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive

relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform
services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter

collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. **CONTRACTOR Information.**

A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.

D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

(1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

(2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY

such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services render by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. **Indemnity.**

A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

(1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars ($1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars ($1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

> "I certify that a motor vehicle will not be used in the performance of any work or services under this agreement."
> _____(CONTRACTOR initials)

(3) Excess Insurance: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.

(4) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

> Workers' Compensation waiver of subrogation in favor of the CITY is not required._____(CITY Representative initials)

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

> "I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers'

Compensation insurance." _____(CONTRACTOR initials)

B. Additional Insured Coverage

(1) Commercial General Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors.

(2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

(1) CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.

(3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self- insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento
c/o EXIGIS LLC
P.O. Box 4668 ECM- #35050
New York, NY 10168-4668

Insurance certificates also may be faxed to (888) 355-3599, or e-mailed to: certificates-sacramento@riskworks.com

(3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

(1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the

parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

    A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Contract or Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

    B. Sellers Permit: For any construction contract and any construction subcontract in the amount of $5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

    C. The above provisions shall apply in all instances unless prohibited by the funding source for the Contract or Agreement.

# EXHIBIT C- CITY OF FOLSOM SAMPLE CONTRACT

CITY OF FOLSOM

DISTINCTIVE BY NATURE

**CITY OF FOLSOM**

**CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into as of _____, 2018 ("Effective Date") by and between the City of Folsom, a Municipal Corporation, hereinafter referred to as "City" and_____, hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, City desires to hire a consultant to provide_____; and,

WHEREAS, Consultant, by reason of its qualifications, experience, and facilities for performing the type of services contemplated herein, has proposed to provide the requested services.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, City and Consultant agree as follows:

**1. Scope of Service**

The scope of service covered by this Agreement includes all consulting services described and contained in Exhibit A, attached hereto and by this reference incorporated into this Agreement. In the event of a conflict between the terms and conditions in this Agreement and the terms and conditions in Exhibit A, the terms and conditions set forth in this Agreement shall prevail.

**2. Term of Agreement**

The term of this Agreement shall commence on the Effective Date and shall continue until all services provided for in this Agreement have been performed or for one year, whichever is sooner, unless otherwise terminated as set forth in Paragraph 17 of this Agreement.

**3. Schedule for Performance**

City and Consultant agree that time is of the essence in the performance of this work, and Consultant agrees to produce documents in the times stated in the Proposal. Deviations from the time schedule stated in the Proposal may be made with the approval of the _____Director, or his/her authorized representative.

**4. Compensation**

Compensation for the services shall be paid on a time-and-materials, not-to-exceed basis. The maximum compensation for the services specified in Exhibit A, including any and all

costs or expenses, is_____. In the event the cost for services exceeds_____, Consultant agrees to complete all services enumerated in Exhibit A at no additional expense to City.

The City shall have the right to review all books and records kept by the Consultant and any subcontractors in connection with the operation and services performed under this Agreement. The City shall withhold payment for any expenditure not substantiated by Consultant's or subcontractor's books and records. In the event the City has made payment for expenditures that are not allowed, as determined by the City's audit, the Consultant shall reimburse the City for the amount of the disallowed expenditures. City shall make no payment for any services not specified in Exhibit A of this Agreement unless such additional services and the price thereof are agreed to in writing and approved by the City prior to the time that such additional services are rendered.

**5. Invoicing, Payment, Notices**

A. Consultant shall submit periodic invoices, not more frequently than monthly, for the services rendered during the preceding period. Invoices shall describe the services performed and costs incurred, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate.

B. Consultant shall transmit invoices and any notices required by this Agreement, to City as follows:

City of Folsom
50 Natoma Street
Folsom, California 95630

C. City shall transmit payments on invoiced amounts, and any notices required by this Agreement to Consultant as follows:

_____
_____
Telephone: _____

**6. Professional Services**

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of the City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.

**7. Independent Contractor**

A. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Consultant shall be responsible for the payment of all

taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, Consultant is to acquire same at its sole expense.

B. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third persons employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall further indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## 8. Authority of Consultant

Consultant enters into this Agreement as an independent contractor and not as an officer, employee or representative of the City. Accordingly, Consultant shall provide information, recommendation, and advice to City, but shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity as agent, or to bind City to any obligations whatsoever.

