



**CITY OF HUGHSON**  
**City Council Meeting**  
City Council Chambers  
7018 Pine Street, Hughson, CA

**OVERFLOW LOCATION:**  
2307 4th Street, Hughson, CA

**AGENDA**  
**MONDAY, NOVEMBER 22, 2021 – 6:00 P.M.**

**How to participate in, or observe the Meeting:**

- In person in the City Council Chambers and/or the Senior Community Center, and submit public comment when invited during the meeting.

- Interactively, via WebEx Videoconference, by accessing this link:

<https://cityofhughson.my.webex.com/cityofhughson.my/j.php?MTID=ma9c185c7b84dfb aaf8d5e39c06b113a0>

Interactive attendees may submit public comment via WebEx when invited during the meeting.

- Observe only via YouTube live, by accessing this link:

[https://www.youtube.com/channel/UC-PwkdIrKoMmOJDzBSodu6A?view\\_as=subscriber](https://www.youtube.com/channel/UC-PwkdIrKoMmOJDzBSodu6A?view_as=subscriber)

- In addition, recorded City Council meetings are posted on the City's website the first business day following the meeting. Recorded videos can be accessed with the following link:

<http://hughson.org/our-government/city-council/#council-agenda>

**How to submit written Public Comment:**

- Email will be available prior to 5:00 PM on November 22, 2021, to provide public comment for the Public Comment Period, or for a specific agenda item. Please email [agose@hughson.org](mailto:agose@hughson.org). Written comment will be distributed to the City Council and kept on file as part of official record of the Council meeting.

**CALL TO ORDER:** Mayor George Carr

**ROLL CALL:** Mayor George Carr  
Mayor Pro Tem Harold Hill  
Councilmember Ramon Bawanan  
Councilmember Samuel Rush  
Councilmember Michael Buck

**FLAG SALUTE:** Mayor George Carr

**INVOCATION:** Hughson Ministerial Association

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**1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):**

Members of the audience may address the City Council on any item of interest to the public pertaining to the City and may step to the podium, state their name and city of residence for the record (requirement of name and city of residence is optional) and make their presentation. Please limit presentations to five minutes. Since the City Council cannot take action on matters not on the agenda, unless the action is authorized by Section 54954.2 of the Government Code, items of concern, which are not urgent in nature can be resolved more expeditiously by completing and submitting to the City Clerk a "Citizen Request Form" which may be obtained from the City Clerk.

**2. PRESENTATIONS: NONE.**

**3. CONSENT CALENDAR:**

**All items listed on the Consent Calendar are to be acted upon by a single action of the City Council unless otherwise requested by an individual Councilmember for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.**

**3.1:** Approve the Minutes of the Regular Meeting of November 8, 2021.

**3.2:** Approve the Warrants Register.

**3.3:** Waive the Second Reading and Adopt Ordinance No. 2021-08, Amending Chapter 8.12 of Title 8 of the Hughson Municipal Code Titled "Refuse Collection," Including the Addition of Organic Waste Reduction and Methane Emission Requirements for the City to Comply with SB 1383 (2016).

- 3.4:** Re-appoint Donya Nunes to the Parks, Recreation and Entertainment Commission.
- 3.5:** Approve the Comments to be Submitted on Behalf of the City Council to the California Public Utilities Commission regarding the Pacific Gas and Electric Rate Increase.

**4. UNFINISHED BUSINESS:**

- 4.1:** Adopt Resolution No. 2021-38, Authorizing the City Manager to Execute the Construction Installment Sale Agreement and Grant Amendment No. 3 for Well No. 7 Well Replacement and Arsenic Treatment with the California State Water Resources Control Board Under the Drinking Water State Revolving Fund Project No. 5010008-011C Agreement No. D16-02057 and to Enter into a Debt Obligation Repayment Schedule.

**5. PUBLIC HEARING TO CONSIDER THE FOLLOWING:**

- 5.1:** Conduct Proposition 218 Public Hearing on proposed Solid Waste Rate Increase and Adopt Resolution No. 2021-39, Declaring the Results of the Proposition 218 Protest Proceeding Public Hearing and Adopting Solid Waste Rates Effective January 1, 2021.
- a. Review Procedure
  - b. Presentation of Rate Proposal
  - c. Open Public Hearing
  - d. Final Request for Written Objections
  - e. Close Public Hearing
  - f. Recess to Tally Objections Received
  - g. Adopt Resolution No. 2021-39 Declaring the Results of the Proposition 218 Protest Proceeding Public Hearing and Adopting Solid Waste Rates Effective January 1, 2021.

**6. NEW BUSINESS:**

- 6.1:** Adopt Resolution No. 2021-40, Approving the Restated and Amended Franchise Agreement with Gilton Solid Waste Management, Inc. for Solid Waste Management and authorize the City Manager to Execute the Agreement, Effective Immediately.

**7. CORRESPONDENCE:                      NONE.**

**8. COMMENTS:**

- 8.1:** Staff Reports and Comments: (Information Only – No Action)

**City Manager:**

**Deputy City Clerk:**

**Community Development Director:**

**Director of Finance and Administrative Services:**

**Police Services:**

**City Attorney:**

**Student Representative:**

**8.2:** Council Comments: (Information Only – No Action)

**8.3:** Mayor's Comments: (Information Only – No Action)

**9. CLOSED SESSION TO DISCUSS THE FOLLOWING: NONE.**

**ADJOURNMENT:**

**Notice Regarding Non-English Speakers:**

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Hughson City Council shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language

**AMERICANS WITH DISABILITIES ACT/CALIFORNIA BROWN ACT**  
**NOTIFICATION FOR THE CITY OF HUGHSON**

This Agenda shall be made available upon request in alternative formats to persons with a disability; as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132) and the Ralph M. Brown Act (California Government Code Section 54954.2).

**Disabled or Special needs Accommodation:** In compliance with the Americans with Disabilities Act, persons requesting a disability related modification or accommodation in order to participate in the meeting and/or if you need assistance to attend or participate in a City Council meeting, please contact the City Clerk's office at (209) 883-4054. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

**WAIVER WARNING**

If you challenge a decision/direction of the City Council in court, you may be limited to raising only those issues you or someone else raised at a public hearing(s) described in this Agenda, or in written correspondence delivered to the City of Hughson at or prior to, the public hearing(s).

**UPCOMING EVENTS:**

<b>November 25</b>	▪ <b>Thanksgiving – City Hall Closed</b>
<b>November 26</b>	▪ <b>Thanksgiving Friday – City Hall Closed</b>
<b>December 4</b>	▪ Downtown Hughson Christmas Festival Parade, 5:30 PM
<b>December 13</b>	▪ City/School 2+2 Committee Meeting, HUSD Office, 4:30 PM
<b>December 13</b>	▪ City Council Meeting, City Council Chambers/YouTube Live Stream/WebEx Videoconference, 6:00 PM
<b>December 14</b>	▪ Parks, Recreation and Entertainment Commission Meeting, City Council Chambers/YouTube Live Stream/WebEx Videoconference, 6:00 PM
<b>December 15</b>	▪ City/Fire 2+2 Committee Meeting, Hughson Fire Department, 5:30 PM
<b>December 21</b>	▪ Planning Commission Meeting, City Council Chambers/YouTube Live Stream/WebEx Videoconference, 6:00 PM
<b>December 27</b>	▪ <b>City Council Meeting - Cancelled</b>
<b>December 24 – January 2</b>	▪ <b>Holiday Closure – City Hall Closed</b>

**General Information:** The Hughson City Council meets in the Council Chambers on the second and fourth Mondays of each month at 6:00 p.m., unless otherwise noticed.

**Council Agendas:** The City Council agenda is now available for public review at the City's website at and City Clerk's Office, 7018 Pine Street, Hughson, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.

**Questions:** Contact the City Clerk at (209) 883-4054.

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### **AFFIDAVIT OF POSTING**

**DATE:** November 18, 2021      **TIME:** 3:00 PM  
**NAME:** Ashton Gose      **TITLE:** Deputy City Clerk



## **CITY COUNCIL AGENDA ITEM NO. 3.1 SECTION 3: CONSENT CALENDAR**

**Meeting Date:** November 22, 2021  
**Subject:** Approval of the City Council Minutes  
**Presented By:** Ashton Gose, Deputy City Clerk

**Approved By:** Merry Mayhew

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### **Staff Recommendation:**

Approve the Minutes of the Regular Meeting of November 8, 2021.

### **Background and Overview:**

The draft minutes of the November 8, 2021 meeting are prepared for the Council's review.



**CITY OF HUGHSON  
CITY COUNCIL MEETING  
CITY COUNCIL CHAMBERS  
7018 PINE STREET, HUGHSON, CA**

**MINUTES  
MONDAY, NOVEMBER 8, 2021 – 6:00 P.M.**

**CALL TO ORDER:** Mayor George Carr

**ROLL CALL:**

Present: Mayor George Carr  
Mayor Pro Tem Harold Hill  
Councilmember Sam Rush  
Councilmember Ramon Bawanan  
Councilmember Michael Buck

Staff Present: Merry Mayhew, City Manager  
Ashton Gose, Deputy City Clerk  
Daniel Schroeder, City Attorney  
Anna Nicholas, Director of Finance and Admin Services  
Rachel Wyse, Community Development Director  
Jose Vasquez, Public Works Superintendent  
Fidel Landeros, Chief of Police

**A moment of silence for Ron Callahan.**

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**1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):**

**NONE.**

**2. PRESENTATIONS:**

**2.1:** Stanislaus Animal Services Agency Annual Report – Annette Bedsworth, Executive Director.

**Annette Bedsworth presented the Annual Report for Stanislaus Animal Services.**



### 3. CONSENT CALENDAR:

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council unless otherwise requested by an individual Councilmember for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

3.1: Approve the Minutes of the Regular Meeting of October 25, 2021.

3.2: Approve the Warrants Register.

**BUCK/CARR 5-0-0-0 motion passes to approve the consent calendar as presented, with the following roll call vote:**

<b>BAWANAN</b>	<b>RUSH</b>	<b>BUCK</b>	<b>HILL</b>	<b>CARR</b>
<b>AYE</b>	<b>AYE</b>	<b>AYE</b>	<b>AYE</b>	<b>AYE</b>

### 4. UNFINISHED BUSINESS: NONE.

### 5. PUBLIC HEARING TO CONSIDER THE FOLLOWING:

5.1: Introduce and Waive the First Reading of Ordinance No. 2021-08, Amending Chapter 8.12 of Title 8 of the Hughson Municipal Code Titled “Refuse Collection,” Including the Addition of Organic Waste Reduction and Methane Emission Requirements for the City to Comply with SB 1383 (2016).

Director Wyse presented the staff report on this item.

Mayor Carr opened the public hearing at 6:23 PM. There was no public comment. Mayor Carr closed the public hearing at 6:23 PM.

**CARR/HILL 5-0-0-0 motion passes to introduce and waive the first reading of Ordinance No. 2021-08, Amending Chapter 8.12 of Title 8 of the Hughson Municipal Code Titled “Refuse Collection,” Including the Addition of Organic Waste Reduction and Methane Emission Requirements for the City to Comply with SB 1383 (2016), with the following roll call vote:**

<b>BAWANAN</b>	<b>RUSH</b>	<b>BUCK</b>	<b>HILL</b>	<b>CARR</b>
<b>AYE</b>	<b>AYE</b>	<b>AYE</b>	<b>AYE</b>	<b>AYE</b>

### 6. NEW BUSINESS: NONE.

### 7. CORRESPONDENCE:

- 7.1:** Notice of Pacific Gas and Electric Company's Request to Increase Rates for Its 2023 Gas Transmission and Storage Cost Allocation and Rate Design Application (A.21-09-018).

**Staff was directed to draft a letter of opposition to the notice of Pacific Gas and Electric Company's request to increase rates for its 2023 gas transmission and storage cost allocation and rate design application. The letter will be presented to the City Council for approval at the next regular meeting scheduled for November 22, 2021.**

**No action was taken.**

**8. COMMENTS:**

- 8.1:** Staff Reports and Comments: (Information Only – No Action)

**City Manager:**

City Manager Mayhew announced the success of the Annual Trunk, or Tent and Treat. She thanked Coco's Taqueria for providing dinner for all the law enforcement officers in attendance. She provided an update on a Property Tax Sharing Agreement between Cities and Stanislaus County.

**Community Development Director:**

Director Wyse provided a brief update on City projects.

**Director of Finance and Administrative Services:**

Director Nicholas expressed recognition for all Veterans.

**Police Services:**

Chief Landeros provided the City Council with the latest Crime Statistic Report.

- 8.2:** Council Comments: (Information Only – No Action)

**Councilmember Bawanan attended a Community Shredding Event, and the Arboretum Fall Festival on November 6, 2021. He will be attending a Christmas Parade meeting on November 9, 2021. He thanked Veterans for their service. He also thanked City staff and Hughson Police Services for continued hard work.**

**Councilmember Rush attended the Halloween Parade, and the Trunk or Tent and Treat on October 29, 2021. He also attended the Arboretum Fall Festival on November 6, 2021.**

**Councilmember Buck thanked City staff and Hughson Police Services for all of the behind the scenes work that is done for events within the City.**

Mayor Pro Tem Hill attended an Economic Development Committee meeting on October 25, 2021. He attended the Halloween Parade and the Trunk, or Tent and Treat on October 29, 2021. He attended an Economic Development Action Committee meeting on November 4, 2021. He thanked all veterans for their service. He acknowledged that the Callahan family will be in his prayers.

**8.3: Mayor's Comments: (Information Only – No Action)**

Mayor Carr provided a reminder regarding the Laying of the Wreath Ceremony by the American Legion Post 872 on November 11, 2021, at the Hughson Sports Complex. He also provided a reminder regarding the Annual Dennis Wallace Balloon Release being held on November 13, 2021, at the Hughson Sports Complex. He attended the Trunk, or Tent and Treat on October 29, 2021. He acknowledged that the Callahan family will be in his prayers.

**9. CLOSED SESSION TO DISCUSS THE FOLLOWING: NONE.**

**ADJOURNMENT:**

**HILL/BUCK 5-0-0-0 motion passes to adjourn the regular meeting of November 8, 2021, at 6:46 PM with the following roll call vote:**

<b>BAWANAN</b>	<b>RUSH</b>	<b>BUCK</b>	<b>HILL</b>	<b>CARR</b>
<b>AYE</b>	<b>AYE</b>	<b>AYE</b>	<b>AYE</b>	<b>AYE</b>

**APPROVED:**

\_\_\_\_\_  
**GEORGE CARR, Mayor**

**ATTEST:**

\_\_\_\_\_  
**ASHTON GOSE, Deputy City Clerk**



## **CITY COUNCIL AGENDA ITEM NO. 3.2**

### **SECTION 3: CONSENT CALENDAR**

**Meeting Date:** November 22, 2021  
**Subject:** Approval of Warrants Register  
**Enclosure:** Warrants Register  
**Presented By:** Anna Nicholas, Director of Finance

**Approved By:** Merry Mayhew

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#### **Staff Recommendation:**

Approve the Warrants Register as presented.

#### **Background and Overview:**

The warrants register presented to the City Council is a listing of all expenditures paid from November 4, 2021, through November 16, 2021.

#### **Fiscal Impact:**

There are reductions in various funds for payment of expenses.



Hughson

# Check Report

By Check Number

Date Range: 11/04/2021 - 11/16/2021

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
<b>Bank Code: Payable Bank-Payable Bank</b>						
01532	Adrian Luna	11/08/2021	Regular	0.00	274.71	54642
<a href="#">INV0006057</a>	Invoice	11/01/2021	Work Boots	0.00	274.71	
01673	Alexander Swanton	11/08/2021	Regular	0.00	400.86	54643
<a href="#">INV0006056</a>	Invoice	10/25/2021	Work Boots	0.00	237.33	
<a href="#">INV0006058</a>	Invoice	10/25/2021	Water Treatment Plant Operation Class	0.00	163.53	
01603	Amazon Capital Services, Inc.	11/08/2021	Regular	0.00	16.15	54644
<a href="#">1NQD-JNM7-H17L</a>	Invoice	10/25/2021	Office Supplies	0.00	16.15	
00104	AYERA TECHNOLOGIES INC.	11/08/2021	Regular	0.00	84.00	54645
<a href="#">319318</a>	Invoice	11/01/2021	Net Service	0.00	84.00	
00310	CLARK'S PEST CONTROL	11/08/2021	Regular	0.00	180.00	54646
<a href="#">29422406</a>	Invoice	11/02/2021	PEST CONTROL - Nov 2021	0.00	113.00	
<a href="#">29435706</a>	Invoice	11/02/2021	PEST CONTROL - Nov 2021	0.00	67.00	
01667	COOPERATIVE PERSONAL SERVICES	11/08/2021	Regular	0.00	450.00	54647
<a href="#">122378</a>	Invoice	10/29/2021	Project A1294.06.1 Traning Gose	0.00	150.00	
<a href="#">122393</a>	Invoice	10/29/2021	Project A1294.06.1 Training Nicholas	0.00	150.00	
<a href="#">122395</a>	Invoice	10/29/2021	Training Project A1294.06.1 Nicholas	0.00	150.00	
00365	CSMFO	11/08/2021	Regular	0.00	110.00	54648
<a href="#">300007496</a>	Invoice	11/01/2021	CSMFO Member. A Nicholas	0.00	110.00	
01645	Donielle Brickner	11/08/2021	Regular	0.00	100.00	54649
<a href="#">INV0006059</a>	Invoice	10/22/2021	Starn Park Rental Deposit Brickner	0.00	100.00	
00462	EWING IRRIGATION PRODUCTS	11/08/2021	Regular	0.00	508.46	54650
<a href="#">15452871</a>	Invoice	10/19/2021	Blanket PO	0.00	508.46	
00463	EXPRESS PERSONNEL SERVICE	11/08/2021	Regular	0.00	912.00	54651
<a href="#">26206028</a>	Invoice	10/20/2021	Extra Help- PW	0.00	912.00	
00528	GILTON SOLID WASTE MANAGE	11/08/2021	Regular	0.00	1,895.07	54652
<a href="#">HUGHSS-063</a>	Invoice	10/29/2021	STREET SWEEPING	0.00	1,895.07	
00698	KUBWATER RESOURCES, INC	11/08/2021	Regular	0.00	4,490.11	54653
<a href="#">10672</a>	Invoice	10/22/2021	Sludge chemicals Blanket PO	0.00	4,490.11	
01674	Kyrsten Bandovi	11/08/2021	Regular	0.00	100.00	54654
<a href="#">INV0006060</a>	Invoice	10/23/2021	Starn Park Rental Refund Bandovi	0.00	100.00	
01459	Merry Mayhew	11/08/2021	Regular	0.00	494.43	54655
<a href="#">INV0006062</a>	Invoice	09/13/2021	Supplies for Meeting, Trunk of Treat & EDC ...	0.00	494.43	
00611	Mid Valley Publications	11/08/2021	Regular	0.00	517.00	54656
<a href="#">115953</a>	Invoice	10/26/2021	L# 8936 - Notice of Vacancy Parks, Rec & Ent...	0.00	258.50	
<a href="#">115954</a>	Invoice	10/26/2021	L# 8937 Notice of Scheduled Vacancy for Pla...	0.00	258.50	
00775	MISSION UNIFORM SERVICE	11/08/2021	Regular	0.00	884.03	54657
<a href="#">515592383</a>	Invoice	09/20/2021	UNIFORMS	0.00	86.58	
<a href="#">515635622</a>	Invoice	10/11/2021	UNIFORMS	0.00	43.29	
<a href="#">515641131</a>	Invoice	10/04/2021	UNIFORMS	0.00	43.80	
<a href="#">515641132</a>	Invoice	10/04/2021	UNIFORMS	0.00	124.62	
<a href="#">515641133</a>	Invoice	10/04/2021	UNIFORMS	0.00	30.00	
<a href="#">515686445</a>	Invoice	10/11/2021	UNIFORMS	0.00	43.80	
<a href="#">515686446</a>	Invoice	10/11/2021	UNIFORMS	0.00	62.92	

## Check Report

Date Range: 11/04/2021 - 11/16/2021

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
<a href="#">515686448</a>	Invoice	10/11/2021	UNIFORMS	0.00	30.00	
<a href="#">515688548</a>	Invoice	10/04/2021	UNIFORMS	0.00	74.58	
<a href="#">515725861</a>	Invoice	10/11/2021	UNIFORMS	0.00	71.00	
<a href="#">515730590</a>	Invoice	10/18/2021	UNIFORMS	0.00	43.80	
<a href="#">515730591</a>	Invoice	10/18/2021	UNIFORMS	0.00	62.92	
<a href="#">515730592</a>	Invoice	10/18/2021	UNIFORMS	0.00	30.00	
<a href="#">515775476</a>	Invoice	10/25/2021	UNIFORMS	0.00	43.80	
<a href="#">515775477</a>	Invoice	10/25/2021	UNIFORMS	0.00	62.92	
<a href="#">515775478</a>	Invoice	10/25/2021	UNIFORMS	0.00	30.00	
00837	NORTHSTAR CHEMICAL	11/08/2021	Regular	0.00	7,011.47	54658
<a href="#">209423</a>	Invoice	10/31/2021	CHLORINE FOR THE WELLS - 8	0.00	5,212.14	
<a href="#">209666</a>	Invoice	10/29/2021	CHLORINE FOR THE WELLS - 3	0.00	148.57	
<a href="#">209668</a>	Invoice	10/29/2021	CHLORINE FOR THE WELLS - 8	0.00	1,650.76	
00879	PG & E	11/08/2021	Regular	0.00	146.15	54659
<a href="#">INV0006066</a>	Invoice	10/26/2021	UTILITIES for October	0.00	146.15	
00884	PITNEY BOWES	11/08/2021	Regular	0.00	500.00	54660
<a href="#">INV0006074</a>	Invoice	10/13/2021	POSTAGE	0.00	500.00	
00906	PROVOST & PRITCHARD CONSU	11/08/2021	Regular	0.00	16,254.47	54661
<a href="#">88061</a>	Invoice	11/04/2021	City of Hughson - TCP Treatment Sept	0.00	16,254.47	
00914	QUICK N SAVE	11/08/2021	Regular	0.00	146.86	54662
<a href="#">1014698</a>	Invoice	10/22/2021	FUEL	0.00	32.43	
<a href="#">1016893</a>	Invoice	10/27/2021	FUEL	0.00	114.43	
01676	Ricardo Raya	11/08/2021	Regular	0.00	360.00	54663
<a href="#">INV0006061</a>	Invoice	10/22/2021	Community Senior Rental Refund Raya	0.00	360.00	
01599	SMILE BUSINESS PRODUCTS, INC	11/08/2021	Regular	0.00	137.91	54664
<a href="#">989989</a>	Invoice	10/21/2021	COPIES	0.00	137.91	
01152	TYLER TECHNOLOGIES	11/08/2021	Regular	0.00	294.58	54665
<a href="#">025-354312</a>	Invoice	11/01/2021	ESS Time & Attendance Maintenance	0.00	294.58	
01192	VISION SERVICE PLAN	11/08/2021	Regular	0.00	525.31	54666
<a href="#">813507440</a>	Invoice	10/19/2021	MEDICAL INSURANCE WITHHELD- Nov	0.00	525.31	
00978	SAN JOAQUIN VALLEY	11/10/2021	Regular	0.00	-319.00	54667
00978	SAN JOAQUIN VALLEY	11/10/2021	Regular	0.00	319.00	54667
<a href="#">N147053</a>	Invoice	09/01/2021	21/22 Annual Permit to Operate (Well Site 5)	0.00	319.00	
01597	Anna Nicholas	11/12/2021	Regular	0.00	466.16	54668
<a href="#">INV0006078</a>	Invoice	11/05/2021	Open Enrollment Meeting/ Lunch All Staff	0.00	162.16	
<a href="#">INV0006079</a>	Invoice	10/14/2021	Gov Membership and Webinar Reg Reimbur...	0.00	304.00	
00109	BADGER METER, INC	11/12/2021	Regular	0.00	248,554.81	54669
<a href="#">1464683</a>	Invoice	11/09/2021	Radio Endpoints	0.00	45,030.27	
<a href="#">1465273</a>	Invoice	11/09/2021	Registers	0.00	1,190.94	
<a href="#">1465574</a>	Invoice	11/09/2021	Radio endpoints	0.00	124,699.19	
<a href="#">1466192</a>	Invoice	11/10/2021	Registers Model 35..QTY1,043	0.00	77,634.41	
00284	CHARTER COMMUNICATION	11/12/2021	Regular	0.00	234.07	54670
<a href="#">0013555110121</a>	Invoice	11/01/2021	IP ADDRESS- PINE ST	0.00	234.07	
00381	DARKHORSE outhouse SERVICE	11/12/2021	Regular	0.00	1,288.35	54671
<a href="#">1357</a>	Invoice	11/09/2021	mobile toilet renta l(Lebright)	0.00	1,288.35	
00463	EXPRESS PERSONNEL SERVICE	11/12/2021	Regular	0.00	912.00	54672
<a href="#">26258693</a>	Invoice	10/27/2021	Extra Help- PW	0.00	912.00	
00527	GIBBS MAINTENANCE CO	11/12/2021	Regular	0.00	935.00	54673

## Check Report

Date Range: 11/04/2021 - 11/16/2021

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
<a href="#">9879</a>	Invoice	10/31/2021	JANITOR SERVICES	0.00	935.00	
00614	HUGHSON FARM SUPPLY	11/12/2021	Regular	0.00	616.79	54674
<a href="#">H395696</a>	Invoice	10/05/2021	Part and Supply Blanket PO	0.00	51.75	
<a href="#">H395843</a>	Invoice	10/06/2021	Part and Supply Blanket PO	0.00	17.25	
<a href="#">H396283</a>	Invoice	10/11/2021	Blanket PO (hughson farm supply)	0.00	368.82	
<a href="#">H396631</a>	Invoice	10/13/2021	Blanket PO (hughson farm supply)	0.00	59.95	
<a href="#">H396709</a>	Invoice	10/14/2021	Part and Supply Blanket PO	0.00	20.91	
<a href="#">H396794</a>	Invoice	10/15/2021	Part and Supply Blanket PO	0.00	13.88	
<a href="#">H396819</a>	Invoice	10/15/2021	Blanket PO (hughson farm supply)	0.00	30.14	
<a href="#">H397318</a>	Invoice	10/21/2021	Part and Supply Blanket PO	0.00	10.77	
<a href="#">H397415</a>	Invoice	10/22/2021	Part and Supply Blanket PO	0.00	39.03	
<a href="#">H398170</a>	Invoice	10/29/2021	Blanket PO (hughson farm supply)	0.00	4.29	
00627	HUGHSON NAPA AUTO & TRUCK	11/12/2021	Regular	0.00	212.84	54675
<a href="#">322850</a>	Invoice	10/06/2021	Blanket PO (napa)	0.00	141.22	
<a href="#">323921</a>	Invoice	10/19/2021	Blanket PO (napa)	0.00	14.01	
<a href="#">324216</a>	Invoice	10/22/2021	Blanket PO (napa)	0.00	27.42	
<a href="#">324259</a>	Invoice	10/22/2021	Blanket PO (napa)	0.00	30.19	
00611	Mid Valley Publications	11/12/2021	Regular	0.00	131.45	54676
<a href="#">115955</a>	Invoice	10/26/2021	Refuse Collection Public Hearing Notice	0.00	131.45	
00822	NESTLE WATERS	11/12/2021	Regular	0.00	110.82	54677
<a href="#">11J0025664277</a>	Invoice	11/09/2021	water service and water dispense	0.00	110.82	
00854	OPER.ENGR. LOCAL UNION #3	11/12/2021	Regular	0.00	260.00	54678
<a href="#">INV0006076</a>	Invoice	11/01/2021	LOCAL UNION #3 DUES - Nov	0.00	260.00	
00899	PRECISION CONCRETE CUTTIN	11/12/2021	Regular	0.00	2,664.71	54679
<a href="#">52079</a>	Invoice	11/10/2021	sidewalk grinding	0.00	2,664.71	
00978	SAN JOAQUIN VALLEY	11/12/2021	Regular	0.00	42.00	54680
<a href="#">N147417</a>	Invoice	11/10/2021	SJVAC annual permit	0.00	42.00	
01069	STEELEY, JARED WATER & WA	11/12/2021	Regular	0.00	3,862.00	54681
<a href="#">9195</a>	Invoice	10/01/2021	Services and Lab Blanket PO	0.00	3,862.00	
01115	THE HOME DEPOT CRC	11/12/2021	Regular	0.00	584.65	54682
<a href="#">INV0006081</a>	Invoice	10/01/2021	Blanket PO (Home Depot)	0.00	119.19	
<a href="#">INV0006082</a>	Invoice	10/12/2021	Blanket PO (Home Depot)	0.00	465.46	
01220	WESTURF INC.	11/12/2021	Regular	0.00	267.51	54683
<a href="#">816304</a>	Invoice	11/10/2021	grass seed and tree stakes	0.00	267.51	
01420	CALIFORNIA STATE DISBURSEMENT UNIT	11/15/2021	Regular	0.00	270.12	54684
<a href="#">INV0006127</a>	Invoice	11/16/2021	INCOME WITHHOLDING FOR CHILD SUPPORT	0.00	270.12	

## Bank Code Payable Bank Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	83	43	0.00	298,525.85
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	-319.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	<b>83</b>	<b>44</b>	<b>0.00</b>	<b>298,206.85</b>

**All Bank Codes Check Summary**

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	83	43	0.00	298,525.85
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	-319.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	<b>83</b>	<b>44</b>	<b>0.00</b>	<b>298,206.85</b>

**Fund Summary**

Fund	Name	Period	Amount
999	POOLED CASH/CONSOLIDATED CASH	11/2021	298,206.85
			<b>298,206.85</b>





Hughson

# Refund Check Register

## Refund Check Detail

UBPKT01921 - Refunds 01 UBPKT01915 Regular

Account	Name	Date	Check #	Amount	Code	Receipt	Amount	Type
12-1250-002	LLC, Breckenridge Property Fund 2016	11/3/2021	54641	58.40			58.40	Generated From Billing
Total Refunds: 1				Total Refunded Amount:	58.40			

### Revenue Code Summary

Revenue Code	Amount
996 - UNAPPLIED CREDITS	58.40
Revenue Total:	58.40

### General Ledger Distribution

Posting Date: 11/03/2021

	Account Number	Account Name	Posting Amount	IFT
Fund: 510 - WATER/SEWER DEPOSIT	510-10001	CLAIM ON CASH-WATER/SEWER DEPOSIT	-58.40	Yes
	510-11040	CUSTOMER CREDITS	58.40	
	510 Total:		0.00	
Fund: 999 - POOLED CASH/CONSOLIDATED CASH	999-10010	CASH IN BANK-MONEY MARKET	-58.40	
	999-20000	DUE TO OTHER FUNDS (POOLED CASH)	58.40	Yes
	999 Total:		0.00	
	Distribution Total:		0.00	



## CITY COUNCIL AGENDA ITEM NO. 3.3

### SECTION 3: CONSENT CALENDAR

**Meeting Date:** November 22, 2021  
**Subject:** Waive the Second Reading and Adopt Ordinance No. 2021-08, Amending Chapter 8.12 of Title 8 of the Hughson Municipal Code Titled “Refuse Collection,” Including the Addition of Organic Waste Reduction and Methane Emission Requirements for the City to Comply with SB 1383 (2016)  
**Presented By:** Rachel Wyse, Community Development Director

**Approved By:** Merry Mayhew

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#### Staff Recommendations:

Waive the second reading and adopt Ordinance No. 2021-08, Amending Chapter 8.12 of Title 8 of the Hughson Municipal Code titled “Refuse Collection,” Including the addition of Organic Waste Reduction and Methane Emission Requirements for the City to Comply with SB 1383 (2016).

#### Background:

Title 8, Chapter 8.12 of the Hughson Municipal Code addresses the collection, transportation and disposal of solid waste refuse collection.

In 2016, Governor Brown signed Senate Bill 1383 (SB 1383) into law. The new law establishes the most significant waste reduction mandate since Assembly Bill 939 was enacted thirty years ago. This legislation requires jurisdictions to institute programs to divert Organic Waste from the landfill to an authorized composting facility.

On September 27, 2021, the City Council approved maintaining a two-cart residential refuse collection system and implementing an organics recycling program in the City of Hughson that complies with SB 1383. The ordinance was introduced, and the title thereof read at the regular meeting of the City Council held on November 8, 2021, and by unanimous vote, further reading was waived.

#### Discussion:

The implementation of SB 1383 and associated solid waste regulations bring significant policy and legal implications for local governments. In addition, the legislation establishes strict deadlines for compliance over the course of the next

four years. One of these requirements is that the City must adopt an ordinance(s) to enforce and comply with solid waste legislation by January 1, 2022.

Attached is a red-lined copy and a clean copy of the City of Hughson Ordinance No. 2021-08 to amend Chapter 8.12 of Title 8 of the Hughson Municipal Code concerning refuse collection. The amendments include revisions necessary for consistency with current solid waste legislation as well as updates to outdated portions of the Code. In summary, the amendments include the following:

- updated definitions,
- edits to formatting and numbering,
- remove outdated language referring to 35-gallon containers,
- update requirements and standards for franchise collectors,
- update certain operational items from requiring Council approval to City Manager approval, example includes refuse/industrial hauler permits,
- delete insurance requirement section as that can change and is appropriate to have in the Franchise Agreement,
- delete outdated recycling section,
- add additional language required by current solid waste legislation, such as:
  - designating organic and non-organic containers,
  - regarding regulations for self-haulers,
  - commercial edible food generators,
  - food recovery organizations and services,
  - requirements for facility operators and community composting operations,
  - compliance with CALGreen recycling requirements,
  - Model Water efficient Landscaping Ordinance Requirements,
  - procurement requirements,
  - waivers, and
  - enforcement of the ordinance.

If approved the ordinance will become effective on December 23, 2021.

**Fiscal Impact:**

There is a negligible fiscal impact to amend the Ordinance.

**CITY OF HUGHSON  
CITY COUNCIL  
ORDINANCE NO. 2021- 08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON,  
AMENDING CHAPTER 8.12 OF TITLE 8 OF THE HUGHSON MUNICIPAL CODE  
CONCERNING REFUSE COLLECTION**

**WHEREAS**, the City of Hughson Municipal Code Chapter 8.12 currently establishes the regulations regarding refuse collection; and

**WHEREAS**, recent legislation, specifically SB 1383, requires jurisdictions to institute programs to divert Organic Waste from the landfill to an authorized composting facility; and

**WHEREAS**, the City desires to update and amend Chapter 8.12 to comply with SB 1383.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HUGHSON  
DOES ORDAIN AS FOLLOWS:**

**Section 1** Chapter 8.12 of Title 8 of the Hughson Municipal Code is amended to read as follows:

**8.12.010 Definitions.**

For the purposes of this chapter, the following terms are defined:

- A. “Bin” means a container designed for mechanical emptying with capacity between 2 and 6 cubic yards and of a design approved by the Council.
- B. “California Green Building Standards (CALGreen)” shall have the same meaning as the California Green Building Standards Code, 24 CCR, Part 11, as it currently exists or amended thereafter.
- C. “City” means the city of Hughson.
- D. “City Manager” means the city manager of the City or designee of the city manager of the City.
- E. “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Residential Dwelling, and as otherwise defined in 14 CCR Section 18982(a)(6), as it currently exists or amended thereafter. A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this Article.

- F. “Commercial Customer” means a customer receiving Refuse collection service where such customer is a Commercial Business
- G. “Commercial Edible Food Generator” includes a Tier One or Tier Two Commercial Edible Food Generator. For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.
- H. “Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet and as otherwise defined by 14 CCR Section 18982(a)(8), as it currently exists or amended thereafter.
- I. “Compost” shall have the same definition as 14 CCR Section 17896.2(a)(4), as it currently exists or amended thereafter.
- J. “Compliance Review” means a review of records by the City to determine compliance with this Article.
- K. “Container” means a container designed for mechanical emptying with a close-fitting cover and of a design approved by the Council. A Bin is considered a Container for the purposes of this Article.
- L. “Container Contamination” or “Contaminated Container” means a Container that contains Prohibited Container Contaminants.
- M. “Council” means the city council of the City.
- N. “County” means the county of Stanislaus, state of California.
- O. “Customer” means any Person receiving Refuse service under the provisions of this chapter.
- P. “Direct Service Providers and Vendors” means a Person, company, agency, district, or other entity that provides a service or services to City pursuant to a contract or other written agreement and as otherwise defined in 14 CCR Section 18982(a)(17), as it currently exists or amended thereafter.
- Q. “Disposal Site” means an area or location used for the disposal of Refuse, and authorized by law to receive such Refuse.
- R. “Drop Box” means a container designed to be loaded upon a vehicle for transportation to the Disposal Site with a minimum capacity of 10 cubic yards and of a design approved by the Council.
- S. “Edible Food” means food intended for human consumption, and as otherwise defined in 14 CCR Section 18982(a)(18), as it currently exists or amended thereafter. “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this Article requires or authorizes

the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

T. “Excluded Waste” means Hazardous Material, infectious waste, volatile, corrosive, medical waste, radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance.

U. “Food Recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, and as otherwise defined in 14 CCR Section 18982(a)(24), as it currently exists or amended thereafter.

V. “Food Recovery Organization” shall have the same meaning as 14 CCR Section 18982(a)(25), as it currently exists or amended thereafter.

W. “Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, and as otherwise defined in 14 CCR Section 18982(a)(26), as it currently exists or amended thereafter.

X. “Franchise Holder” means a Person who collects or transports Refuse under authority granted by the Council, in accordance with HMC Section 8.12.240, as it currently exists or amended thereafter.

Y. “Hazardous Material” means any explosive, highly flammable, radioactive, or toxic material.

Z. “High Diversion Organic Waste Processing Facility” shall have the same definition as 14 CCR Section 18982(a)(33), as it currently exists or amended thereafter.

AA. “Industrial Refuse” means Refuse produced by a Person principally engaged in the business of processing, warehousing, or manufacturing agricultural, animal, or other products or materials, who is not a Commercial Customer or residential customer, whose principal business on site is not retail in nature and Refuse produced by any Persons engaged in the business of building, remodeling, construction, or demolition.

BB. “Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event.

CC. “Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For the purposes of this chapter, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts

center, fairground, museum, theater, or other public attraction facility. For the purposes of this chapter, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.

DD. “Mixed Waste Organic Collection Stream” or “Mixed Waste” means Organic Waste collected in a Container that is required to be taken to a High Diversion Organic Waste Processing Facility and as otherwise defined in 14 CCR Section 17402(a)(11.5), as it currently exists or amended thereafter.

EE. “Model Water Efficient Landscaping Ordinance (MWELo)” shall have the same meaning as the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division 2, Chapter 2.7, as it currently exists or amended thereafter.

FF. “Multi-Family Residential Dwellings” or “Multi-Family” means of, from, or pertaining to residential Premises with five (5) or more dwelling units. Multi-family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

GG. “Non-Compostable Paper” includes but is not limited, to paper that is coated in a plastic material that will not breakdown in the composting process and as otherwise defined in 14 CCR Section 18982(a)(41), as it currently exists or amended thereafter.

HH. “Non-Organic Recyclables” means non-Putrescible Waste and non-Hazardous Recyclable Wastes including but not limited to bottles, cans, metals, plastics and glass, and as otherwise defined in 14 CCR Section 18982(a)(43), as it currently exists or amended thereafter.

II. “Non-Organic Waste” means all collected wastes that is not designated for collection in the Organic Waste Container, including carpets, Non-Compostable Paper, and textiles.

JJ. “Non-Organic Waste Container” means a Container that shall be used for the collection and storage of Non-Organic Waste.

KK. “Notice of Violation (NOV)” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, and as otherwise defined in 14 CCR Section 18982(a)(45), as it currently exists or amended thereafter.

LL. “Occupant” means the Person in possession or control of Premises such as lessee, licensee, manager, custodian, or caretaker.

MM. “Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges and as otherwise defined in 14 CCR Section 18982(a)(46), as it currently exists or amended thereafter, excluding carpets, Non-Compostable Paper, textiles, and Hazardous Materials. Biosolids and digestate are as defined by 14 CCR Section 18982(a), as it currently exists or amended thereafter.

NN. “Organic Waste Container” means a Container that shall be used for the collection and storage of Organic Waste.

OO. “Organic Waste Generator” means a Person or entity that is responsible for the initial creation of Organic Waste, and as otherwise defined in 14 CCR Section 18982(a)(48), as it currently exists or amended thereafter.

PP. “Owner” means the Person having dominion of or title to Premises.

QQ. “Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, and as otherwise defined in 14 CCR Section 18982(a)(51), as it currently exists or amended thereafter.

RR. “Permit Holder” means a Person who collects or transports Refuse under authority granted by the City Manager, in accordance with HMC Section 8.12.290, as it currently exists or amended thereafter.

SS. “Person” means any individual, firm, corporation, association, group, or combination and the plural as well as the singular.

TT. “Premises” means a parcel of real property to the center of any alley adjacent thereto, unless other specified by the City Manager, located in the incorporated area of the City, upon which is situated any dwelling house or other place of human habitation, including each unit of a multiple occupancy building, or upon which is conducted any business, occupation, or activity which results in the production or accumulation of Refuse.

UU. “Printing and Writing Paper” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, and as otherwise defined in 14 CCR Section 18982(a)(54), as it currently exists or amended thereafter.

VV. “Prohibited Container Contaminants” means the following: (1) discarded materials placed in the Non-Organic Waste Container that are not identified as Non-Organic Waste; (2) discarded materials placed in the Organic Waste Container that are not identified as Organic Waste; (3) Excluded Waste.

WW. “Putrescible Waste” include waste that is capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, vectors, gases, or other offensive conditions, and include materials such as, but not limited to food wastes and dead animals.

XX. “Recyclable Materials” means reusable waste materials including, but not limited to, various types of plastic, metal, glass, aluminum, packaging, paper, books, magazines, boxes, wrappers.



YY. “Recycled-Content Paper” means Paper Products and Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, and as otherwise defined in 14 CCR Section 18982(a)(61), as it currently exists or amended thereafter.

ZZ. “Refuse” means all discarded items and substances of every kind, including infectious wastes and Recyclable Materials and Organic Waste, but not including sewage, septic tank contents, sewer sludge and construction and demolition debris, sand trap contents, grease trap contents or Hazardous Materials as defined by state and/or federal law.

AAA. “Route Review” means a visual inspection of Containers along a Franchise Holder route for the purpose of determining Container Contamination and may include mechanical inspection methods such as the use of cameras, and as otherwise defined in 14 CCR Section 18982(a)(65), as it currently exists or amended thereafter.

BBB. “Self-Hauler” means a Person, who hauls Solid Waste, Organic Waste or Recyclable Material he/she/they has generated to another Person. Self-hauler also includes a Person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

CCC. “Solid Waste” shall have the same meaning as defined in California Public Resources Code Section 40191, as it currently exists or amended thereafter.

DDD. “Source Separated” means materials, including commingled Recyclable Materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, and as otherwise defined in 14 CCR Section 17402.5(b)(4), as it currently exists or amended thereafter. For the purposes of the ordinance, Source Separated shall include separation of materials by the generator, Owner, Owner’s employee, property manager, or property manager’s employee into different Containers for the purpose of collection such that Source Separated materials are separated from Non-Organic Waste or other Solid Waste for the purposes of collection and processing.

EEE. “Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (1) Supermarket; (2) Grocery store with a total facility size equal to or greater than 10,000 square feet; (3) Food service provider; (4) Food distributor; and (5) Wholesale food vendor.