## 9. Conflict of Interest

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest required by either City ordinance or State law.

Neither this Agreement, any duties or obligations under this Agreement, nor the intention or expectations of the City will cause the Consultant to be a "public official" as that term is

used in California Government Code section 87100. The City and Consultant agree that the Consultant is not a "public official" or "participating in governmental decisions" as those terms are used in section 87100. The City and Consultant also agree that no actions and opinions necessary for the performance of duties under this Agreement will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in section 87100. Nothing in this Agreement shall be construed to be inconsistent with the Consultant's status as an independent contractor.

## 10. Assignment and Subcontracting

Consultant's rights, duties and obligations under this Agreement are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the City.

## 11. Ownership of Work Product

All technical data, evaluations, reports, plans and other work products of Consultant provided hereunder shall become the property of City and shall be delivered to City upon completion of the services authorized hereunder. Consultant may retain copies thereof for its files and internal use. City representatives shall have access to work products for the purpose of inspecting same and determining that the services are being performed in accordance with the terms of the Agreement. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City.

Both parties recognize that the City is a public entity subject to the requirements of the California Public Records Act ("PRA"). Consultant understands that the release of any written, printed, graphic, or electronically recorded information and document delivered by Consultant to the City will be governed by the PRA and agrees that the release of such material pursuant to the PRA shall not require Consultant's prior consent or approval.

## 12. Indemnification

Consultant shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply, and shall further survive the expiration or termination of this Agreement. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

## 13. Insurance

During the term of this Agreement, Consultant shall maintain and provide evidence of insurance coverage as set forth in Exhibit B, attached hereto and incorporated herein by reference, at its own cost and expense.

**14. Employment Practices**

Consultant, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

**15. Licenses, Permits, Etc.**

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

**16. Records**

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices.

**17. Termination**

A. City or Consultant may terminate this Agreement by providing thirty (30) days written notice prior to the effective termination date.

B. In the event of such termination, City shall pay Consultant for all services actually rendered up to and including the date of termination.

C. Consultant shall deliver to City copies of all drawings, reports, analyses, and investigations whether completed or not, prepared or in the process of being prepared under the provisions of this Agreement.

**18. Amendments**

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by both parties hereto.

**19. Incidental Beneficiaries**

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to City and Consultant. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the City and Consultant that any such person or entity, other than City and Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

**20. Miscellaneous Provisions**

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party

shall be entitled to reasonable attorneys' fees according to law.

B. Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a state court in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.

D. Time: All times stated herein or in any other contract documents are of the essence.

E. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

G. Waiver: In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

## 21. Entire Agreement

This instrument and any attachments hereto constitute the entire Agreement between the City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

## 22. Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

## 23. Counterparts

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

END OF TEXT - SIGNATURE PAGE FOLLOWS

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed.

| | |
|---|---|
| **CONSULTANT:** | ***(If a corporation, must be signed by two officers of the corporation per Corporations Code section 313.)*** |
| Date | Tax I.D. Number |
| Signature | Signature |
| Print Name | Print Name |
| Title | Title |

**CITY OF FOLSOM,** A Municipal Corporation:

| | |
|---|---|
| Date | Elaine Andersen, City Manager |
| ATTEST: | FUNDING AVAILABLE: |
| Christa Freemantle, City Clerk<br>Date | James W. Francis, Finance Director<br>Date |
| ORIGINAL APPROVED AS TO CONTENT: | ORIGINAL APPROVED AS TO FORM: |
| Director<br>Date | Steven Wang, City Attorney<br>Date |

**NOTICE: SIGNATURE(S) ON BEHALF OF CONSULTANT MUST BE NOTARIZED**.
A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of consultant. This section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

# EXHIBIT A

(Scope of Work)

# EXHIBIT B
# INSURANCE

NOTE: The word “Consultant” in this Exhibit refers to either “Consultant” or “Contractor” as the term is used in the Agreement/Contract to which this Exhibit is attached.