FFF. “Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet; (2) Hotel with an on-site food facility and 200 or more rooms; (3) Health facility with an on-site food facility and 100 or more beds; (4) Large Venue; (5) Large Events; (6) A state agency with a cafeteria with 250 or more seats or a total

cafeteria facility size equal to or greater than 5,000 square feet; and (7) A local education agency with an on-site food facility.

#### **8.12.020 Littering Prohibited.**

A. No Owner or Occupant shall throw, drop, leave, dump, bury, place, or otherwise dispose of any Refuse, or allow any other Person to dispose of Refuse, upon his/her/their Premises except in a regularly designated Disposal Site; provided, however, building materials may be kept on Premises during a period of active construction, reconstruction, or repair of a building or structure thereon under a valid building permit; and wood may be kept neatly piled upon Premises for household use; and garden waste may be composted in a manner approved by the City Manager.

B. No Person shall throw or deposit or cause to be thrown or deposited, any Refuse or abandon any material whatsoever in or upon any public property, public right-of-way, watercourse, or banks of any watercourse, or upon the Premises of any other Person except at a regularly designated Disposal Site.

#### **8.12.030 Refuse collection compulsory.**

The Owner or Occupant of an occupied dwelling, house, or other place of human habitation, including a business establishment, shall be responsible for the regular collection of Refuse from said place by the authorized collector of Refuse in the City at least once each week, and shall also be responsible for the payment of all Refuse services by said authorized collector of Refuse. The Owner or Occupant of Premises upon which a hotel, restaurant, boardinghouse, or other Refuse-producing business is operated shall be responsible for the regular collection of Refuse from said place by the authorized collector of Refuse in the City at least twice each week and shall also be responsible for the payment of all Refuse services by said authorized collector of Refuse. The City Manager may require a greater number of collections per week, provided, however, that, upon a showing of hardship or unnecessary, the City Manager may exempt any single location from the requirements of this section.

#### **8.12.040 Containers – Generally.**

No Owner or Occupant shall fail or neglect to provide or have provided a sufficient number of Containers for receiving and holding, without leakage or escape of odors, all Refuse created, produced, or accumulated on the Premises, and all such Refuse shall be deposited in such Containers. Containers shall at all times be kept in good, useful, and sanitary condition. Containers shall be kept continuously closed except when Refuse is being placed therein or removed therefrom, and shall at all times be closed against the access of flies, rodents, and other animals. Containers used shall be those provided by the Franchise Holder.

#### **8.12.050 Containers – Number.**

All Premises shall have sufficient Containers to hold all Refuse created, produced, or accumulated on the Premises between required removals. Customers may arrange for use of Bins or Drop Boxes instead. These arrangements shall be made with the Franchise Holder on the basis

of charges established by the terms of the franchise or by resolution of the City, as the case may be.

#### **8.12.060 Containers – Designated Materials in Containers.**

Residential Customers shall only place Organic Waste in the Organic Waste Container and Non-Organic Waste in the Non-Organic Waste Container. Customers shall not place Excluded Waste in Containers.

#### **8.12.070 Containers – Restrictions.**

Any Container in excess of the number of Containers containing Refuse which the Customer is entitled to have collected according to the charge he/she/they pays shall not be collected.

#### **8.12.080 Containers – Location.**

Containers shall not be placed or allowed to remain in or on any street or alley right-of-way unless authorized by the City Manager. Except for handicapped Customers, residential Customers shall place their Containers curbside for collection day.

#### **8.12.090 (Reserved)**

#### **8.12.100 Special arrangements.**

The Owner or Occupant of a Premises, or two or more such Persons acting jointly, may request the Council to approve a plan whereby special arrangements are made for effective and efficient Refuse removal. The proposed plan shall include a statement of expected charges and such other comments as the City Manager considers appropriate. The Council is authorized to grant variances to any provision of this chapter and to approve the proposed plan with such conditions as are deemed necessary.

#### **8.12.110 Placement.**

Subject to the prohibitions of HMC 8.12.080, Containers shall be placed for collection of their contents in the following manner:

A. On single-family and two-family Premises:

1. Where alleys exist, upon the Customer's Premises immediately adjacent to and accessible from the alley without the necessity of entering the Premises;
2. Where alleys do not exist, upon the Customer's Premises at a location no greater than the curbside of the street fronting the Premises; provided, that the City Manager may approve an agreement between the Customer and the Franchise Holder as to the location of Refuse for collection.

B. Containers for service to multiple-dwelling Premises and Refuse-producing businesses shall be placed in a location no greater than 50 feet from the nearest point where the Franchise

Holder's vehicle can reasonably be parked. Drop Boxes shall be located as agreed upon between the Customer and the Franchise Holder. In case of dispute, the location shall be as determined by the City Manager.

C. Containers for required service may be placed on Premises at a location other than as provided in subsections A and B of this section set forth as may be provided in the schedule of charges adopted by the Council from time to time.

D. Containers may be placed for collection of their contents no earlier than noon on the day before the scheduled collection day, and must be removed from the collection point and placed in accordance with subsection (A)(2) of this section no later than noon on the day following the scheduled collection day.

E. All Containers not set out for collection must be screened from public view, where possible. If conditions of the Customer's Premises make it impossible to screen Containers from public view, Containers shall be stored as far from the curb and as out of the public view as possible under the circumstances.

#### **8.12.120 Hazardous Materials prohibited.**

No Person shall deposit in any Container used for Refuse, any explosive, highly flammable, radioactive, toxic, or other Hazardous Material or substance without having first made special arrangements for the disposal thereof with a Franchise Holder or Permit Holder. No Person shall deposit any such Hazardous Material in a Disposal Site without having first made special arrangements for the disposal thereof with the Disposal Site operator.

#### **8.12.130 Hours.**

No collection shall be made in residential districts, as shown on the zoning map of the City, prior to 6:00 a.m. or after 6:00 p.m. No collections shall be made at schools, churches, offices, or Commercial establishments in or adjacent to residential districts prior to 5:00 a.m. or after 9:00 p.m.

#### **8.12.140 Use restrictions.**

Notwithstanding the provisions of HMC 8.12.030, Refuse may be used for animal feed, soil improvement, recycling, or other beneficial purpose; provided, such use complies with this chapter and all other laws. Except as authorized pursuant to HMC 8.12.100, no Person shall use, store, or transport Refuse for any beneficial purpose without having a valid permit therefor issued by the City Manager. The City Manager shall issue or amend a permit upon terms and conditions as are determined to be necessary to ensure that the use or the proposed use complies with existing laws and regulations and does not create a health menace or a nuisance.

A. Self-Haulers shall Source Separate all Recyclable Materials and Organic Waste (materials that City otherwise requires generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, as the sections currently exist or thereafter amended, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility.

B. Self-Haulers shall haul their Source Separated Non-Organic Recyclables and Source Separated Organic Waste to a facility that recovers those materials; and haul their Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.

C. Self-Haulers that are Commercial Businesses shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to inspection by the City. The records shall include the following information:

1. Delivery receipts and weight tickets from the entity accepting the waste.
2. The amount of material in cubic yards or tons transported by the generator to each entity.
3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.

#### **8.12.150 Transportation – Spill prevention.**

Refuse hauled by any Person over any street or road in the City shall be securely tied or covered during the hauling thereof. No Person shall allow Refuse to leak, spill, blow off, or drop from any vehicle on any street or road.

#### **8.12.160 Transportation – Vehicle requirements.**

All collections by Franchise Holder shall be made with vehicles of a design approved by the City Manager. All collections shall be made as quietly as possible and the use of any unnecessarily noisy trucks or equipment is unlawful.

#### **8.12.170 Ownership.**

All Refuse upon being removed from the Premises where created, produced, or accumulated shall become and be the property of the Franchise Holder and upon being deposited in an authorized Disposal Site shall forthwith become the property of the Owner of the site.

#### **8.12.180 Interference with Containers prohibited.**

No Person other than the Owner or Occupant of Premises, an employee of the City, or an employee of the Franchise Holder shall tamper with or interfere in any manner with any Container or the contents thereof.

#### **8.12.190 Interference with collection prohibited.**

No Person shall by any means hinder, obstruct, or interfere with the removal or transportation of Refuse by Franchise Holder.

#### **8.12.200 Inspection.**

The City Manager is authorized to conduct inspections and investigations, at random or otherwise, of any collection Container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Customers (including Multi-Family Residential Dwellings), Owners, Commercial Edible Food Generators, Franchise Holder, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for inspection.

#### **8.12.210 Refusal to collect – Notice.**

A Franchise Holder shall notify the City Manager whenever the collector has refused to pick up a Container because the Container is dilapidated, disintegrated, overloaded, contains dangerous materials, or the Container has been tipped over and the contents scattered. A franchise holder shall notify the City Manager when he/she/they observes any violations of this chapter.

#### **8.12.220 Refusal to collect – Marking.**

Whenever a Franchise Holder gives or intends to give a report to the City Manager, he/she/they shall place a tag on the Container or otherwise give the Owner or Occupant notice of the substance of his/her/their report to the City Manager. Whenever an authorized representative of the City observes a violation of this chapter, he/she/they shall place a tag on the Container or otherwise give the Owner or Occupant notice of the illegal condition. The tag or other notice shall have a copy of the penalties set forth in this chapter printed upon it and shall inform the Owner of the action necessary to correct the illegal condition. The Owner or Occupant shall, within seven days, correct the illegal condition.

#### **8.12.230 Collector franchise – Required.**

No Person shall collect, transport, or use Refuse in the incorporated area of the City without first receiving a franchise or permit to engage in such activity.

#### **8.12.240 Collector franchise – Granting.**

A franchise agreement may be entered into for the collection and disposal of Refuse in the City in accordance with and subject to the terms and conditions of this chapter and such terms and conditions as may be imposed by the Council.

#### **8.12.250 Collector franchise – Bid procedure.**



Before entering into such agreement, the City may, but shall not be required to, call for bids for a franchise. In the event the Council elects to call for bids, the form of proposals and the time and place for receiving bids shall be fixed by resolution of the Council; a notice thereof shall be published one time in a newspaper published or circulated in the City, which notice shall specify the time the agreement is to run. The scheduled rates offered by each bidder shall be based upon classifications as may be designated by resolution of the Council and the Council shall have the right to reject all bids. Where bids have been solicited and received and where the Council has not elected to reject all bids, the franchise shall be awarded to the lowest qualified bidder.

#### **8.12.260 Collector franchise – Statement required.**

Prior to the granting of a franchise, the bidder, if any, or applicant, and on July 1st of each year after the grant, the Franchise Holder, shall file a statement of ownership, operational capability, and financial support and shall verify the same as being true and correct under penalty of perjury. The statement shall be in such form as may be prescribed therefor by the City Manager.

#### **8.12.270 Collector franchise – Exclusivity.**

Within the City, the Franchise Holder shall have the exclusive right to make all collections of Refuse; however, as provided by HMC 3.12.290 through 3.12.320, other Persons may be issued permits which can be exercised in the City unless such franchise agreement grants exclusivity to the franchisee thereunder.

#### **8.12.280 Collector franchise – Disposal requirements.**

The Franchise Holder shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:

- A. Identify the facilities to which they will transport Organic Waste and Non-Organic Waste, through written notice to the City, no later than 90 days before the City's reporting deadline as defined in 14 CCR Section 18994.2, as it currently exists or amended thereafter.
- B. Transport Organic Waste and Non-Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as currently defined in 14 CCR, Division 7, Chapter 12, Article 2, and amended thereafter.
- C. Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting construction and demolition debris in a manner that complies with 14 CCR Section 18989.1, and Section 8.12.680 of this ordinance.

#### **8.12.290 Permit – Granting.**

The City Manager may grant a permit for collections other than those provided for by HMC 8.12.030 to collect, transport, or use Industrial Refuse upon application therefor whenever in the opinion of the City Manager the granting of such permit is in the public interest and welfare and the existing franchise agreement does not provide for exclusivity. The Permit Holder

shall meet the requirements and standards identified in HMC 8.12.280 as a condition of approval of a permit.

#### **8.12.300 Permit – Period.**

Such permits may be granted for any period not to exceed one year. Permits may be renewed upon expiration thereof for a similar term; provided, that the City Manager finds that the Permit Holder is capable of continuing operations in conformity with the provisions of this chapter and the rules and regulations of the Council.

#### **8.12.310 Permit – Contents.**

Every such permit granted by the City Manager shall be subject to the provisions of this chapter and the rules and regulations of the Council. The permit shall state:

- A. The name and address of the Person to whom the permit is issued;
- B. The activity authorized;
- C. The area in which the activity is authorized;
- D. The term for which the permit is granted;
- E. Such other conditions as the Council may provide.

#### **8.12.320 Permit – Application.**

Applicants for a permit or for the renewal of a permit to collect, transport, or use Refuse shall file with the City Manager a verified application in writing which shall give the following information:

- A. Name and description of the applicant;
- B. Permanent home and business address and full local address of the applicant;
- C. Trade and firm name;
- D. If a joint venture, a partnership, or limited partnership, the names of all partners and their permanent addresses. If a corporation, the names and permanent addresses of all the stockholders and the officers and the percentage of participation of each;
- E. A detailed explanation of the manner in which the applicant will conduct the activity for which the permit is requested;
- F. The applicant's arrangements for the disposal of all Refuse collected or transported by him/her/them at an approved Disposal Site or his/her/their arrangements for other authorized disposal;
- G. Facts showing that the applicant is able to render efficient Refuse service;



H. That the applicant owns or has under his/her/their control in good mechanical condition sufficient equipment to adequately conduct the business for which a permit is requested;

I. That his/her/their vehicles and equipment conform to all applicable provisions of this chapter;

J. That the applicant shows to the satisfaction of the City Manager that the issuance of a permit is in the public interest, and there is need for a permit to be issued;

K. Such other facts or information as the City Manager may require.

#### **8.12.330 Charges – Service required.**

A Franchise Holder shall provide Refuse removal service to all Premises situated within the City. A Franchise Holder shall not be required to service oversize, overweight, or unsafe Containers. A Franchise Holder shall not be required to continue to provide Refuse removal if the Owner or Occupant has failed to pay the charges for service for a period of 60 days. Prior to terminating service for nonpayment of charges, the Franchise Holder shall, at least 14 days prior to termination, provide written notice of intention to terminate, a copy of which shall be given to the City Manager.

#### **8.12.340 Charges – Amount.**

Charges to Customers of a Franchise Holder for Refuse removal service shall be determined by the terms of the franchise. A basic charge shall be established by the Council, payment of which shall entitle a residential Customer to have the contents of one Organic Waste Container and one Non-Organic Waste Container removed from his/her/their Premises once a week by a Franchise Holder. The Council may approve an agreement between the Customer and the Franchise Holder to provide additional service for an additional charge. The charges may be revised by the Council from time to time after a public hearing thereon and a determination by the Council that a change is in the public interest.

#### **8.12.350 Charges – Determination.**

Charges to Customers for rubbish removal service provided by the holder of a permit may be set by the Council by resolution and may be revised by the Council from time to time as it determines to be necessary.

#### **8.12.360 Charges – Uniformity required.**

All charges for fees for service by a Franchise Holder shall be uniform for the same services as fixed and approved by the Council. Any Customer contending that he/she/they has been required to pay an unreasonable charge for any service or has in any manner been subject to an overcharge, may file a written complaint with the City Manager setting forth the facts of such alleged overcharge and the City Manager shall notify the Franchise Holder of the complaint and shall investigate the matter of the complaint and shall determine the charge.

#### **8.12.370 Fees – Franchise.**

To provide for the administration and enforcement of this chapter, the Council may require that the holder of a franchise pay to the City a franchise fee based on percentage of gross receipts realized from services required to be furnished by this chapter or other reasonable basis. The amount of the franchise fee shall be one of the terms of the franchise. The franchise fee may be revised by the Council from time to time after a public hearing thereon and a determination by the Council that a change is in the public interest.

#### **8.12.380 (Reserved)**

#### **8.12.390 Fees – Industrial permit.**

The permit fee for engaging in the business of collecting Industrial Refuse shall be a fee as approved by the Council, payable on July 1st of each year. In addition to the annual fee, the holder of a permit for engaging in the business of collecting Industrial Refuse shall pay annually to the City, within 60 days following the close of the fiscal year, an amount equivalent to eight percent of the gross receipts derived from the furnishing of such Industrial Refuse collection services within the incorporated areas of the City.

#### **8.12.400 Fees – Permit.**

The permit fee for any other activity involving Refuse shall be a fee as approved by the Council, payable on July 1st of each year.

#### **8.12.410 Fees – Payment.**

Fees shall be paid to the City clerk who shall deposit them to the general fund or such other fund as the Council may designate.

#### **8.12.420 Bond required.**

A Franchise Holder shall post a bond with the City in the amount provided for in the franchise agreement.

A Permit Holder shall file with the City Manager a faithful performance bond or other form of security satisfactory to the City Manager in an amount determined by the City Manager not more than \$10,000 nor less than \$1,000.

#### **8.12.430 (Reserved)**

#### **8.12.440 Transferability of franchise or permit.**

No franchise or permit granted pursuant to the provisions of this chapter and no ownership interest in any Franchise or Permit Holder shall be sold, transferred, leased, assigned, mortgaged, pledged, hypothecated, or otherwise encumbered or disposed of in whole or in part, directly or indirectly, whether voluntarily or by operation of law or through any stock transfer, transfer in trust, change in control, consolidation or merger, without the prior written consent of the Council. The Council may grant or deny such a request and may impose conditions as it may

deem to be in the public interest. Any disposition made without consent shall constitute good cause for revocation of the affected franchise or permit.

#### **8.12.450 Revocation of franchise.**

In the event of suspension or revocation of a franchise, the City shall have the right forthwith to take possession of all trucks and other equipment of the Franchise Holder for the purpose of collecting and disposing of Refuse and performing all other duties which the Franchise Holder is obligated to perform. The City shall have the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the City for such purpose. The City shall pay the Franchise Holder a reasonable rental for the use of such trucks and equipment.

#### **8.12.460 Employee requirements.**

The City may, at its option, require photographing and fingerprinting of applicants for a franchise or permit and of the employees of the Franchise Holder or Permit Holder.

#### **8.12.470 Interruption of service – Labor dispute.**

In the event the Refuse collection of a Franchise Holder is interrupted by a labor dispute and scheduled collections are discontinued for more than 72 hours, the City shall have the right to forthwith take temporary possession of all facilities and equipment of the Franchise Holder for the purpose of continuing the service which the Franchise Holder has agreed to provide in order to preserve and protect the public health and safety. The City has the right to retain possession of such facilities and equipment and to render the required services until the Franchise Holder can demonstrate to the satisfaction of the City that required services can be resumed by the Franchise Holder; provided, however, that the temporary assumption of the Franchise Holder's obligations under the franchise shall not be continued by the City for more than 120 days from the date such operations were undertaken. Should the Franchise Holder fail to demonstrate to the satisfaction of the City that required services can be resumed by the Franchise Holder prior to the expiration of the 120 days, the rights and privileges granted to the Franchise Holder may be forfeited and the franchise may be revoked.

#### **8.12.480 Interruption of service – City responsibility.**

During any period in which the City has temporarily assumed the obligation of the Franchise Holder under HMC 8.12.470 through 8.12.490, the City shall be entitled to the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury of the City to the credit of the general fund. Final adjustment and allocation of gross revenue, costs, and expenses to the period during which the City temporarily assumed the obligations of the Franchise Holder shall be determined by an audit by a certified public accountant or licensed public accountant and prepared in report form with his/her/their opinion annexed thereto.

#### **8.12.490 Interruption of service – Employee use.**

Employees of the Franchise Holder may be employed by the City during any period in which the City temporarily assumes the obligations of the Franchise Holder under this chapter; provided, however, that the rate of compensation to be paid such employees, or any other employees, shall be the rate or rates in effect at the time the Franchise Holder's service was interrupted by the labor dispute and the terms and conditions of employment shall be the same as provided by the Franchise Holder. (Ord. 90-10 § 1, 1990)

#### **8.12.500 Recordkeeping.**

Each Person granted a franchise or permit under the provisions of this chapter shall maintain detailed records of all receipts and expenditures received or incurred in the operations of such business, including all fees collected for services rendered. The City, its officers and employees shall be entitled to inspect, audit, and copy such books and records upon reasonable notice during normal business hours.

#### **8.12.510 Audit required.**

A Franchise Holder shall annually provide the City with a copy of an audit within 60 days after the close of the holder's fiscal year. The audit shall be prepared by a certified public accountant or licensed public accountant who has annexed his/her/their opinion thereto. The accountant shall be entirely independent of the Franchise Holder, shall not be an employee directly or indirectly of the Franchise Holder, and shall have no financial interest whatsoever in the business of the Franchise Holder. The City shall specify the form and detail of the annual audit. In the event of failure to provide any such annual audit, the City may employ a qualified accountant or the County auditor to conduct the audit and the Franchise Holder in such case shall be liable for and shall pay the costs and expenses of the audit.

#### **8.12.520 Vehicles – Requirements.**

All Refuse collection shall be made with a vehicle and equipment of a design approved by the Council. All Refuse collections shall be made as quietly as possible and noise abatement shall be a consideration of vehicle and equipment inspections and approval. Vehicles transporting Refuse shall be kept clean and sanitary and shall be disinfected immediately after being used.

#### **8.12.530 Vehicles – Cleanliness.**

All trucks of a Franchise Holder shall be clean, sanitary, and well painted. The Franchise Holder shall have printed or stenciled in a prominent place on the exterior of each vehicle used by him in the collection of Refuse the following information in four-inch letters:

Truck # \_\_\_\_\_

Franchise Holder (name)

#### **8.12.540 Vehicles – Inspection.**

The City Manager is authorized to provide inspections of all vehicles and equipment of a Franchise or Permit Holder at a place designated by the City Manager. Vehicles and equipment

shall conform to the requirements of the California Vehicle Code, this chapter, and rules or regulations of the Council.

#### **8.12.550 Vehicles – Equipment required**

The holder of a franchise or permit shall equip each vehicle hauling Refuse with a shovel, broom, and fire extinguisher of a type approved by the Council.

#### **8.12.560 Name restrictions.**

A Franchise or Permit Holder shall not use a firm name containing the words “city” or “Hughson” or other words implying City ownership. The Franchise or Permit Holder shall establish and maintain an office where service may be applied for and complaints made. The office shall be equipped with a listed telephone to which calls from City residents may be placed without payment of a toll charge and shall have a responsible person in charge between the hours of 8:00 a.m. and 5:00 p.m. of each day except Saturdays, Sundays, and holidays.

#### **8.12.570 Service records.**

A Franchise Holder shall supply the City Manager current maps and schedules of collection routes. Maps and schedules of routes shall be updated within 90 days of receipt of a final subdivision map that includes final approved street names and addresses of a new residential subdivision or commercial/industrial development.

#### **8.12.580 (Reserved)**

#### **8.12.590 Billing.**

Franchise Holder may bill a Customer and collect service charges in accordance with the rates adopted by the Council for Refuse removal service. A Franchise Holder and the City may enter into an agreement whereby the City will bill the Customer and pay the Franchise Holder for services rendered. Such an agreement shall set forth the respective duties and responsibilities of the Franchise Holder and City regarding the billing and collection of such charges.

#### **8.12.600 Enforcement.**

The health officer of the Stanislaus County health department is designated to enforce all health-related violations of this chapter.

#### **8.12.620 (Reserved)**

#### **8.12.630 (Reserved)**

#### **8.12.640 (Reserved)**

#### **8.12.650 Requirements for Commercial Edible Food Generators**

A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section 8.12.650 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

B. Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities, as defined by Health and Safety Code Section 113789, operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

C. Commercial Edible Food Generators shall comply with the following requirements:

1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
2. Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
3. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
4. Allow City's designated enforcement entity or designated third party enforcement entity to access the Premises and review records pursuant to 14 CCR Section 18991.4.
5. Keep records that include the following information, and as otherwise specified in 14 CCR Section 18991.4, as it current exists and amended thereafter:
  - a. A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
  - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
  - c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
    - i. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
    - ii. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
    - iii. The established frequency that food will be collected or self-hauled.
    - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

- d. Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

#### **8.12.660 Requirements for Food Recovery Organizations and Services**

A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement shall maintain the following records, unless specified otherwise by 14 CCR Section 18991.5(a)(1), as it currently exists and amended thereafter:

1. The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement shall maintain the following records unless specified otherwise by 14 CCR Section 18991.5(a)(2), as it currently exists and amended thereafter:

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

C. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators shall report to the City the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators, no later than 90 days before the City's reporting deadline as defined in 14 CCR Section 18994.2, as it currently exists or amended thereafter.

D. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the City that provides solid waste collection services, or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

#### **8.12.670 Requirements for Facility Operators and Community Composting Operations**

A. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly owned treatment works shall, upon City request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.

B. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days.

#### **8.12.680 Compliance with CALGreen Recycling Requirements**

Persons applying for a permit from the City for new construction and building additions and alternations shall comply with Section 4.408.1, 4.410.2, 5.410.1, and 5.408.1 of CALGreen, as each section currently exists or amended thereafter, if its project is covered by the scope of CALGreen or more stringent requirements of the City. If the requirements of CALGreen are more stringent than the requirements of this Section, the CALGreen requirements shall apply.

#### **8.12.690 Model Water Efficient Landscaping Ordinance Requirements (MWELo)**

Owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the City, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo.

#### **8.12.700 Procurement Requirements for City Departments, Direct Service Providers, and Vendors**

A. City departments, and Direct Service Providers and Vendors to the City, as applicable, must comply with the City's Recovered Organic Waste Product procurement policy.

B. All Direct Service Providers and Vendors providing Paper Products and Printing and Writing Paper shall:



1. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than non-recycled items.
2. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12, as it currently exists or amended thereafter.
3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the City. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
4. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the City is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013), as it currently exists or amended thereafter.
5. Provide records of all Paper Products and Printing and Writing Paper purchases within thirty (30) days of the purchase (both Recycled-Content and non-Recycled Content, if any is purchased) made by any division or department or employee of the City. Records shall include a copy of the invoice or other documentation of purchase, written certifications as required in Sections 8.12.700(b)(3) and 8.12.700(b)(4) of this ordinance for Recycled-Content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none).

### **8.12.710 Waivers**

A. De Minimis Waivers: The City Manager may waive a Commercial Business' obligation to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 8.12.710(a)(2) below. Commercial Businesses requesting a de minimis waiver shall:

1. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 8.12.710(a)(2) below.
2. Provide documentation that either:
  - a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in an Organic Waste Container comprises less than 20 gallons per week per applicable Container of the business' total waste; or,

- b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in an Organic Waste Container comprises less than 10 gallons per week per applicable Container of the business' total waste.
3. Notify City Manager if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.
4. Provide written verification of eligibility for de minimis waiver every 5 years, if City Manager has approved de minimis waiver.

B. Physical Space Waivers: City Manager may waive a Commercial Business' or Owner's obligations to comply with some or all of the Recyclable Materials and/or Organic Waste collection service requirements if the City has evidence from its own staff, Franchise Holder, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for the collection Containers required for compliance with the Organic Waste collection requirements of Section 8.12.640.

1. A Commercial Business or Owner may request a physical space waiver through the following process:
  - a. Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
  - b. Provide documentation that the Premises lacks adequate space for an Organic Waste Container including documentation from its Franchise Holder, licensed architect, or licensed engineer.
  - c. Provide written verification to City Manager that it is still eligible for physical space waiver every five years, if City Manager has approved application for a physical space waiver.

#### **8.12.720 Enforcement**

A. Violation of any provision of Chapter 8.12 shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a City Manager. Enforcement Actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.

B. Process for Enforcement

1. City Manager will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an inspection program Section 8.12.200 establishes City's right to conduct inspections and investigations.

2. City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. For incidences of Prohibited Container Contaminants found in Containers, City will issue a Notice of Violation to any Owner or Occupant found to have Prohibited Container Contaminants in a Container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants. If the City observes Prohibited Container Contaminants in an Owner or Occupant's Containers on more than two (2) consecutive occasions, the City may assess contamination processing fees or penalties on the Owner or Occupant.
4. With the exception of Prohibited Container Contaminants found in Containers, addressed under Section 8.12.720(B)(3), City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
5. A Notice of Violation shall include the following information:
  - a. The name(s), or account name(s) if different, of each person or entity to whom it is directed.
  - b. A factual description of the violations of this chapter, including the section(s) being violated.
  - c. A compliance date by which the violator is to take specified action(s).
  - d. The penalty for not complying within the specified compliance date.
6. Absent compliance by the violator within the deadline set forth in the Notice of Violation, City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to HMC Enforcement Chapter 1.17.
  - a. Notices shall be sent to Owner at the official address of the Owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.
7. The penalty levels are as follows:
  - a. For a first violation, the amount of the base penalty shall be \$100 per violation.
  - b. For a second violation, the amount of the base penalty shall be \$200 per violation.
  - c. For a third or subsequent violation, the amount of the base penalty shall be \$500 per violation.
8. The City Manager may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with Section 8.12.720(B)(5)(c) if it finds that there are extenuating

circumstances beyond the control of the violator that make compliance within the Notice of Violation deadlines impracticable, including the following:

- a. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- b. Delays in obtaining discretionary permits or other government agency approvals; or,
- c. Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2, as it currently exists or amended thereafter, due to those deficiencies.

**Section 2** If any provision of this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the validity of any particular portion thereof.

**Section 3** This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 4** Within fifteen (15) days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in accordance with California Government Code section 36933.

**Section 5** This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date.

The foregoing Ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on November 8, 2021, and by a vote of the Council members present, further reading was waived.

On motion of Councilperson \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was passed by the City Council of the City of Hughson at a regular meeting held on \_\_\_\_\_, 2021, by the following votes:

/ / / /

/ / / /

/ / / /

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTENTIONS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
GEORGE CARR, Mayor

ATTEST:

\_\_\_\_\_  
ASHTON GOSE, Deputy City Clerk

**CITY OF HUGHSON**  
**CITY COUNCIL**  
**ORDINANCE NO. 2021- 08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON,**  
**AMENDING CHAPTER 8.12 OF TITLE 8 OF THE HUGHSON MUNICIPAL CODE**  
**CONCERNING REFUSE COLLECTION**

WHEREAS, the City of Hughson Municipal Code Chapter 8.12 currently establishes the regulations regarding refuse collection; and

WHEREAS, recent legislation, specifically SB 1383, requires jurisdictions to institute programs to divert Organic Waste from the landfill to an authorized composting facility; and

WHEREAS, the City desires to update and amend Chapter 8.12 to comply with SB 1383.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HUGHSON DOES ORDAIN AS FOLLOWS:**

**Section 1** Chapter 8.12 of Title 8 of the Hughson Municipal Code is amended to read as follows:

**8.12.010 Definitions.**

For the purposes of this chapter, the following terms are defined:

- A. A. ~~“Bin”~~ “Bin” means a container designed for mechanical emptying with capacity between 2 and 6 cubic yards and of a design approved by the Council.
- B. “California Green Building Standards (CALGreen)” shall have the same meaning as the California Green Building Standards Code, 24 CCR, Part 11, as it currently exists or amended thereafter.
- C. “City” means the city of Hughson.
- D. “City Manager” means the city manager of the City or designee of the city manager of the City.
- E. “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Residential Dwelling, and as otherwise defined in 14 CCR Section 18982(a)(6), as it currently exists or amended thereafter. A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this Article.

F. “Commercial Customer” means a customer receiving Refuse collection service where such customer is a Commercial Business

G. “Commercial Edible Food Generator” includes a Tier One or Tier Two Commercial Edible Food Generator. For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.

H. “Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet and as otherwise defined by 14 CCR Section 18982(a)(8), as it currently exists or amended thereafter.

I. “Compost” shall have the same definition as 14 CCR Section 17896.2(a)(4), as it currently exists or amended thereafter.

J. “Compliance Review” means a review of records by the City to determine compliance with this Article.

~~A.K.~~ “Container” means a container designed for mechanical emptying with a close-fitting cover and of a design approved by the ~~council~~Council. A Bin is considered a Container for the purposes of this Article.

~~B. “City” means the city of Hughson.~~

~~C. “City manager” means the city manager of the city.~~

~~D. “Commercial customer” means a customer receiving refuse collection service where such customer is principally engaged in retailing of goods or services and not defined as industrial or residential.~~

~~E. “Contract” means the written agreement covering the performance of the work, including, but not limited to, the formal agreement and special provisions, affidavits and certificates of equal opportunity employment, certificate of workers’ compensation insurance, the proposal, contract specifications and performance bond.~~

~~F. “Contractor” means the individual, partnership, corporation, joint venture or other legal entity entering into a contract with the city to provide residential, commercial and partial industrial refuse collection services. When modified by the phrase “as constituted,” it means the partnership, corporation or other legal entity as organized and existing, with the same majority shareholders, as determined at the time of the execution of a contract between the contractor and the city.~~

~~L.~~ ~~G.~~ “Container Contamination” or “Contaminated Container” means a Container that contains Prohibited Container Contaminants.

~~B.M.~~ “Council” means the city council of the ~~city~~City.

~~C.N.~~ ~~H.~~ “County” means the county of Stanislaus, state of California.

~~D.O.~~ ~~I.~~ “Customer” means any ~~person~~Person receiving ~~refuse~~Refuse service under the provisions of this chapter.

~~P.~~ ~~J.~~ “Direct Service Providers and Vendors” means a Person, company, agency, district, or other entity that provides a service or services to City pursuant to a contract or other written agreement and as otherwise defined in 14 CCR Section 18982(a)(17), as it currently exists or amended thereafter.

~~E.Q.~~ “Disposal ~~site~~Site” means an area or location used for the disposal of ~~refuse~~Refuse, and authorized by law to receive such ~~refuse~~Refuse.

~~F.R.~~ ~~K.~~ “Drop ~~box~~Box” means a container designed to be loaded upon a vehicle for transportation to the ~~disposal site~~Disposal Site with a minimum capacity of 10 cubic yards and of a design approved by the ~~council~~Council.

~~S.~~ ~~L.~~ “Edible Food” means food intended for human consumption, and as otherwise defined in 14 CCR Section 18982(a)(18), as it currently exists or amended thereafter. “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this Article requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

~~T.~~ “Excluded Waste” means Hazardous Material, infectious waste, volatile, corrosive, medical waste, radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance.

~~U.~~ “Food Recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, and as otherwise defined in 14 CCR Section 18982(a)(24), as it currently exists or amended thereafter.

~~V.~~ “Food Recovery Organization” shall have the same meaning as 14 CCR Section 18982(a)(25), as it currently exists or amended thereafter.

~~W.~~ “Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, and as otherwise defined in 14 CCR Section 18982(a)(26), as it currently exists or amended thereafter.

~~X.~~ “Franchise Holder” means a Person who collects or transports Refuse under authority granted by the Council, in accordance with HMC Section 8.12.240, as it currently exists or amended thereafter.

~~Y.~~ “Hazardous Material” means any explosive, highly flammable, radioactive, or toxic material.



Z. “High Diversion Organic Waste Processing Facility” shall have the same definition as 14 CCR Section 18982(a)(33), as it currently exists or amended thereafter.

~~G-AA.~~ “Industrial ~~refuse~~Refuse” means ~~refuse~~Refuse produced by a ~~person~~Person principally engaged in the business of processing, warehousing, or manufacturing agricultural, animal, or other products or materials, who is not a ~~commercial~~Commercial Customer or residential customer, whose principal business on site is not retail in nature and ~~refuse~~Refuse produced by any ~~persons~~Persons engaged in the business of building, remodeling, construction, or demolition.

~~BB. M-~~ “Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event.

CC. “Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For the purposes of this chapter, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For the purposes of this chapter, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.

DD. “Mixed Waste Organic Collection Stream” or “Mixed Waste” means Organic Waste collected in a Container that is required to be taken to a High Diversion Organic Waste Processing Facility and as otherwise defined in 14 CCR Section 17402(a)(11.5), as it currently exists or amended thereafter.

EE. “Model Water Efficient Landscaping Ordinance (MWELo)” shall have the same meaning as the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division 2, Chapter 2.7, as it currently exists or amended thereafter.

FF. “Multi-Family Residential Dwellings” or “Multi-Family” means of, from, or pertaining to residential Premises with five (5) or more dwelling units. Multi-family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

GG. “Non-Compostable Paper” includes but is not limited, to paper that is coated in a plastic material that will not breakdown in the composting process and as otherwise defined in 14 CCR Section 18982(a)(41, as it currently exists or amended thereafter.

HH. “Non-Organic Recyclables” means non-Putrescible Waste and non-Hazardous Recyclable Wastes including but not limited to bottles, cans, metals, plastics and glass, and as otherwise defined in 14 CCR Section 18982(a)(43), as it currently exists or amended thereafter.

II. “Non-Organic Waste” means all collected wastes that is not designated for collection in the Organic Waste Container, including carpets, Non-Compostable Paper, and textiles.

JJ. “Non-Organic Waste Container” means a Container that shall be used for the collection and storage of Non-Organic Waste.

KK. “Notice of Violation (NOV)” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, and as otherwise defined in 14 CCR Section 18982(a)(45), as it currently exists or amended thereafter.

~~H.LL.~~ “Occupant” means the ~~person~~Person in possession or control of ~~premises~~Premises such as lessee, licensee, manager, custodian, or caretaker.

MM. ~~N.~~ “Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges and as otherwise defined in 14 CCR Section 18982(a)(46), as it currently exists or amended thereafter, excluding carpets, Non-Compostable Paper, textiles, and Hazardous Materials. Biosolids and digestate are as defined by 14 CCR Section 18982(a), as it currently exists or amended thereafter.

NN. “Organic Waste Container” means a Container that shall be used for the collection and storage of Organic Waste.

OO. “Organic Waste Generator” means a Person or entity that is responsible for the initial creation of Organic Waste, and as otherwise defined in 14 CCR Section 18982(a)(48), as it currently exists or amended thereafter.

~~I.PP.~~ “Owner” means the ~~person~~Person having dominion of or title to ~~premises~~Premises.

QQ. ~~Ø.~~ “Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, and as otherwise defined in 14 CCR Section 18982(a)(51), as it currently exists or amended thereafter.

RR. “Permit Holder” means a Person who collects or transports Refuse under authority granted by the City Manager, in accordance with HMC Section 8.12.290, as it currently exists or amended thereafter.

~~J.SS.~~ “Person” means any individual, firm, corporation, association, group, or combination and the plural as well as the singular.

~~K.TT. P.~~ “Premises” means a parcel of real property to the center of ~~an~~any alley adjacent thereto, unless other specified by the City Manager, located in the incorporated area of the ~~city~~City, upon which is situated any dwelling house or other place of human habitation, including each unit of a multiple occupancy building, or upon which is conducted any business, occupation, or activity which results in the production or accumulation of ~~refuse~~.Refuse.

UU. Q. “Printing and Writing Paper” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, and as otherwise defined in 14 CCR Section 18982(a)(54), as it currently exists or amended thereafter.

VV. “Prohibited Container Contaminants” means the following: (1) discarded materials placed in the Non-Organic Waste Container that are not identified as Non-Organic Waste; (2) discarded materials placed in the Organic Waste Container that are not identified as Organic Waste; (3) Excluded Waste.

WW. “Putrescible Waste” include waste that is capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, vectors, gases, or other offensive conditions, and include materials such as, but not limited to food wastes and dead animals.

XX. “Recyclable Materials” means reusable waste materials including, but not limited to, various types of plastic, metal, glass, aluminum, packaging, paper, books, magazines, boxes, wrappers.

YY. “Recycled-Content Paper” means Paper Products and Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, and as otherwise defined in 14 CCR Section 18982(a)(61), as it currently exists or amended thereafter.

~~L.ZZ.~~ “Refuse” means ~~any and~~ all discarded items and substances of every kind, including infectious wastes and ~~salvageable or recyclable materials and garden wastes~~ Recyclable Materials and Organic Waste, but not including sewage, septic tank contents, sewer sludge and construction and demolition debris, sand trap contents, grease trap contents or ~~hazardous wastes~~ Hazardous Materials as defined by state and/or federal law.

~~R. “Refuse collector” means a person who collects or transports refuse under authority granted by the council, including his agents and employees. (Ord. 90-10 § 1, 1990)~~

AAA. “Route Review” means a visual inspection of Containers along a Franchise Holder route for the purpose of determining Container Contamination and may include mechanical inspection methods such as the use of cameras, and as otherwise defined in 14 CCR Section 18982(a)(65), as it currently exists or amended thereafter.

BBB. “Self-Hauler” means a Person, who hauls Solid Waste, Organic Waste or Recyclable Material he/she/they has generated to another Person. Self-hauler also includes a Person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

CCC. “Solid Waste” shall have the same meaning as defined in California Public Resources Code Section 40191, as it currently exists or amended thereafter.

DDD. “Source Separated” means materials, including commingled Recyclable Materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, and as otherwise defined in 14 CCR Section 17402.5(b)(4), as it currently exists or amended thereafter. For the purposes of the ordinance, Source Separated shall include separation of materials by the generator, Owner, Owner’s employee, property manager, or property manager’s employee into different Containers for the purpose of collection such that Source Separated materials are separated from Non-Organic Waste or other Solid Waste for the purposes of collection and processing.

EEE. “Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (1) Supermarket; (2) Grocery store with a total facility size equal to or greater than 10,000 square feet; (3) Food service provider; (4) Food distributor; and (5) Wholesale food vendor.

FFF. “Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet; (2) Hotel with an on-site food facility and 200 or more rooms; (3) Health facility with an on-site food facility and 100 or more beds; (4) Large Venue; (5) Large Events; (6) A state agency with a cafeteria with 250 or more seats or a total cafeteria facility size equal to or greater than 5,000 square feet; and (7) A local education agency with an on-site food facility.

#### 8.12.020 Littering ~~PROHIBITED~~Prohibited.

A. ~~A.~~ No ~~owner~~Owner or ~~occupant~~Occupant shall throw, drop, leave, dump, bury, place, or otherwise dispose of any ~~refuse~~Refuse, or allow any other ~~person~~Person to dispose of ~~refuse~~Refuse, upon his ~~premises~~/her/their Premises except in a regularly designated ~~disposal site~~Disposal Site; provided, however, building materials may be kept on ~~premises~~Premises during a period of active construction, reconstruction, or repair of a building or structure thereon under a valid building permit; and wood may be kept neatly piled upon ~~premises~~Premises for household use; and garden ~~refuse~~waste may be composted in a manner approved by the ~~council~~City Manager.

B. ~~B.~~ No ~~person~~Person shall throw or deposit or cause to be thrown or deposited, any ~~refuse~~Refuse or abandon any material whatsoever in or upon any public property, public right-of-way, watercourse, or banks of any watercourse, or upon the ~~premises~~Premises of any other ~~person~~Person except at a regularly designated ~~disposal site~~Disposal Site. (~~Ord. 90-10 § 1, 1990~~)Disposal Site.

#### 8.12.030 ~~Garbage~~Refuse collection compulsory.

The ~~owner~~Owner or ~~occupant~~Occupant of an occupied dwelling, house, or other place of human habitation, including a business establishment, shall be responsible for the regular

collection of ~~garbage~~Refuse from said place by the authorized collector of ~~garbage~~Refuse in the ~~city~~City at least once each week, and shall also be responsible for the payment of all ~~garbage~~Refuse services by said authorized collector of ~~garbage~~Refuse. The ~~owner~~Owner or ~~occupant~~Occupant of ~~premises~~Premises upon which a hotel, restaurant, boardinghouse, or other ~~garbage~~Refuse-producing business is operated shall be responsible for the regular collection of ~~garbage~~Refuse from said place by the authorized collector of ~~garbage~~Refuse in the ~~city~~City at least twice each week and shall also be responsible for the payment of all ~~garbage~~Refuse services by said authorized collector of ~~garbage~~Refuse. The ~~council~~City Manager may require a greater number of collections per week, provided, however, that, upon a showing of hardship or unnecessary, the ~~city manager~~City Manager may exempt any single location from the requirements of this section. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.040 Containers – Generally.**

No ~~owner~~Owner or ~~occupant~~Occupant shall fail or neglect to provide or have provided a sufficient number of ~~containers or bins~~Containers for receiving and holding, without leakage or escape of odors, all ~~refuse~~Refuse created, produced, or accumulated on the ~~premises~~Premises, and all such ~~refuse~~Refuse shall be deposited in such ~~containers~~Containers. Containers shall at all times be kept in good, useful, and sanitary condition. Containers shall be kept continuously closed except when ~~refuse or recyclables are~~Refuse is being placed therein or removed therefrom, and shall at all times be closed against the access of flies, rodents, and other animals. Containers used shall be those provided by the ~~franchise collector~~. (~~Ord. 01-09 § 1, 2001; Ord. 90-10 § 1, 1990~~)Franchise Holder.

#### **8.12.050 Containers – Number.**

~~A. All premises shall have sufficient containers to hold all refuse created, produced, or accumulated on the premises between required removals. In determining the sufficiency of the number of containers required, the following minimum standards shall apply:~~

- ~~1. One-family and two-family dwellings, one container per dwelling unit of at least 35-gallon capacity;~~
- ~~2. Multiple-dwelling building, one container of at least 35-gallon capacity per dwelling unit unless a lesser number is authorized by the council;~~
- ~~3. Motel, hotel, trailer park or mobile home park, one container of at least 35-gallon capacity per unit or space unless a lesser number is authorized by the council;~~
- ~~4. Business, not less than one container of at least 35-gallon capacity.~~

~~B. Customers may arrange for use of bins or drop boxes instead. These arrangements shall be made with the refuse collector Franchise Holder on the basis of charges established by the terms of the franchise or by resolution of the city, as the case may be. (~~Ord. 01-09 § 2, 2001; Ord. 90-10 § 1, 1990~~)~~

#### 8.12.060 Containers – ~~Yard waste.~~

~~Yard waste may be placed~~Designated Materials ~~in refuse containers or yard waste containers provided by the franchise collector. (Ord. 01-09 § 3, 2001; Ord. 90-10 § 1, 1990)~~Containers.

Residential Customers shall only place Organic Waste in the Organic Waste Container and Non-Organic Waste in the Non-Organic Waste Container. Customers shall not place Excluded Waste in Containers.

#### 8.12.070 Containers – Restrictions.

Any ~~container~~Container in excess of the number of ~~containers~~Containers containing ~~refuse~~Refuse which the ~~customer~~Customer is entitled to have collected according to the charge he/she/they pays shall not be collected. ~~(Ord. 90-10 § 1, 1990)~~

#### 8.12.080 Containers – Location.

Containers shall not be placed or allowed to remain in or on any street or alley right-of-way unless authorized by the ~~council~~City Manager. Except for handicapped ~~customers~~Customers, residential ~~customers~~Customers shall place their ~~containers~~Containers curbside for collection day. ~~(Ord. 01-09 § 4, 2001; Ord. 90-10 § 1, 1990)~~

#### 8.12.090 ~~Containers – Marking.~~

~~Containers and bins which the owner desires to have left on the premises by the refuse collector, shall have printed or marked thereon in figures at least two inches in height, and clearly legible, the street number of the premises to which the container belongs. The refuse collector may collect and remove any container which does not have the house number or business address plainly marked thereon as provided in this section. (Ord. 90-10 § 1, 1990)~~(Reserved)

#### 8.12.100 Special arrangements.

The ~~owner~~Owner or ~~occupant~~Occupant of a ~~premises~~Premises, or two or more such ~~persons~~Persons acting jointly, may request the ~~council~~Council to approve a plan whereby special arrangements are made for effective and efficient ~~refuse~~Refuse removal. The proposed plan shall include a statement of expected charges and such other comments as the ~~city manager~~City Manager considers appropriate. The ~~council~~Council is authorized to grant variances to any provision of this chapter and to approve the proposed plan with such conditions as are deemed necessary. ~~(Ord. 90-10 § 1, 1990)~~

#### 8.12.110 Placement.

Subject to the prohibitions of HMC ~~8.12.080, containers~~ 8.12.080, Containers shall be placed for collection of their contents in the following manner:



- A. ~~A.~~ On single-family and two-family ~~premises~~Premises:
1. ~~1.~~ Where alleys exist, upon the ~~customer's premises~~Customer's Premises immediately adjacent to and accessible from the alley without the necessity of entering the ~~premises~~Premises;
  2. ~~2.~~ Where alleys do not exist, upon the ~~customer's premises~~Customer's Premises at a location no greater than the curbside of the street fronting the ~~premises~~Premises; provided, that the ~~city manager~~City Manager may approve an agreement between the ~~customer~~Customer and the ~~refuse collector~~Franchise Holder as to the location of ~~refuse~~Refuse for collection.
- B. ~~B.~~ Containers ~~and bins~~ for service to multiple-dwelling ~~premises~~Premises and ~~garbage~~Refuse-producing businesses shall be placed in a location no greater than 50 feet from the nearest point where the ~~refuse collector's~~Franchise Holder's vehicle can reasonably be parked. Drop ~~boxes~~Boxes shall be located as agreed upon between the ~~customer~~Customer and the ~~refuse collector~~Franchise Holder. In case of dispute, the location shall be as determined by the ~~council~~City Manager.
- C. ~~C.~~ Containers for required service may be placed on ~~premises~~Premises at a location other than as provided in subsections A and B of this section set forth as may be provided in the schedule of charges adopted by the ~~council~~Council from time to time.
- D. ~~D.~~ Containers may be placed for collection of their contents no earlier than noon on the day before the scheduled collection day, and must be removed from the collection point and placed in accordance with subsection (A)(2) of this section no later than noon on the day following the scheduled collection day.
- E. ~~E.~~ All ~~containers~~Containers not set out for collection must be screened from public view, where possible. If conditions of the ~~customer's premises~~Customer's Premises make it impossible to screen ~~containers~~Containers from public view, ~~containers~~Containers shall be stored as far from the curb and as out of the public view as possible under the circumstances. (~~Ord. 09-01 §§ 1, 2, 2009; Ord. 03-07 § 1, 2003; Ord. 01-09 § 5, 2001; Ord. 90-10 § 1, 1990~~)

#### 8.12.120 Hazardous ~~materials~~Materials prohibited.

No ~~person~~Person shall deposit in any ~~container~~Container used for ~~refuse~~Refuse, any explosive, highly flammable, radioactive, toxic, or other ~~hazardous material~~Hazardous Material or substance without having first made special arrangements for the disposal thereof with ~~the refuse collector, a Franchise Holder or Permit Holder~~. No ~~person~~Person shall deposit any such ~~hazardous material~~Hazardous Material in a ~~disposal site~~Disposal Site without having first made special arrangements for the disposal thereof with the ~~disposal site~~Disposal Site operator. (~~Ord. 90-10 § 1, 1990~~)

### 8.12.130 Hours.

No collection shall be made in residential districts, as shown on the zoning map of the ~~city~~City, prior to 6:00 a.m. or after 6:00 p.m. No collections shall be made at schools, churches, offices, or ~~commercial~~Commercial establishments in or adjacent to residential districts prior to 5:00 a.m. or after 9:00 p.m. (~~Ord. 90-10 § 1, 1990~~)

### 8.12.140 Use restrictions.

Notwithstanding the provisions of HMC ~~8.12.030, refuse~~8.12.030, Refuse may be used for animal feed, soil improvement, recycling, or other beneficial purpose; provided, such use complies with this chapter and all other laws. Except as authorized pursuant to HMC ~~8.12.100, 8.12.100~~, no ~~person~~Person shall use, store, or transport ~~refuse~~Refuse for any beneficial purpose without having a valid permit therefor issued by the ~~city manager~~City Manager. The ~~city manager~~City Manager shall issue or amend a permit upon terms and conditions as are determined to be necessary to ~~insure~~ensure that the use or the proposed use complies with existing laws and regulations and does not create a health menace or a nuisance. (~~Ord. 90-10 § 1, 1990~~)

A. Self-Haulers shall Source Separate all Recyclable Materials and Organic Waste (materials that City otherwise requires generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, as the sections currently exist or thereafter amended, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility.

B. Self-Haulers shall haul their Source Separated Non-Organic Recyclables and Source Separated Organic Waste to a facility that recovers those materials; and haul their Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.

C. Self-Haulers that are Commercial Businesses shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to inspection by the City. The records shall include the following information:

1. Delivery receipts and weight tickets from the entity accepting the waste.
2. The amount of material in cubic yards or tons transported by the generator to each entity.
3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.



#### **8.12.150 Transportation – Spill prevention.**

Refuse hauled by any ~~person~~Person over any street or road in the ~~city~~City shall be securely tied or covered during the hauling thereof. No ~~person~~Person shall allow ~~refuse~~Refuse to leak, spill, blow off, or drop from any vehicle on any street or road. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.160 Transportation – Vehicle requirements.**

All collections by ~~refuse collectors~~Franchise Holder shall be made with vehicles of a design approved by the ~~city manager~~City Manager. All collections shall be made as quietly as possible and the use of any unnecessarily noisy trucks or equipment is unlawful. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.170 Ownership.**

All ~~refuse~~Refuse upon being removed from the ~~premises~~Premises where created, produced, or accumulated shall become and be the property of the ~~refuse collector~~Franchise Holder and upon being deposited in an authorized ~~disposal site~~Disposal Site shall forthwith become the property of the ~~owner~~Owner of the site. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.180 Interference with ~~containers~~Containers prohibited.**

No ~~person~~Person other than the ~~owner~~Owner or ~~occupant~~Occupant of ~~premises~~Premises, an employee of the ~~city~~City, or an employee of the ~~refuse collector~~Franchise Holder shall tamper with or interfere in any manner with any ~~refuse container~~Container or the contents thereof. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.190 Interference with collection prohibited.**

No ~~person~~Person shall by any means hinder, obstruct, or interfere with the removal or transportation of ~~refuse~~Refuse by ~~a refuse collector~~. ~~(Ord. 90-10 § 1, 1990)~~Franchise Holder.

#### **8.12.200 Inspection.**

~~The city manager may inspect or cause to be inspected, at regular intervals, refuse containers as to their fitness for use. (Ord. 90-10 § 1, 1990)~~

The City Manager is authorized to conduct inspections and investigations, at random or otherwise, of any collection Container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Customers (including Multi-Family Residential Dwellings), Owners, Commercial Edible Food Generators, Franchise Holder, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for inspection.

#### **8.12.210 Refusal to collect – Notice.**

A ~~refuse collector~~Franchise Holder shall notify the ~~city manager~~City Manager whenever the collector has refused to pick up a ~~container~~Container because the ~~container~~Container is dilapidated, disintegrated, overloaded, contains dangerous materials, or the ~~container~~Container has been tipped over and the contents scattered. A ~~refuse collector~~franchise holder shall notify the ~~city manager~~City Manager when he/~~she/they~~ observes any violations of this chapter. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.220 Refusal to collect – Marking.**

Whenever a ~~refuse collector~~Franchise Holder gives or intends to give a report to the ~~city manager~~City Manager, he/~~she/they~~ shall place a tag on the ~~container~~Container or otherwise give the ~~owner~~Owner or ~~occupant~~Occupant notice of the substance of his/~~report/her/their~~report to the ~~city manager~~City Manager. Whenever an authorized representative of the ~~city~~City observes a violation of this chapter, he/~~she/they~~ shall place a tag on the ~~refuse container~~Container or otherwise give the ~~owner~~Owner or ~~occupant~~Occupant notice of the illegal condition. The tag or other notice shall have a copy of the penalties set forth in this chapter printed upon it and shall inform the ~~owner~~Owner of the action necessary to correct the illegal condition. The ~~owner~~Owner or ~~occupant~~Occupant shall, within seven days, correct the illegal condition. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.230 Collector franchise – Required.**

No ~~person~~Person shall collect, transport, or use ~~refuse~~Refuse in the incorporated area of the ~~city~~City without first receiving a franchise or permit to engage in such activity. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.240 Collector franchise – Granting.**

A franchise agreement may be entered into for the collection and disposal of ~~refuse~~Refuse in the ~~city~~City in accordance with and subject to the terms and conditions of this chapter and such terms and conditions as may be imposed by the ~~city council~~. (~~Ord. 90-10 § 1, 1990~~)~~Council.~~

#### **8.12.250 Collector franchise – Bid procedure.**

Before entering into such agreement, the ~~city~~City may, but shall not be required to, call for bids for a franchise. In the event the ~~council~~Council elects to call for bids, the form of proposals and the time and place for receiving bids shall be fixed by resolution of the ~~city council~~Council; a notice thereof shall be published one time in a newspaper published or circulated in the ~~city~~City, which notice shall specify the time the agreement is to run. The scheduled rates offered by each bidder shall be based upon classifications as may be designated by resolution of the ~~council~~Council and the ~~city council~~Council shall have the right to reject all bids. Where bids have been solicited and received and where the ~~council~~Council has not elected to reject all bids, the franchise shall be awarded to the lowest qualified bidder. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.260 Collector franchise – Statement required.**

Prior to the granting of a franchise, the bidder, if any, or applicant, and on July 1st of each year after the grant, the ~~franchise holder~~Franchise Holder, shall file a statement of ownership, operational capability, and financial support and shall verify the same as being true and correct under penalty of perjury. The statement shall be in such form as may be prescribed therefor by the ~~city manager~~. (~~Ord. 90-10 § 1, 1990~~)City Manager.

#### **8.12.270 Collector franchise – Exclusivity.**

Within the ~~city~~City, the ~~franchise holder~~Franchise Holder shall have the exclusive right to make all collections of ~~refuse~~Refuse; however, as provided by HMC 3.12.290 through 3.12.320, other ~~persons~~Persons may be issued permits which can be exercised in the ~~city~~City unless such franchise agreement grants exclusivity to the franchisee thereunder. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.280 ~~8.12.280~~ Collector franchise – Disposal requirements.**

~~The franchise holder shall dispose of all refuse collected as a result of collections required by HMC 8.12.030 at a designated county owned or operated landfill; provided, however, the franchise holder may request and the council may issue a permit for disposal of such refuse as provided by HMC 8.12.140. (Ord. 90-10 § 1, 1990)~~

The Franchise Holder shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:

A. Identify the facilities to which they will transport Organic Waste and Non-Organic Waste, through written notice to the City, no later than 90 days before the City's reporting deadline as defined in 14 CCR Section 18994.2, as it currently exists or amended thereafter.

B. Transport Organic Waste and Non-Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as currently defined in 14 CCR, Division 7, Chapter 12, Article 2, and amended thereafter.

C. Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting construction and demolition debris in a manner that complies with 14 CCR Section 18989.1, and Section 8.12.680 of this ordinance.

#### **8.12.290 Permit – Granting.**

The ~~council~~City Manager may grant a permit for collections other than those provided for by HMC ~~8.12.030~~8.12.030 to collect, transport, or use ~~industrial refuse~~Industrial Refuse upon application therefor whenever in the opinion of the ~~council~~City Manager the granting of such permit is in the public interest and welfare and the existing franchise agreement does not provide for exclusivity. (~~Ord. 90-10 § 1, 1990~~)The Permit Holder shall meet the requirements and standards identified in HMC 8.12.280 as a condition of approval of a permit.

#### **8.12.300 Permit – Period.**

Such permits may be granted for any period not to exceed one year. Permits may be renewed upon expiration thereof for a similar term; provided, that the ~~council~~City Manager finds that the ~~permit holder~~Permit Holder is capable of continuing operations in conformity with the provisions of this chapter and the rules and regulations of the ~~council~~. ~~(Ord. 90-10 § 1, 1990)~~Council.

#### **8.12.310 Permit – Contents.**

Every such permit granted by the ~~council~~City Manager shall be subject to the provisions of this chapter and the rules and regulations of the ~~council~~Council. The permit shall state:

- A. ~~A.~~ The name and address of the ~~person~~Person to whom the permit is issued;
- B. ~~B.~~ The activity authorized;
- C. ~~C.~~ The area in which the activity is authorized;
- D. ~~D.~~ The term for which the permit is granted;
- E. ~~E.~~ Such other conditions as the ~~council~~Council may provide. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.320 Permit – Application.**

Applicants for a permit or for the renewal of a permit to collect, transport, or use ~~refuse~~Refuse shall file with the ~~city manager~~City Manager a verified application in writing which shall give the following information:

- A. ~~A.~~ Name and description of the applicant;
- B. ~~B.~~ Permanent home and business address and full local address of the applicant;
- C. ~~C.~~ Trade and firm name;
- D. ~~D.~~ If a joint venture, a partnership, or limited partnership, the names of all partners and their permanent addresses. If a corporation, the names and permanent addresses of all the stockholders and the officers and the percentage of participation of each;
- E. ~~E.~~ A detailed explanation of the manner in which the applicant will conduct the activity for which the permit is requested;
- F. ~~F.~~ The applicant's arrangements for the disposal of all ~~refuse~~Refuse collected or transported by him/her/them at an approved ~~disposal site~~Disposal Site or his/her/their arrangements for other authorized disposal;
- G. ~~G.~~ Facts showing that the applicant is able to render efficient ~~refuse~~Refuse service;

- H. ~~H.~~ That the applicant owns or has under his/her/their control in good mechanical condition sufficient equipment to adequately conduct the business for which a permit is requested;
- I. ~~I.~~ That his/her/their vehicles and equipment conform to all applicable provisions of this chapter;
- J. ~~J.~~ That the applicant shows to the satisfaction of the ~~council~~City Manager that the issuance of a permit is in the public interest, and there is need for a permit to be issued;
- K. ~~K.~~ Such other facts or information as the ~~council~~City Manager may require. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.330 Charges – Service required.**

A ~~franchise holder~~Franchise Holder shall provide ~~refuse~~Refuse removal service to all ~~premises~~Premises situated with the ~~city~~City. A ~~franchise holder~~Franchise Holder shall not be required to service oversize, overweight, or unsafe ~~containers~~Containers. A ~~franchise holder~~Franchise Holder shall not be required to continue to provide ~~refuse~~Refuse removal if the ~~owner~~Owner or ~~occupant~~Occupant has failed to pay the charges for service for a period of 60 days. Prior to terminating service for nonpayment of charges, the ~~franchise holder~~Franchise Holder shall, at least 14 days prior to termination, provide written notice of intention to terminate, a copy of which shall be given to the ~~city manager~~. (~~Ord. 90-10 § 1, 1990~~)City Manager.

#### **8.12.340 Charges – Amount.**

Charges to ~~customers~~Customers of a ~~franchise holder~~Franchise Holder for ~~refuse~~Refuse removal service shall be determined by the terms of the franchise. A basic charge shall be established by the ~~council~~Council, payment of which shall entitle a ~~customer~~residential Customer to have the contents of one ~~standard container~~Organic Waste Container and ~~garden refuse without limit~~one Non-Organic Waste Container removed from his/~~premises/her/their~~Premises once a week by a ~~refuse collector~~Franchise Holder. The ~~council may authorize a customer to receive reduced service for a reduced charge and~~Council may approve an agreement between the ~~customer~~Customer and the ~~refuse collector~~Franchise Holder to provide additional service for an additional charge. The charges may be revised by the ~~council~~Council from time to time after a public hearing thereon and a determination by the ~~council~~Council that a change is in the public interest. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.350 Charges – Determination.**

Charges to ~~customers~~Customers for rubbish removal service provided by the holder of a permit may be set by the ~~council~~Council by resolution and may be revised by the ~~council~~Council from time to time as it determines to be necessary. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.360 Charges – Uniformity required.**

All charges for fees for service by a ~~refuse collector~~Franchise Holder shall be uniform for the same services as fixed and approved by the ~~council~~Council. Any ~~customer~~Customer contending that he/~~she/they~~ has been required to pay an unreasonable charge for any service or has in any manner been subject to an overcharge, may file a written complaint with the ~~council~~City Manager setting forth the facts of such alleged overcharge and the ~~council~~City Manager shall notify the ~~refuse collector~~Franchise Holder of the complaint and shall investigate the matter of the complaint and shall determine the charge. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.370 Fees – Franchise.**

To provide for the administration and enforcement of this chapter, the ~~council~~Council may require that the holder of a franchise pay to the ~~city~~City a franchise fee based on percentage of gross receipts realized from services required to be furnished by this chapter or other reasonable basis. The amount of the franchise fee shall be one of the terms of the franchise. The franchise fee may be revised by the ~~council~~Council from time to time after a public hearing thereon and a determination by the ~~council~~Council that a change is in the public interest. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.380 (Reserved)**

#### **8.12.390 Fees – Industrial permit.**

The permit fee for engaging in the business of collecting ~~industrial waste~~Industrial Refuse shall be ~~a fee as approved by the sum of \$100.00 per year~~Council, payable on July 1st of each year. In addition to the annual fee, the holder of a permit for engaging in the business of collecting ~~industrial refuse~~Industrial Refuse shall pay annually to the ~~city~~City, within 60 days following the close of the fiscal year, an amount equivalent to eight percent of the gross receipts derived from the furnishing of such ~~industrial refuse~~Industrial Refuse collection services within the incorporated areas of the ~~city~~. (~~Ord. 91-04 § 1, 1991; Ord. 90-10 § 1, 1990~~)City.

#### **8.12.400 Fees – Permit.**

The permit fee for any other activity involving ~~refuse~~Refuse shall be ~~a fee as approved by the sum of \$10.00 per year~~Council, payable on July 1st of each year. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.410 Fees – Payment.**

Fees shall be paid to the ~~city~~City clerk who shall deposit them to the general fund or such other fund as the ~~council~~Council may designate. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.420 Bond required.**

A ~~franchise holder~~Franchise Holder shall post ~~a bond~~ with the ~~city~~a cash bond-City in the ~~sum of \$25,000 or a surety bond in the same amount furnished by a corporate surety authorized to do business in the state, payable to the city. The bond shall be conditioned upon the full and faithful performance of his obligations of the applicable~~



~~provisions of this chapter and the provided for in the~~ franchise agreement ~~and shall be kept in full force and effect at all times.~~

~~A~~ Permit ~~holders~~Holder shall file with the ~~council~~City Manager a faithful performance bond or other form of security satisfactory to the ~~council~~City Manager in an amount determined by the ~~council~~City Manager not more than \$10,000 nor less than \$1,000. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.430 Insurance required.**

~~A. No franchise shall be issued under the provisions of this chapter, nor shall any franchise be valid after issuance unless there is at all times in force and effect to provide protection against liability for damages which may be imposed for the negligence of the franchise holder or his employees or agents a liability insurance policy or policies approved by the city and issued by an insurance company licensed to do business in the state.~~

~~B. Such policy or policies shall provide protection against liability of the franchise holder for the payment of damages in amounts, at least, as follows:~~

~~1. One million dollars on account of bodily injuries to or death of one person;~~

~~2. One million dollars covering total liability of the franchise holder on account of bodily injuries to or death of more than one person as a result of any one accident;~~

~~3. Five hundred thousand dollars for one accident resulting in damage or destruction of property, whether the property of one or more than one claimant.~~

~~C. A liability insurance policy required by this section shall insure to the benefit of any persons who are injured or sustain damage to property proximately caused by the negligence of the franchise holder insured by the policy, his employees or agents.~~

~~D. Satisfactory evidence that the liability insurance required by this section is at all times in full force and effect shall be furnished the council by the franchise holder.~~

~~E. The policy of insurance shall contain certain provisions against cancellation except upon 10 days' prior written notice thereof to the city.~~

~~F. The permit holder shall comply with the provisions of this section; provided, however, that the council may authorize lesser amounts of insurance coverage as its deems appropriate. (Ord. 90-10 § 1, 1990)~~(Reserved)

#### **8.12.440 Transferability of franchise or permit.**

No franchise or permit granted pursuant to the provisions of this chapter and no ownership interest in any ~~franchise~~Franchise or ~~permit holder~~Permit Holder shall be sold, transferred, leased, assigned, mortgaged, pledged, hypothecated, or otherwise encumbered or disposed of in whole or in part, directly or indirectly, whether voluntarily or by operation of law or through any

stock transfer, transfer in trust, change in control, consolidation or merger, without the prior written consent of the ~~council~~Council. The ~~council~~Council may grant or deny such a request and may impose conditions as it may deem to be in the public interest. Any disposition made without consent shall constitute good cause for revocation of the affected franchise or permit. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.450 Revocation of franchise.**

In the event of suspension or revocation of a franchise, the ~~city~~City shall have the right forthwith to take possession of all trucks and other equipment of the ~~franchise holder~~Franchise Holder for the purpose of collecting and disposing of ~~refuse~~Refuse and performing all other duties which the ~~franchise holder~~Franchise Holder is obligated to perform. The ~~city~~City shall have the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the ~~city~~City for such purpose. The ~~city~~City shall pay the ~~franchise holder~~Franchise Holder a reasonable rental for the use of such trucks and equipment. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.460 Employee requirements.**

The ~~city~~City may, at its option, require photographing and fingerprinting of applicants for a franchise or permit and of the employees of the ~~franchise holder or permit holder~~. (~~Ord. 90-10 § 1, 1990~~)Franchise Holder or Permit Holder.

#### **8.12.470 Interruption of service – Labor dispute.**

In the event the ~~refuse~~Refuse collection of a ~~franchise holder~~Franchise Holder is interrupted by a labor dispute and scheduled collections are discontinued for more than 72 hours, the ~~city~~City shall have the right to forthwith take temporary possession of all facilities and equipment of the ~~franchise holder~~Franchise Holder for the purpose of continuing the service which the ~~franchise holder~~Franchise Holder has agreed to provide in order to preserve and protect the public health and safety. The ~~city~~City has the right to retain possession of such facilities and equipment and to render the required services until the ~~franchise holder~~Franchise Holder can demonstrate to the satisfaction of the ~~city~~City that required services can be resumed by the ~~franchise holder~~Franchise Holder; provided, however, that the temporary assumption of the ~~franchise holder's~~Franchise Holder's obligations under the franchise shall not be continued by the ~~city~~City for more than 120 days from the date such operations were undertaken. Should the ~~franchise holder~~Franchise Holder fail to demonstrate to the satisfaction of the ~~city~~City that required services can be resumed by the ~~franchise holder~~Franchise Holder prior to the expiration of the 120 days, the rights and privileges granted to the ~~franchise holder~~Franchise Holder may be forfeited and the franchise may be revoked. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.480 Interruption of service – City responsibility.**

During any period in which the ~~city~~City has temporarily assumed the obligation of the ~~franchise holder~~Franchise Holder under HMC 8.12.470 through 8.12.490, the ~~city~~City shall be entitled to the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses, including a reasonable rental for use of trucks and equipment,



applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury of the ~~city~~City to the credit of the general fund. Final adjustment and allocation of gross revenue, costs, and expenses to the period during which the ~~city~~City temporarily assumed the obligations of the ~~franchise holder~~Franchise Holder shall be determined by an audit by a certified public accountant or licensed public accountant and prepared in report form with his/her/their opinion annexed thereto. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.490 Interruption of service – Employee use.**

Employees of the ~~franchise holder~~Franchise Holder may be employed by the ~~city~~City during any period in which the ~~city~~City temporarily assumes the obligations of the ~~franchise holder~~Franchise Holder under this chapter; provided, however, that the rate of compensation to be paid such employees, or any other employees, shall be the rate or rates in effect at the time the ~~franchise holder's~~Franchise Holder's service was interrupted by the labor dispute and the terms and conditions of employment shall be the same as provided by the ~~franchise holder.~~Franchise Holder. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.500 Recordkeeping.**

Each ~~person~~Person granted a franchise or permit under the provisions of this chapter shall maintain detailed records of all receipts and expenditures received or incurred in the operations of such business, including all fees collected for services rendered. The ~~city~~City, its officers and employees shall be entitled to inspect, audit, and copy such books and records upon reasonable notice during normal business hours. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.510 Audit required.**

A ~~franchise holder~~Franchise Holder shall annually provide the ~~city~~City with a copy of an audit within 60 days after the close of the holder's fiscal year. The audit shall be prepared by a certified public accountant or licensed public accountant who has annexed his/her/their opinion thereto. The accountant shall be entirely independent of the ~~franchise holder~~Franchise Holder, shall not be an employee directly or indirectly of the ~~franchise holder~~Franchise Holder, and shall have no financial interest whatsoever in the business of the ~~franchise holder.~~Franchise Holder. The ~~city~~City shall specify the form and detail of the annual audit. In the event of failure to provide any such annual audit, the ~~city~~City may employ a qualified accountant or the ~~county~~County auditor to conduct the audit and the ~~franchise holder~~Franchise Holder in such case shall be liable for and shall pay the costs and expenses of the audit. (~~Ord. 90-10 § 1, 1990~~)

#### **8.12.520 Vehicles – Requirements.**

All ~~refuse~~Refuse collection shall be made with a vehicle and equipment of a design approved by the ~~council~~Council. All ~~refuse~~Refuse collections shall be made as quietly as possible and noise abatement shall be a consideration of vehicle and equipment inspections and approval. Vehicles transporting ~~garbage~~Refuse shall be kept clean and sanitary and shall be disinfected immediately after being used. (~~Ord. 90-10 § 1, 1990~~)

#### 8.12.530 Vehicles – Cleanliness.

All trucks of a ~~franchise holder~~Franchise Holder shall be clean, sanitary, and well painted. The ~~franchise holder~~Franchise Holder shall have printed or ~~stencilled~~stenciled in a prominent place on the exterior of each vehicle used by him in the collection of ~~refuse~~Refuse the following information in four-inch letters:

Truck # \_\_\_\_\_

~~Refuse Collector~~Franchise Holder (name)

~~(Ord. 90-10 § 1, 1990)~~

#### 8.12.540 Vehicles – Inspection.

~~All~~The City Manager is authorized to provide inspections of all vehicles and equipment of a ~~franchise~~Franchise or ~~permit holder shall be inspected~~Permit Holder at a place designated by the ~~city manager at least once each year~~City Manager. Vehicles and equipment shall conform to the requirements of the California Vehicle Code, this chapter, and rules or regulations of the ~~council. (Ord. 90-10 § 1, 1990)~~Council.

#### 8.12.550 Vehicles – Equipment required.

The holder of a franchise or permit shall equip each vehicle hauling ~~refuse~~Refuse with a shovel, broom, and fire extinguisher of a type approved by the ~~council. (Ord. 90-10 § 1, 1990)~~Council.

#### 8.12.560 Name restrictions.

A ~~franchise~~Franchise or ~~permit holder~~Permit Holder shall not use a firm name containing the words “city” or “Hughson” or other words implying ~~city~~City ownership. The ~~franchise~~Franchise or ~~permit holder~~Permit Holder shall establish and maintain an office where service may be applied for and complaints made. The office shall be equipped with a listed telephone to which calls from ~~city~~City residents may be placed without payment of a toll charge and shall have a responsible person in charge between the hours of 8:00 a.m. and 5:00 p.m. of each day except Saturdays, Sundays, and holidays. ~~(Ord. 90-10 § 1, 1990)~~

#### 8.12.570 Service records.

A ~~franchise holder~~Franchise Holder shall supply the ~~city manager with the name of the owner or occupant of each premises served, the address of the property, and with~~City Manager current maps and schedules of collection routes. ~~(Ord. 90-10 § 1, 1990)~~

#### ~~8.12.580 Information card.~~

~~A franchise holder~~Maps and schedules of routes shall ~~supply every occupant of premises served under his franchise a printed information card stating the amounts of refuse~~

~~which will be collected, rates, regulations affecting collections, updated within 90 days of collections, receipt of a final subdivision map that includes final approved street names and complaint procedures. Such cards shall be provided when service is initiated and be replaced in advance of any changes of collection days, rates, or regulations affecting collections. (Ord. 90-10 § 1, 1990) addresses of a new residential subdivision or commercial/industrial development.~~

#### **8.12.580 (Reserved)**

#### **8.12.590 Billing.**

~~Refuse collectors~~Franchise Holder may bill a ~~customer~~Customer and collect service charges in accordance with the rates adopted by the ~~council~~Council for ~~refuse~~Refuse removal service. A ~~franchise holder~~Franchise Holder and the ~~city~~City may enter into an agreement whereby the ~~city~~City will bill the ~~customer~~Customer and pay the ~~refuse collector~~Franchise Holder for services rendered. Such an agreement shall set forth the respective duties and responsibilities of the ~~franchise holder~~Franchise Holder and ~~city~~City regarding the billing and collection of such charges. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.600 Enforcement.**

The health officer of the Stanislaus County health department is designated to enforce all health-related violations of this chapter. ~~(Ord. 90-10 § 1, 1990)~~

#### **8.12.620 ~~RECYCLING~~-(Reserved)**

~~The city and the franchise collector may, from time to time, establish programs and regulations to aid in curbside recycling of refuse. Owners and occupants may place recyclable material in containers provided pursuant to such programs, in accordance with regulations promulgated by the franchise collector. The franchise collector may refuse to pick up recyclable containers in which the recyclable material is improperly placed, but shall otherwise collect such recyclable material in accordance with the franchise agreement between the city and the franchise collector, and shall charge therefor at the rates established from time to time by the city council by resolution. (Ord. 01-09 § 7, 2001)~~

#### **8.12.630 (Reserved)**

#### **8.12.640 (Reserved)**

#### **8.12.650 Requirements for Commercial Edible Food Generators**

A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section 8.12.650 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

B. Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities, as defined by Health and Safety Code Section 113789, operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

C. Commercial Edible Food Generators shall comply with the following requirements:

1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
2. Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
3. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
4. Allow City's designated enforcement entity or designated third party enforcement entity to access the Premises and review records pursuant to 14 CCR Section 18991.4.
5. Keep records that include the following information, and as otherwise specified in 14 CCR Section 18991.4, as it current exists and amended thereafter:
  - a. A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
  - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
  - c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
    - i. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
    - ii. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
    - iii. The established frequency that food will be collected or self-hauled.
    - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
  - d. Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal

Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

#### **8.12.660 Requirements for Food Recovery Organizations and Services**

A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement shall maintain the following records, unless specified otherwise by 14 CCR Section 18991.5(a)(1), as it currently exists and amended thereafter:

1. The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement shall maintain the following records unless specified otherwise by 14 CCR Section 18991.5(a)(2), as it currently exists and amended thereafter:

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

C. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators shall report to the City the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators, no later than 90 days before the City's reporting deadline as defined in 14 CCR Section 18994.2, as it currently exists or amended thereafter.

D. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the City that provides solid waste collection services, or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

#### **8.12.670 Requirements for Facility Operators and Community Composting Operations**

A. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly owned treatment works shall, upon City request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.

B. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days.

#### **8.12.680 Compliance with CALGreen Recycling Requirements**

Persons applying for a permit from the City for new construction and building additions and alternations shall comply with Section 4.408.1, 4.410.2, 5.410.1, and 5.408.1 of CALGreen, as each section currently exists or amended thereafter, if its project is covered by the scope of CALGreen or more stringent requirements of the City. If the requirements of CALGreen are more stringent then the requirements of this Section, the CALGreen requirements shall apply.

#### **8.12.690 Model Water Efficient Landscaping Ordinance Requirements (MWEL0)**

Owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the City, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWEL0.

#### **8.12.700 Procurement Requirements for City Departments, Direct Service Providers, and Vendors**

A. City departments, and Direct Service Providers and Vendors to the City, as applicable, must comply with the City's Recovered Organic Waste Product procurement policy.

B. All Direct Service Providers and Vendors providing Paper Products and Printing and Writing Paper shall:



1. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than non-recycled items.
2. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12, as it currently exists or amended thereafter.
3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the City. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
4. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the City is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013), as it currently exists or amended thereafter.
5. Provide records of all Paper Products and Printing and Writing Paper purchases within thirty (30) days of the purchase (both Recycled-Content and non-Recycled Content, if any is purchased) made by any division or department or employee of the City. Records shall include a copy of the invoice or other documentation of purchase, written certifications as required in Sections 8.12.700(b)(3) and 8.12.700(b)(4) of this ordinance for Recycled-Content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none).

### **8.12.710 Waivers**

A. De Minimis Waivers: The City Manager may waive a Commercial Business' obligation to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 8.12.710(a)(2) below. Commercial Businesses requesting a de minimis waiver shall:

1. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 8.12.710(a)(2) below.
2. Provide documentation that either:
  - a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in an Organic Waste Container comprises less than 20 gallons per week per applicable Container of the business' total waste; or,

- b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in an Organic Waste Container comprises less than 10 gallons per week per applicable Container of the business' total waste.
3. Notify City Manager if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.
4. Provide written verification of eligibility for de minimis waiver every 5 years, if City Manager has approved de minimis waiver.

B. Physical Space Waivers: City Manager may waive a Commercial Business' or Owner's obligations to comply with some or all of the Recyclable Materials and/or Organic Waste collection service requirements if the City has evidence from its own staff, Franchise Holder, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for the collection Containers required for compliance with the Organic Waste collection requirements of Section 8.12.640.

1. A Commercial Business or Owner may request a physical space waiver through the following process:
  - a. Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
  - b. Provide documentation that the Premises lacks adequate space for an Organic Waste Container including documentation from its Franchise Holder, licensed architect, or licensed engineer.
  - c. Provide written verification to City Manager that it is still eligible for physical space waiver every five years, if City Manager has approved application for a physical space waiver.

### **8.12.720 Enforcement**

A. Violation of any provision of Chapter 8.12 shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a City Manager. Enforcement Actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.

#### **B. Process for Enforcement**

1. City Manager will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an inspection



program Section 8.12.200 establishes City's right to conduct inspections and investigations.

2. City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. For incidences of Prohibited Container Contaminants found in Containers, City will issue a Notice of Violation to any Owner or Occupant found to have Prohibited Container Contaminants in a Container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants. If the City observes Prohibited Container Contaminants in an Owner or Occupant's Containers on more than two (2) consecutive occasions, the City may assess contamination processing fees or penalties on the Owner or Occupant.
4. With the exception of Prohibited Container Contaminants found in Containers, addressed under Section 8.12.720(B)(3), City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
5. A Notice of Violation shall include the following information:
  - a. The name(s), or account name(s) if different, of each person or entity to whom it is directed.
  - b. A factual description of the violations of this chapter, including the section(s) being violated.
  - c. A compliance date by which the violator is to take specified action(s).
  - d. The penalty for not complying within the specified compliance date.
6. Absent compliance by the violator within the deadline set forth in the Notice of Violation, City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to HMC Enforcement Chapter 1.17.
  - a. Notices shall be sent to Owner at the official address of the Owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.
7. The penalty levels are as follows:
  - a. For a first violation, the amount of the base penalty shall be \$100 per violation.
  - b. For a second violation, the amount of the base penalty shall be \$200 per violation.
  - c. For a third or subsequent violation, the amount of the base penalty shall be \$500 per violation.

8. The City Manager may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with Section 8.12.720(B)(5)(c) if it finds that there are extenuating circumstances beyond the control of the violator that make compliance within the Notice of Violation deadlines impracticable, including the following:

- a. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- b. Delays in obtaining discretionary permits or other government agency approvals; or,
- c. Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2, as it currently exists or amended thereafter, due to those deficiencies.

**Section 2** If any provision of this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the validity of any particular portion thereof.

**Section 3** This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 4** Within fifteen (15) days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in accordance with California Government Code section 36933.

**Section 5** This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date.

The foregoing Ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on \_\_\_\_\_, 2021, and by a vote of the Council members present, further reading was waived.

On motion of Councilperson \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was passed by the City Council of the City of Hughson at a regular meeting held on \_\_\_\_\_, 2021, by the following votes:

/ / / /

/ / / /  
/ / / /

AYES:

NOES:

ABSTENTIONS:

ABSENT:

GEORGE CARR, Mayor

ATTEST:

ASHTON GOSE, Deputy City Clerk



## **CITY COUNCIL AGENDA ITEM NO. 3.4**

### **SECTION 3: CONSENT CALENDAR**

**Meeting Date:** November 22, 2021  
**Subject:** Consideration to Re-appoint Donya Nunes to the Parks, Recreation and Entertainment Commission  
**Enclosure:** Application for the Parks, Recreation and Entertainment Commission: Donya Nunes  
**Presented By:** Ashton Gose, Deputy City Clerk  
**Approved By:** Merry Mayhew

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#### **Staff Recommendation:**

Re-appoint Donya Nunes to the Parks, Recreation and Entertainment Commission.

#### **Background and Overview:**

The Hughson Parks, Recreation and Entertainment Commission provides recommendations to the City Council regarding policies for acquisition, development, maintenance, and improvement of park facilities. The Commission is also responsible for formulating and recommending appropriate fee schedules, policies, rules and regulations for park sites and other recreation facilities.

The Commission consists of five members appointed by the Mayor, with a majority of the City Council, to alternating two-year terms. Currently, there are three (3) vacancies on the Commission, for a term set to expire on December 31, 2021. The application period for this vacancy was advertised starting October 1, 2021, with a deadline of 5:00 PM on October 29, 2021.

Staff received an application from incumbent Donya Nunes for the Commission vacancy, no other application has been received to date. If appointed, her term will begin on January 1, 2022 and expire on December 31, 2023. City staff conferred with Mayor George Carr regarding the recommendation to re-appoint this applicant. Mayor Carr agreed with the recommendation and asked staff to present the item to the City Council for a majority vote.

At this time, the City Council has the opportunity to discuss this application, ask the applicant questions if necessary, and ultimately appoint the applicant with a majority

vote. Discussion and/or applicant interview, would require the item to be pulled from the Consent Calendar by a member of the City Council.

Since there are still two Commission terms set to expire on December 31, 2021, staff will reopen the application period, and advertise the vacancies until filled.

**Fiscal Impact:**

There is no fiscal impact associated with this item.



RECEIVED

OCT 29 2021

City Clerk's Office  
City of Hughson

**CITY OF HUGHSON**  
**APPLICATION FOR PARKS, RECREATION AND ENTERTAINMENT COMMISSION**

NAME: DONYA OLIVEIRA NUNES

HOME ADDRESS: [REDACTED]

DO YOU LIVE WITHIN CITY LIMITS? YES X NO       

EMAIL: [REDACTED]

HOME PHONE:                      CELL PHONE: [REDACTED]

ARE YOU RELATED TO CURRENT CITY EMPLOYEES? YES        NO X

IF YES, PLEASE LIST EMPLOYEE'S NAME AND RELATIONSHIP: N/A

OCCUPATION: ATTORNEY

BUSINESS ADDRESS: 832 12TH STREET MODESTO, CA

EDUCATION (HIGHEST SCHOOL YEAR, DEGREES, ETC.): 2017 - JURIS DOCTOR - HUMPHREYS UNIVERSITY

\*EMPLOYMENT HIGHLIGHTS (Please submit resume) ATTACHED

PRIOR PUBLIC SERVICE (IF ANY): 2019-PRESENT CITY OF HUGHSON PARKS AND REC.

2018-PRESENT STANISLAUS DEPUTY DISTRICT ATTORNEY, 2019-PRESENT STANISLAUS PROSECUTORS ASSOCIATION PRESIDENT.

PRESENT AND PAST COMMUNITY ACTIVITIES (PLEASE DO NOT LIST PARTISAN POLITICAL ACTIVITIES):  
TURLOCK WE CARE VOLUNTEER, TURLOCK TOGETHER VOLUNTEER, AND ENGAGE STANISLAUS  
PROSECUTORS ASSOCIATION IN VARIOUS LAW ENFORCEMENT EVENTS AS VOLUNTEERS OR  
CONTRIBUTORS.

WHAT DO YOU BELIEVE ARE THE MOST IMPORTANT ISSUES FACING HUGHSON TODAY (Relative to the position being sought)?

COMING OUT OF AN UNPRECEDENTED PANDEMIC THE BIGGEST ISSUE WOULD BE GETTING MORE  
PEOPLE INVOLVED IN A SAFE AND PRODUCTIVE MANNER. TO CONTINUE TO HAVE GREAT IDEAS  
FOR THE MAINTENANCE AND USE OF PARKS, BUILDINGS, AND COMMUNITY EVENTS.

SIGNATURE: [Signature]

DATE: 10/29/2021

Deliver or mail to: City Clerk, City Hall  
7018 Pine Street/ P.O. Box 9  
Hughson, CA. 95326

**DEADLINE FOR FILING – October 29, 2021 at 5:00 PM**

**CANDIDATE'S STATEMENT**

*As a candidate for the PARKS, RECREATION AND ENTERTAINMENT COMMISSION of the City of Hughson, I submit the following statement on why I am interested in serving as a City Commissioner:*

My name is Donya Nunes and I am interested in continuing to serve as a City Commissioner.

I have been very fortunate to have been a commissioner for the past two years and during  
unprecedented times. I believe that the city of Hughson has been and will only continue  
to grow as an amazing town that more and more will want to move to. Given that there  
will inevitably be an increase in use of of parks, community resources, and events. It  
would be an honor to become more involved than we have been able to be in the past  
year in a half and continue help make Hughson a safe and beautiful community for  
families

DATE October 29, 2021



SIGNATURE



# DONYA NUNES

CONTACT

## ATTORNEY AT LAW - CAREER OBJECTIVE

To represent Stanislaus County and serve my community as an efficient, dedicated, and hardworking team player.

**California State Bar Number: 320950**

## EDUCATION

**Humphreys University - School of Law**  
Juris Doctor, 2017

Graduated in 2.5 years as Salutatorian, Callahan Inn of Courts, Delta Theta Phi Law Fraternity Secretary, Student Bar Association Class Representative, Black Law Student Association Secretary, Barbri Representative

**California State University, Stanislaus**  
Bachelor of Arts in Political Science, 2014  
Transferred from CSU Fullerton in 2012

## SKILLS

- Legal Writing and Research
- Trial Experience
- Case Management and Negotiation
- Organization and Time Management

## COMMUNITY

- Stanislaus County Prosecutors Assoc. President
- City of Hughson, Parks & Rec. Commissioner
- We Care Shelter Turlock, Volunteer
- Turlock Together, Volunteer
- NCAA Division 1 Women's Soccer Team
- Portuguese Women's National Team

## EXPERIENCE

**Deputy District Attorney IV - Stanislaus County**  
*August 2018 - Present*

Criminal case management, negotiation, and litigation of a case load of approximately 200. Review arrests for issuance as well as train incoming attorneys on how to prepare for trial. Wide range of criminal trial and preliminary hearing experience including homicide, gang, assaults, drug sales, crimes against children, and domestic violence offenses. My trial experience also encompassed multiple defendant, multiple offense date, multiple victim, and multiple enhancements. Maintain a professional relationship and open communication with law enforcement.

**Stanislaus County Prosecutors Association, President**  
*July 2019 - Present*

Cofounded association to promote the economic, professional, and social interests of its members. Work to foster positive community and law enforcement relations, as well as participate in electoral process in a proactive manner through political endorsements. Drafted association bylaws and endorsement policy and created DA logo apparel to promote morale.

**JNETIX Artificial Insemination Services**  
*June 2020 - Present*

Manage business accounting, contracts, filings, purchases, sales, and taxes. Includes several accounts with approximately 20,000 cows.

**Certified Law Student, Collaborative Courts San Joaquin**  
*June 2016 - June 2017*

**Administrative Clerk - Stanislaus Child Protective Services**  
*November 2015 - August 2018*

**Legal Clerk, Personal Injury & Workers' Comp. - T. Mae Yoshida**  
*March 2015 - September 2015*

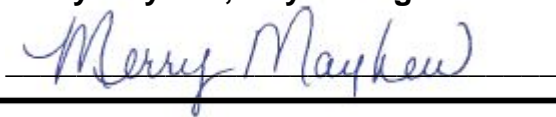
**Escrow Assistant, Oliveira Team - PMZ Real Estate**  
*June 2014 - February 2015*

**Customer Service Clerk - Save Mart Supermarkets**  
*September 2012 - October 2014*



## **CITY COUNCIL AGENDA ITEM NO. 3.5**

### **SECTION 3: CONSENT CALENDAR**

**Meeting Date:** November 22, 2021  
**Subject:** Approval to Submit Comments Regarding Pacific Gas and Electric Rate Increase to the California Public Utilities Commission  
**Presented By:** Merry Mayhew, City Manager  
**Approved By:** 

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#### **Staff Recommendation:**

Approve the Comments to be Submitted on Behalf of the City Council to the California Public Utilities Commission regarding the Pacific Gas and Electric Rate Increase.

#### **Background and Discussion:**

In a letter dated October 26, 2021, Pacific Gas and Electric (PG&E) noticed the City of Hughson of their application to the California Public Utilities Commission (CPUC) to increase rates for its 2023 Gas Transmission & Storage Cost Allocation and Rate Design Application (A.21-09-018).

At the November 8, 2021, City Council meeting, Mayor Carr expressed his dismay at the additional increase in rates as PG&E noticed the City in July 2021 of an 18% increase. Mayor Carr requested that City staff bring recommended comments to the City Council at the next meeting for discussion and approval. Once comments are finalized and approved, staff will then submit the comments to the CPUC.

The following comments are submitted for the Council's review, discussion, and approval:

*The document dated October 8, 2021, is confusing, the title states "request to increase rates" however stated in the body of the document is the following wording, "There are no new costs being requested in this application." Further down, the document states "If PG&E's rate request is approved by the CPUC, the average monthly bill for a typical residential customer averaging 31 therms per month would increase from \$56.34 to \$56.37, or 0.1%." The*

*language used appears as if PG&E has no increased costs and PG&E is requesting another increase in rates, in addition to the July 2021 notice increasing gas rates 18%.*

*It would be helpful to understand why this increase is necessary in addition to the 18% and this documentation does not explain the necessity.*

*California residents deserve better than this. Residents cannot afford these continuing increases. Not only is it taking longer than anticipated to get public health restrictions lifted and for people to feel safe getting out and moving around without fear for their health during a pandemic, but many residents are still unemployed, businesses are struggling, and PG&E is asking to increase gas rates again on top of the July noticed 18% increase.*

*The City Council of the City of Hughson is calling on the CPUC to deny PG&E's request for an increase.*

**Fiscal Impact:**

There is no fiscal impact to the City of Hughson associated with this item.



## CITY COUNCIL AGENDA ITEM NO. 4.1

### SECTION 4: UNFINISHED BUSINESS

**Meeting Date:** November 22, 2021  
**Subject:** Approval to Adopt Resolution No. 2021-38, Authorizing the City Manager to Execute the Construction Installment Sale Agreement and Grant Amendment No. 3 for Well No. 7 Well Replacement and Arsenic Treatment with the California State Water Resources Control Board Under the Drinking Water State Revolving Fund Project No. 5010008-011C Agreement No. D16-02057 and to Enter into a Debt Obligation Repayment Schedule  
**Enclosure:** SWRCB Transmittal Letter  
Construction Installment Sale Agreement and Grant Amendment No. 3  
Amendment No. 3 Signature Pages  
General Counsel Opinion  
**Presented By:** Anna Nicholas, Director of Finance & Administrative Services

**Approved By:**

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#### Staff Recommendation:

Adopt Resolution No. 2021-38, authorizing the City Manager to execute the Construction Installment Sale Agreement and Grant Amendment No. 3 between the City of Hughson and the California State Water Resources Control Board (SWRCB) for Well No. 7 Well Replacement and Arsenic Treatment under the Drinking Water State Revolving Fund Project No. 5010008-011C, Agreement No. D16-02057, Fiscal Agreement No. SWRCB0000000000D1602057.

#### Background and Overview:

##### ***Hughson Municipal Water System***

The City of Hughson relies entirely upon groundwater to supply drinking water for its public water system. To date, one well is not in compliance with the drinking water standards in relation to the arsenic maximum contaminant level (MCL). Of note, Well No. 8 has a coagulation/filtration treatment system that removes arsenic from the groundwater prior to its use in the system and delivery to consumers. Well No. 4 is not compliant with arsenic treatment for current drinking water standards which

causes the City to not meet compliance as a public water system. Currently, Well No. 4 is used as backup and is expected to be used for non-potable uses or decommissioned once Wells 9 and 10 are online.

In 2012, the California Department of Public Health (CDPH) issued Addendum No. 1 to Compliance Order No. 03-10-09CO-001A for violation of the arsenic maximum contaminant level (MCL) which extended the City's compliance date for removal of arsenic from the drinking water until no later than July 1, 2015. In early 2015, Addendum No. 2 was issued that revised the compliance date to no later than July 1, 2018. On June 22, 2018, Addendum No. 3 was issued that revised the compliance date to no later than July 1, 2021. Addendum No. 4, dated March 18, 2021, was received by the City with a compliance deadline extension to March 31, 2023.

The City's Water Enterprise Fund currently owns a 1.12-acre site facing the future extension of Roeding Road at its intersection of Tully Road, directly behind and to the east of Grossi Fabrication. A test well was sunk to almost 900 feet in 2012 to ascertain the water quality at different depths. The test showed surface contaminants, such as nitrates and DBCP, were not detected below 300 feet. However, below 300 feet, arsenic is present throughout the different strata, so the well designed to replace Well No. 7 will have arsenic treatment facilities similar to Well No. 8. To eliminate arsenic from the municipal water system, CDPH encouraged the expansion of the new treatment plant project to include a second well. The Compliance Order that the City of Hughson's Municipal Water System is currently working under will be met when the two new wells are online and Well 4 is used as non-potable water or has been decommissioned.

On May 28, 2013 (Resolution No. 2013-17), the City Council approved the submission of a full construction application prior to July 8, 2013 deadline. On January 28, 2014, the City of Hughson received notification from CDPH that its application for funding under the Safe Drinking Water State Revolving Fund (SDWSRF) was determined to be eligible for construction funding. The Hughson City Council provided the necessary approval on March 10, 2014 (Resolution No. 2014-07).

### ***Disadvantaged Community Classification***

City staff worked with Rural Community Assistance Corporation (RCAC) over the later part of 2014 and the citywide income survey concluded in January 2015. Based on the results, the City of Hughson's median household income was \$48,000 based on the 29 percent response rate. Although not adequate based on the 2014 California Disadvantaged MHI, the City's median household income did meet the 2015 threshold of \$48,875. As such, SWRCB revised their financial determination under Safe Drinking Water State Revolving Fund Project Funding for the City of Hughson, Project No. 50100008-011C.

On April 13, 2015 (Resolution No. 2015-08), the Hughson City Council reaffirmed the NOAA based on the revised terms and conditions which included a \$6,607,210 loan, 20-year repayment and a 1.663% interest rate (Resolution No. 2015-08). At that time, MCR Engineering shared that the original project cost estimate (formulated in early 2013) had been revisited due to various factors including

inflation and a change of a key element in the project scope from a steel tank to a concrete tank for reduced long term cost of ownership. The revised project cost estimate was approximately \$8.3 million. Subsequently, the City Manager submitted the revised project estimate to the SWRCB on April 30, 2015 and on May 11, 2015 (Resolution No. 2015-15), the Hughson City Council once again reaffirmed the NOAA based on the revised project estimate.

### **Funding Agreement for Well No. 7 Well Replacement and Arsenic Treatment History**

On April 10, 2017, the City Council approved the Installment Sale Agreement Amendment No. 1, for the Well 7 Replacement Project Drinking Water State Revolving Fund Project No. 5010008-011C Agreement No. D16-02057 in the amount of \$8,327,753 with the following terms:

Total funding: \$8,327,753  
Contingent principal forgiveness: \$5,000,000  
Estimated amount of principal due: \$3,327,753 (30 Years)  
Payment, interest rate, charges: Interest Rate of Zero Percent  
Start construction: No later than December 1, 2017  
Completion of construction: January 1, 2020

On July 13, 2020, the City Manager received an Installment Sale Agreement Amendment No. 2, for the Well 7 Replacement Agreement No. D16-02057 with the following terms:

Total funding: \$8,327,753  
Principal forgiveness: \$8,327,753  
Start construction: no later than December 1, 2017  
Completion of Construction: January 30, 2021

MCR Engineering continued working with City staff on the Well 7 Replacement Project and has been discussing increasing costs with City staff and the State. The \$8,327,753 estimate was based on pricing in 2015 and according to MCR Engineering, construction costs have increased due to inflation of 5%-7% annually. Current construction costs for Phase IV only are estimated at approximately \$9.5 million, bringing the total project cost to \$12,832,762. Discussion regarding increased costs due to the pandemic, supply chain issues, increasing labor costs, and increased steel costs, are on-going with the State.

On November 5, 2021, the City received the Construction Installment Sale Agreement and Grant Amendment No. 3 for the Well No. 7 Replacement and Arsenic Treatment Drinking Water State Revolving Fund Project No. 5010008-011 C Agreement No. D16-02057.

Project Funding Amount: \$12,832,762  
Interest Rate: 1.4%  
Principal Forgiveness Component: \$1,153,679  
Grant Component: \$8,470,893  
Estimated Reasonable Project Cost: \$12,832,762

Total Repayment Amount: \$4,099,035

The State notification indicated that the funding agreement (with two original signature pages) needed to be returned no later than 30 days following the date of the transmittal letter. As such, City staff is bringing forward to the City Council for formal consideration and approval to meet this deadline.

In addition to the grants in this Agreement, the SWRCB has assured staff that upon completion of the Water Consolidation Project, which extends City water to Country Vista Apartments (20 units) and Cobles Corner (18 units), additional incentives are available including dropping the interest rate on this SWRCB water loan from 1.4% to 0% and a consolidation incentive of approximately \$430,000 decrease to the principal. The terms would be included in the Consolidation Agreement.

**Fiscal Impact:**

The total debt obligation for Well No.7 Well Replacement and Arsenic Treatment Drinking Water State Revolving Fund Project No. 5010008-011C, Agreement No. D16-02057, Fiscal Agreement No. SWRCB0000000000D1602057, Amendment No. 3 is \$4,099,034.57, with payment obligations commencing on 1/1/2022 and final payment due 7/1/2052 and is displayed in Exhibit E of the Agreement. Budget appropriations for debt repayment will be increased at Mid-Year Budget and payments will be made from Fund 240 – Water.

**CITY OF HUGHSON  
CITY COUNCIL  
RESOLUTION NO. 2021-38**

**A RESOLUTION OF CITY COUNCIL OF THE CITY OF HUGHSON AUTHORIZING THE  
CITY MANAGER TO EXECUTE THE INSTALLMENT SALE AGREEMENT  
AMENDMENT NO. 3 FOR WELL NO. 7 REPLACEMENT AND ARSENIC TREATMENT  
WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD UNDER  
THE DRINKING WATER STATE REVOLVING FUND PROJECT NO. 5010008-011C  
AGREEMENT NO. D16-02057**

**WHEREAS**, the City of Hughson seeks financing from the State Water Resources Control Board for a project commonly known as Well No. 7 Replacement Project, also known as (Well No. 9) ("Project"); and

**WHEREAS**, the City Council recognizes the need and requirement for the City of Hughson's water system to come into compliance with the State of California's safe drinking water mandates by March 1, 2023; and

**WHEREAS**, on April 10, 2017, the City Council of the City of Hughson approved the total project cost of the Well No. 7 Replacement Project at \$8,327,753, of which the State agreed is eligible for Safe Drinking Water State Revolving Fund (DWSRF) financing with \$5,000,000 subject to contingent principal forgiveness and \$3,327,753 estimated amount of principal at a zero percent interest rate with a 30-year repayment; and

**WHEREAS**, on July 13, 2020, the City of Hughson received Installment Sale Agreement Amendment No. 2 which amends the terms of the Agreement to a full principal forgiveness in the amount of \$8,327,753; and

**WHEREAS**, on November 5, 2021, the City of Hughson received Installment Sale Agreement Amendment No. 3 which amends the terms of the Agreement to: Project Funding Amount \$12,832,762, with a Principal Forgiveness Component of \$1,153,679 and a Grant Component of \$8,470,893, which leaves a Principal balance owed by the City of \$3,208,190, with a 1.4% interest rate applied over a 30-year payment schedule for a total debt obligation of \$4,099,034.57; and

**WHEREAS**, the City agrees to the debt obligation payment schedule referred to as the California DWSRF Payment Schedule with payments commencing on January 1, 2022 and concluding on July 1, 2052; and

**WHEREAS**, the City agrees to start construction no later than December 1, 2017 and ensure completion of construction by September 30, 2022; and

**WHEREAS**, upon completion of the Well No. 7 Replacement and Arsenic Treatment, the City of Hughson will come into compliance with the State of California's safe drinking water mandate for arsenic maximum contaminant level (MCL).

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, that the City Council of the City of Hughson hereby approves and authorizes the City Manager to execute the



Installation Sale Agreement Amendment No. 3 for Well No. 7 Replacement and Arsenic Treatment with the California State Water Resources Control Board under the Drinking Water State Revolving Fund Project No. 5010008-011C Agreement No. D16-02057 and enter into the debt repayment schedule as set forth in the agreement.

**PASSED AND ADOPTED** by the City Council of the City of Hughson at its regular meeting held on this 22nd day of November 2021, by the following roll call votes:

**AYES:**

**NOES:**

**ABSTENTIONS:**

**ABSENT:**

**APPROVED:**

---

**GEORGE CARR, Mayor**

**ATTEST:**

---

**ASHTON GOSE, Deputy City Clerk**



GAVIN NEWSOM  
GOVERNOR



JARED BLUMENFELD  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

November 5, 2021

City of Hughson  
Attn: Merry Mayhew, City Manager  
P.O. Box 9  
Hughson, CA 95326

Agreement Number: SWRCB0000000000D1602057  
Project Number: 5010008-011C

Enclosed is your amended Funding Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board ("State Water Board").

If in agreement with all terms and conditions of the Agreement, please have the Authorized Representative, as noted in the executed resolution, sign and return two (2) signature pages no later than thirty (30) calendar days from the date of this letter to:

### **US Mail**

Maria Nanca  
State Water Resources Control Board  
Division of Financial Assistance  
P.O. Box 944212  
Sacramento, CA 94244-2120

### **Overnight Mail**

Maria Nanca  
State Water Resources Control Board  
Division of Financial Assistance  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

In order for the Funding Agreement to be executed by the State Water Board, the following items must also be returned with the signed signature pages:

1. Opinion of General Counsel.
2. Bond Counsel Letter.

### **Additional Compliance Requirements:**

#### **Davis Bacon Compliance:**

[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/davisbacon.shtml](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/davisbacon.shtml)

#### **Disadvantaged Business Enterprise (DBE)**

[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/policy0513/dbe\\_compliance\\_guidelines\\_instructions.pdf](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/policy0513/dbe_compliance_guidelines_instructions.pdf)

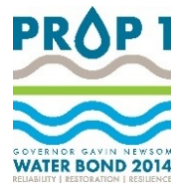
E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Ms. Nanca may be contacted at [Maria.Nanca@waterboards.ca.gov](mailto:Maria.Nanca@waterboards.ca.gov)

Once the Agreement is signed by both parties, we will forward an executed copy to you for your entity's records.

Enclosures



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## DRINKING WATER

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CITY OF HUGHSON

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION  
INSTALLMENT SALE AGREEMENT  
AND GRANT

WELL NO. 7 WELL REPLACEMENT AND ARSENIC TREATMENT

DRINKING WATER STATE REVOLVING FUND PROJECT NO. 5010008-011C

AGREEMENT NO. D16-02057

FISCAL AGREEMENT NO. SWRCB0000000000D1602057

AMENDMENT NO. 3

PROJECT FUNDING AMOUNT: \$12,832,762

PRINCIPAL FORGIVENESS COMPONENT: \$1,153,679

GRANT COMPONENT: \$8,470,893

ESTIMATED REASONABLE PROJECT COST: \$12,832,762

ELIGIBLE WORK START DATE: NOVEMBER 9, 2016

ELIGIBLE CONSTRUCTION START DATE: DECEMBER 1, 2017

CONSTRUCTION COMPLETION DATE: SEPTEMBER 30, 2022

FINAL DISBURSEMENT REQUEST DATE: MARCH 31, 2023

FINAL PAYMENT DATE: JANUARY 1, 2052

RECORDS RETENTION END DATE: SEPTEMBER 30, 2058

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**This Agreement executed by the State Water Board on April 25, 2017 and subsequently amended on May 2, 2019 and on September 16, 2020, is hereby amended and restated in its entirety.**

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## AGREEMENT

### 1. AUTHORITY.

(a) The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to Section 116760 et seq. of the Health and Safety Code, Section 79724 of the Water Code, and State Water Board Resolution Nos. 2019-0042, 2019-0065, 2020-0022, and 2021-0022.

(b) The Recipient is authorized to enter into this Installment Sale Agreement (Agreement) pursuant to Resolution No. 2015-15.

### 2. INTENTION.

The Recipient desires to receive financial assistance for and undertake work required for the drinking water construction Project according to the terms and conditions set forth in this Agreement.

(a) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement, with the expectation that the Recipient shall repay a portion of the financial assistance to the State Water Board.

(b) The Recipient intends to evidence its obligation to submit Payments to the State Water Board and secure its obligation with Net Revenues of its water/wastewater enterprise, as set forth in Exhibit B, according to the terms and conditions set forth in this Agreement.

(c) Recipient intends to certify and evidence its compliance with the Tax Covenants set forth in Exhibit F.

### 3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

In consideration of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement.

(a) The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board.

(b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following:

- i. The Recipient must deliver to the Division a resolution authorizing this Agreement.
- ii. The Recipient must deliver an opinion of bond counsel and general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.

(c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Final Payment Date.

(d) This Agreement includes the following exhibits and attachments thereto:

- i. EXHIBIT A – SCOPE OF WORK
- ii. EXHIBIT B – FUNDING TERMS
- iii. EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS
- iv. EXHIBIT D – SPECIAL CONDITIONS
- v. EXHIBIT E – PAYMENT SCHEDULE
- vi. EXHIBIT F – TAX CERTIFICATE

(e) This Agreement includes the following documents incorporated by reference:

- i. the Final Plans & Specifications, dated May 31, 2018, May 1 2019, December 11, 2020, which are the basis for the construction contract to be awarded by the Recipient;
- ii. the Drinking Water System Permit No. 03-10-04PA-001;
- iii. the Recipient's Reimbursement Resolution No. dated May 11, 2015;
- iv. the Recipient's Tax Questionnaire dated August 5, 2016.
- v. the Davis-Bacon requirements found at:

[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/davisbacon/2020\\_dwsrf\\_governmental\\_entities.pdf](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/2020_dwsrf_governmental_entities.pdf)

#### 4. PARTY CONTACTS

State Water Board		City of Hughson	
Section:	Division of Financial Assistance		
Name:	Judith Salazaer, Project Manager	Name:	Merry Mayhew, City Manager
Address:	1001 I Street, 16 <sup>th</sup> Floor	Address:	P.O. Box 9
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Hughson, CA 95326
Phone:	(916) 445-0827	Phone:	(209) 883-4054
Email:	Judith.Salazar@waterboards.ca.gov	Email:	mmayhew@hughson.org

The Recipient may change its contact upon written notice to the Division, which notice shall be accompanied by authorization from the Recipient's Authorized Representative. The State Water Board will notify the Recipient of any changes to its contact.

While the foregoing are contacts for day-to-day communications regarding Project work, the Recipient shall provide official communications and events of Notice as set forth in Exhibit C to the Division's Deputy Director.

#### 5. DEFINITIONS.

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

"Additional Payments" means the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Agreement" means this agreement, including all exhibits and attachments hereto.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

"Bank" means the California Infrastructure and Economic Development Bank.

"Bond Funded Portion of the Project Funds" means any portion of the Project Funds which was or will be funded with Bond Proceeds.

"Bond Proceeds" means original proceeds, investment proceeds, and replacement proceeds of Bonds.

"Bonds" means any series of bonds issued by the Bank, the interest on which is excluded from gross income for federal tax purposes, all or a portion of the proceeds of which have been, are, or will be applied by the State Water Board to fund all or any portion of the Project Costs or that are secured in whole or in part by Payments paid hereunder.

"Charge In Lieu of Interest" means any fee or charge in lieu of some or all of, but not to exceed, the interest that would otherwise be owed under this Agreement, as set forth in Exhibit E.

"Code" as used in Exhibit F of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is identified in Exhibit A of this Agreement.

"Cover Page" means the front page of this Agreement.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, as of any date, with respect to outstanding System Obligations and, in the case of the additional debt tests in Exhibit B of this Agreement, any System Obligations that are proposed to be outstanding, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), together with any Charge In Lieu of Interest on this Obligation or other System Obligations to the State Water Board, calculated with the following assumptions:

a. Principal payments (unless a different subdivision of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;

b. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the SIFMA Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;

c. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of LIBOR, or its successor index, during the 24 months preceding the date of such calculation;

d. Interest on a variable rate System Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;

e. Interest on a fixed rate System Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subdivisions (b) or (c) of this definition of Debt Service;

f. Payments of principal and interest on a System Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the defeasance of such System Obligations;

g. If 25% or more of the principal of a System Obligation is not due until its final stated maturity, then principal and interest on that System Obligation may be projected to amortize over the lesser of 30 years or the Useful Life of the financed asset, and interest may be calculated according to subdivisions (b)-(e) of this definition of Debt Service, as appropriate.

"Deputy Director" means the Deputy Director of the Division.

"District Office" means District Office of the Division of Drinking Water of the State Water Board.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.

"Division of Drinking Water" means the Division of Drinking Water of the State Water Board.

"Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

"Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Event of Default" means the occurrence of any of the following events:

- a) Failure by the Recipient to make any payment required to be paid pursuant to this Agreement, including Payments;
- b) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- c) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.

- d) Failure by the Recipient to comply with the additional debt test or reserve fund requirement, if any, in Exhibit B or Exhibit D of this Agreement;
- e) Failure to operate the System or the Project without the Division's approval;
- f) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- g) The occurrence of a material breach or event of default under any System Obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- h) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient's entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient's existence, or any action in furtherance of any of the foregoing;
- i) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code;
- j) Loss of the Recipient's rights, licenses, permits, or privileges necessary for the operation of the System or the Project, or the occurrence of any material restraint on the Recipient's enterprise by a government agency or court order.

"Final Disbursement Request Date" means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

"Final Payment Date" is the date by which all principal and accrued interest due under this Agreement is to be paid in full to the State Water Board and is specified on the Cover Page of this Agreement.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees, equipment, or resources for the Project.

"GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

"Guidelines" means the State Water Board's "Proposition 1 Drinking Water Program Funding guidelines," as set forth in the Intended Use Plan in effect as of the execution date of this Agreement.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported with respect to such System Obligation pursuant to Rule 15c2-12(b)(5).

"Material Obligation" means an obligation of the Recipient that is material to this transaction, including System Obligations.

"Maximum Annual Debt Service" means the maximum amount of Debt Service due on System Obligations in a Fiscal Year during the period commencing with the Fiscal Year for which such calculation is made and within the next five years in which Debt Service for any System Obligations will become due.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Payments (including Additional Payments) as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description in Exhibit A and Exhibit B and in the documents thereby incorporated by reference.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Parity Obligation" means a debt obligation of the Recipient on parity with this Obligation. The Recipient's Parity Obligations are these:

- The Installment Sales Agreement between Recipient and Municipal Finance Corporation dated February 27, 2006.

"Payment" means any payment due to the State Water Board from the Recipient pursuant to this Agreement.

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

"Project" means the Project financed by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy and Guidelines, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, and may include capitalized interest.

“Project Funds” means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.

“Recipient” means City of Hughson.

“Records Retention End Date” means the last date that the Recipient is obligated to maintain records and is set forth on the Cover Page of this Agreement.

“Regional Water Quality Control Board” or “Regional Water Board” means the appropriate Regional Water Quality Control Board.

“Reimbursement Resolution” means the Recipient’s reimbursement resolution identified and incorporated by reference in this Agreement.

“Reserve Fund” means the reserve fund required pursuant to Exhibit B of this Agreement.

“Revenues” means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient’s behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

“Rule 15c2-12(b)(5)” means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

“Senior Obligation” means a debt obligation of the Recipient that is senior to this Obligation. There are no Senior Obligations.

“SRF” means the Drinking Water State Revolving Fund.

“State” means State of California.

“State Water Board” means the State Water Resources Control Board.

“Subordinate Obligation” means a debt obligation of the Recipient that is subordinate to this Obligation. There are no Subordinate Obligations.

“System” means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

“System Obligation” means any obligation of the Recipient payable from the Revenues, including but not limited to this Obligation, any Parity Obligation, any Subordinate Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.



“Useful Life” means the economically useful life of the Project beginning at Completion of Construction and is set forth in Exhibit A.

“Year” means calendar year unless otherwise expressly indicated.

IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto.

CITY OF HUGHSON:

By: \_\_\_\_\_  
Name: Merry Mayhew  
Title: City Manager

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

STATE WATER RESOURCES CONTROL BOARD:

By: \_\_\_\_\_  
Name: Joe Karkoski  
Title: Deputy Director  
Division of Financial Assistance

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

## EXHIBIT A – SCOPE OF WORK

### A.1. PROJECT DESCRIPTION, USEFUL LIFE, AND SCOPE OF WORK.

- (a) The Project is the project set forth on the Cover Page of this Agreement.
- (b) The Useful Life of this Project is at least 40 years.
- (c) Scope of Work.

The Project includes the installation and consolidation of two (2) deep wells, two (2) water filters, one (1) equalization/storage tank for treated water, one (1) backwash holding and processing tank with appurtenances for backwash reclamation, distribution system booster pumps, control building, emergency power supply, on and off site pipelines for water conveyance, and other incidental items for a fully functioning water treatment, storage, and distribution facility. The Project will solve the ranked problem through a combined strategy of (1) avoiding some contaminants by replacing shallow groundwater wells with deep groundwater wells, and (2) treating water for inorganic contamination that is ubiquitous in local aquifers.

### A.2. STANDARD PROJECT REQUIREMENTS.

#### A.2.1 Acknowledgements.

The Recipient shall include the following acknowledgement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

#### A.2.2 Reports

##### A.2.2.1 Progress Reports.

- (a) The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement.
- (b) The Recipient must provide a progress report with each disbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B.
- (c) A progress report must contain the following information:
  - i. A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;

- ii. A description of compliance with environmental requirements;
- iii. A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- iv. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

#### A.2.2.2 Project Completion Report.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

#### A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

#### A.2.2.4 Reserved.

#### A.2.2.5 DBE Reports for SRF Projects.

The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

#### A.2.3 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain

the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



“Funding for the Well No. 7 Well Replacement and Arsenic Treatment Project has been provided in full or in part by Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014, the Safe and Affordable Funding for Equity and Resiliency (SAFER) Drinking Water Program, and the Drinking Water State Revolving Fund through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds.”

b. The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

#### A.2.4 Commencement of Operations.

Upon Completion of Construction of the Project, the Recipient must expeditiously initiate Project operations.

#### A.3 DATES & DELIVERABLES.

(a) Time is of the essence.

(b) The Recipient must expeditiously proceed with and complete construction of the Project.

(c) The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Construction Start Date
- iii. Completion of Construction Date
- iv. Final Disbursement Request Date
- v. Records Retention End Date
- vi. Final Payment Date

(d) The Recipient must award the prime construction contract timely.

(e) The Recipient agrees to start construction no later than .

(f) The Recipient must deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.

(g) The undisbursed balance of this Agreement will be deobligated if the Recipient does not provide its final Disbursement Request to the Division on or before the Final Disbursement Request Date, unless prior approval has been granted by the Division.

- (h) Upon request by the Division, the Recipient shall submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

#### A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to Project Completion. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Disbursement Request prior to the Final Disbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	ADDITIONAL SUBMITTAL(S) TO DIVISION		
1.	Final Plans and Specifications	N/A	Complete
2.	Final Budget Approval Package	N/A	Complete
3.	Completion of Construction	9/30/2022	N/A
B.	REPORTS		
1.	Progress Reports	Quarterly	
2.	Final Inspection and Certification	N/A	9/30/2022
3.	Project Completion Report	N/A	12/30/2022
4.	As Needed Reports	As Requested by Division	
EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	REIMBURSEMENTS		
1.	Reimbursement Requests	N/A	Quarterly
2.	Final Reimbursement Request	3/31/2023	N/A

## EXHIBIT B – FUNDING TERMS

### B.1. FUNDING AMOUNTS AND DISBURSEMENTS

#### B.1.1 Funding Contingency and Other Sources.

(a) If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount.

(b) If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board to be applied to Payments due hereunder, if any.

#### B.1.2 Estimated Reasonable Cost.

The estimated reasonable cost of the total Project, including associated planning and design costs is twelve million eight hundred thirty-two thousand seven hundred sixty-two dollars and no cents (\$12,832,762.00).

#### B.1.3 Project Funding Amount.

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

#### B.1.4 Grant and Principal Forgiveness Components.

(a) Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board will forgive principal and make a grant of not to exceed the amount of the Grant and Principal Forgiveness Components set forth on the Cover Page of this Agreement.

(b) Upon Completion of Construction, the State Water Board will prepare an alternate payment schedule reflecting the grant and forgiveness.

#### B. 1.5 Budget Costs.

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(b) Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

### FINAL BUDGET APPROVAL

Table 1: Approved Construction Bid Amount

CONTRACTOR	AMOUNT BID	APPROVED COSTS
Phase 1: Anthony J. Prieto Water Well Drilling, Inc.	\$891,319	\$891,319
Phase 2: Gateway Pacific Construction	\$1,896,104	\$1,896,104
Phase 3: N/A	N/A	N/A
Phase 4: Gateway Pacific Construction	\$7,895,716	\$7,895,716
<b>TOTAL</b>	<b>\$10,683,139</b>	<b>\$10,683,139</b>

Table 2: Approved Final Project Budget

TYPE OF WORK	Phase 1 Actual Cost	Phase 2 Actual Cost	Phase 3 Approved Cost	Phase 4 Approved Cost	Total
<b>A. Construction</b>					
Phase 1: Anthony J. Prieto Water Well Drilling, Inc.	\$891,319	\$0	\$0	\$0	\$891,319
Phase 2: Gateway Pacific Construction	\$0	\$1,896,104	\$0	\$0	\$1,896,104
Phase 3: N/A	\$0	\$0	\$0	\$0	\$0
Phase 4: Gateway Pacific Construction	\$0	\$0	\$0	\$7,895,716	\$7,895,716
<b>B. Pre-Purchased Material/Equipment</b>	\$0	\$0	\$614,405	\$0	\$614,405
<b>C. Land Purchase</b>	\$0	\$0	\$0	\$0	\$0
<b>D. Contingency</b>	\$96,169	\$0	\$0	\$557,454	\$653,623
<b>E. Allowances</b>	\$297,393	\$224,687	\$0	\$359,515	\$881,595
<b>TOTAL</b>	<b>\$1,284,881</b>	<b>\$2,120,791</b>	<b>\$614,405</b>	<b>\$8,812,685</b>	<b>\$12,832,762</b>

Note: Adjustments may be made between Line Items on the Final Disbursement.

The eligibility determinations and conditions of approval identified below are based on the review of:

- Stamped and Signed Final Plan and Specifications (P&S) for the Phase 1 for the Project received on June 5, 2018, dated on May 31, 2018.
- Stamped and Signed Final P&S for the Phase 2 of the Project received on March 18, 2020, dated on May 1, 2019.
- Stamped and Signed Final P&S for Phase 4 of the Project received on March 11, 2021, dated on December 11, 2020.



The eligibility determination for the bid items shown in the schedule of values provided by the Recipient are as follows:

Table 3: Eligibility Determination Agreement (Phase 4)

Bid Item	Description	Percent Eligibility
1	Mobilization	100%
2	Yard Piping	100%
3	Mechanical	100%
4	Instrumentation	100%
5	Site Electrical	100%
6	Switchgear, MCC, PLC	100%
7	SCADA and Telemetry	100%
8	Control Building	100%
9	Chemical Disinfection System	100%
10	Site Work	100%
11	Generator	100%
12	Backwash Tank	100%
13	16" Transmission Piping	100%
14	12" Transmission Piping	100%
15	Installation of Owner's Filters	100%
16	A.C. Remove/Replace	100%

#### Eligibility Determination Conditions of Approval

1. Necessary insurance directly related to the construction contract and extending throughout the period of the construction contract will be eligible for DWSRF financing. This includes builder risk insurance, public liability insurance, fire, and Project specific insurance.
2. Earthquake insurance and "Act of God" insurance are ineligible for funding.
3. Asphalt pavement, corresponding improvements, and excavation and refill materials due to trenching are limited to replacement of the trench width plus one foot on each side of the trench disturbed due to the construction work of the subject contract only. Full lane width paving or slurry seal is eligible only if required by ordinance or code.
4. The cost of local permits and licenses other than those issued by the Recipient are eligible for DWSRF financing.
5. The approved contingency may not be increased above the approved contingency shown in Table 2. Any unclaimed construction or allowance costs may also be used towards approved construction change orders. The change order approval may not: (1) increase the maximum amount of the financing agreement based on Table 2: Approved Construction Budget, (2) increase the term of the financing agreement, or (3) result in a substantial change in the Project scope.
6. Review of the P&S by the Division is conducted to determine eligibility and administrative compliance with the Policy. Issuance of the FBA does not relieve the Recipient and the design engineer of their legal liability for the adequacy of the design.

#### B.1.6 Contingent Disbursement.

- (a) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

(c) Construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient.

(d) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.

(e) Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

(f) Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.

(g) The Recipient agrees to ensure that its final Disbursement Request is received by the Division no later than the Final Disbursement Request Date, unless prior approval has been granted by the Division. If the final Disbursement Request is not received timely, the undisbursed balance of this Agreement will be deobligated.

(h) The Recipient is not entitled to interest earned on undisbursed funds.

#### B.1.7 Disbursement Procedure.

Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance costs through submission to the State Water Board of the Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
3. The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts approved by the Division in the Final Budget Approval.
4. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260 and Form 261, or any amendment thereto, duly

completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.

5. The Recipient must not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request. Supporting documentation (e.g., receipts) must be submitted with each Disbursement Request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Disbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Disbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future disbursements.
7. The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
8. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
9. No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>, as of the date costs are incurred by the Recipient.

#### B.1.8 Withholding of Disbursements.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- (a) The Recipient's failure to maintain reasonable progress on the Project as determined by the Division;
- (b) Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or payment of debt service on System Obligations; [privates] Reduction of fees or charges levied for operation of the System or payment of debt service on System Obligations;
- (c) Commencement of litigation or a judicial or administrative proceeding related to the Project, System, or Revenues that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- (d) Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal

- Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) A material adverse change in the condition of the Recipient, the Revenues, or the System, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
  - (f) The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
  - (g) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents regarding the Project or the System;
  - (h) An event requiring Notice as set forth in Exhibit C;
  - (i) An Event of Default or an event that the Division determines may become an Event of Default.

#### B.1.9 Fraud and Misuse of Public Funds.

All requests for disbursement submitted must be accurate and signed by the Recipient's Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the repayment of all Project Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

#### B.2 RECIPIENT'S PAYMENT OBLIGATION, PLEDGE, AND RESERVE

##### B.2.1 Project Costs.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs and Additional Payments. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

##### B.2.2 Estimated Principal Payment Due.

The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is twelve million eight hundred thirty-two thousand seven hundred sixty-two dollars and no cents (\$12,832,762.00).

##### B.2.3 Interest Rate and In-Lieu of Interest Charges.

(a) The Recipient agrees to make all Payments according to the schedule in Exhibit E, and as otherwise set forth herein, at an interest rate of one point four percent (1.4%) per annum.

(b) Interest will accrue beginning with each disbursement.

(c) In lieu of, and not to exceed, interest otherwise due under this Agreement, the Recipient agrees to pay the following charge(s), as further set forth in Exhibit E:

- an Administrative Service Charge
- a Drinking Water Small Community Emergency Grant Fund Charge

B.2.4 Reserved.

B.2.5 Obligation Absolute.

The obligation of the Recipient to make the Payments and other payments required to be made by it under this Agreement, from the Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Payments and Additional Payments have been paid in full, the Recipient must not discontinue or suspend any Payments or other payments required to be made by it hereunder when due, whether or not the Project, or any related part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

B.2.6 Payment Timing.

(a) The Recipient must pay interest semi-annually, by January and July of each year, until one year after Completion of Construction. Beginning no later than one year after Completion of Construction, the Recipient must make semi-annual Payment of the principal of the Project Funds, together with all interest accruing thereon by January and July of each year. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Payment Date. Payments are based on a standard fully amortized assistance amount with equal annual payments.

(b) The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, plus any Charge In Lieu of Interest, less the Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit E is a payment schedule based on the provisions of this Exhibit and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

(c) Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient. The Recipient must make each Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred by the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other related costs. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

(d) The Recipient is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient must provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

(e) Each Payment must be paid in lawful money of the United States of America by check or other acceptable form of payment set forth at [www.waterboards.ca.gov/make\\_a\\_payment](http://www.waterboards.ca.gov/make_a_payment). The Recipient must pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor.

#### B.2.7 Pledged Revenues.

##### B.2.7.1 Establishment of Enterprise Fund and Reserve Fund.

In order to carry out its System Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in this Exhibit, the Recipient must establish and maintain a Reserve Fund.

##### B.2.7.2 Pledge of Net Revenues, Enterprise Fund, and Reserve Fund.

The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund on parity with the Parity Obligations. The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund to secure the Obligation, including payment of Payments and Additional Payments hereunder. The Enterprise Fund, Net Revenues in the Enterprise Fund, and any Reserve Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.

##### B.2.7.3 Application and Purpose of the Enterprise Fund.

Subject to the provisions of any outstanding System Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the System Obligations in order of priority. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient.

#### B.2.7 Reserved.

#### B.2.8 No Prepayment.

Pursuant to State Water Board's Debt Management Policy, adopted on October 3, 2017, the Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.

#### B.2.9 Reserve Fund.

Prior to Completion of Construction, the Recipient must establish a restricted Reserve Fund, held in its Enterprise Fund, equal to one year's Debt Service on this Obligation. The Recipient must maintain the Reserve Fund throughout the term of this Agreement. The Reserve Fund is subject to lien and pledged as security for this Obligation, and its use is restricted to payment of this Obligation during the term of this Agreement.

#### B.3 RATES, FEES AND CHARGES.

(a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are equal to at least 115% of the Maximum Annual Debt Service with respect to all outstanding System Obligations, so long as System Obligations other than this Obligation are outstanding. Upon defeasance of all System Obligations other than this Obligation, this ratio must be at least 120%, except where System Obligations are defeased pursuant to refunding obligations.

(b) The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

(c) Upon consideration of a voter initiative to reduce Revenues, the Recipient must make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in this Section. The Recipient must make its findings available to the public. The Recipient's Authorized Representative must request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in this Agreement and its obligation to operate and maintain the Project for its Useful Life. The Recipient must