A. During the term of this Agreement, Consultant shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

General Liability:

a. General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
c. Claims-made coverage is not acceptable.
d. The limits of liability shall not be less than:

| | |
|---|---|
| Each occurrence: ($1,000,000) | One Million Dollars |
| Products & Completed Operations: ($1,000,000) | One Million Dollars |
| Personal & Advertising Injury: ($1,000,000) | One Million Dollars |

e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the ‘each occurrence’ limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the ‘each occurrence’ limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
g. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Automobile Liability:

a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).

c. The limits of liability per accident shall not be less than: Combined Single Limit One Million Dollars ($1,000,000)
d. If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.

Workers' Compensation:

a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employer's Liability coverage.
b. Employer's Liability Coverage with a limit not less than $1,000,000 per accident for bodily injury and disease.
c. Consultant shall sign and file with the City department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.

Insurance Required in the Supplementary Conditions: Consultant shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.

Professional Liability Insurance

If required, errors and omissions, malpractice or professional liability insurance with coverage of not less than $1,000,000 per claim.

Other Insurance Provisions:

a. The Consultant's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
    i. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant in a form acceptable to the City Attorney.
    ii. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to the City.
    iii. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
b. For any claims related to the project, the Consultant's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of the City and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

c. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
d. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
e. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.

Acceptability of Insurers:
Insurance is to be placed with insurers with **a Bests' rating of no less than A:VII**.

The Consultant shall furnish the City with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. **The Consultant shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.**

The Consultant shall report, by telephone to the Project Manager within 24 hours, and also report in writing to the City within 48 hours, after Consultant or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars ($10,000) to property of the City or others, arising out of any work done by or on behalf of the Consultant as part of the contract.

Such report shall contain:
a. the date and time of the occurrence,
b. the names and addresses of all persons involved, and
c. a description of the accident or occurrence and the nature and extent of the injury or damage.

The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.

If the Consultant fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.

Failure of the City to obtain such insurance shall in no way relieve the Consultant from any

of its responsibilities under the contract.

The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.

The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.

In the event Consultant carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and the City's insurance or self-insurance coverage shall be excess to the Consultant's Excess Liability Coverage.

# ATTACHMENT 1- NEAR-TERM AND TONNAGE COMMITMENT MATRIX

Sacramento Jurisdictions
Organic Material Diversion Services RFP

REQUIRED: Near-Term and Tonnage Commitment Matrix – Indicate price per ton

Matrix 1: Near-Term Services, beginning July 1, 2020

| | 2 – 3 years | 3 - 4 years | 4 - 5 years | 5 – 6 years |
|---|---|---|---|---|
| 0-20,000 TPY | | | | |
| 20,001-40,000 TPY | | | | |
| 40,001-80,000 TPY | | | | |
| 80,001-120,000 TPY | | | | |
| 120,001-160,000 TPY | | | | |
| 160-001-200,000 TPY | | | | |
| 200,001+ TPY | | | | |

This space left blank and PROPOSER is invited to make notes or convey any additional clarification or elaboration to the submitted Near-Term and Tonnage Commitment Matrix.

# ATTACHMENT 2- LONG-TERM AND TONNAGE COMMITMENT MATRIX

Sacramento Jurisdictions
Organic Material Diversion Services RFP

REQUIRED: Long-Term and Tonnage Commitment Matrix – Indicate price per ton

Proposed starting date for receiving ORGANIC MATERIAL: _____
(PROPOSER must enter a start date to complete Matrix 2)

| | 5 – 10 years | 10 - 15 years | 15 - 20 years | 20 + years |
|---|---|---|---|---|
| 0-20,000 TPY | | | | |
| 20,001-40,000 TPY | | | | |
| 40,001-80,000 TPY | | | | |
| 80,001-120,000 TPY | | | | |
| 120,001-160,000 TPY | | | | |
| 160-001-200,000 TPY | | | | |
| 200,001+ TPY | | | | |

This space left blank and PROPOSER is invited to make notes or convey any additional clarification or elaboration to the submitted Long-Term and Tonnage Commitment Matrix.

# ATTACHMENT 3- AGREEMENT DEFAULT

## AGREEMENT DEFAULT:

**Agreement Default/Early Termination**
Please list all agreement defaults and early terminations within the last 10 years beginning with the most recent.

| Entity Name | Contact Name & Phone Number | Type of Service Provided | B. Tons/Year | C. Explanation |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |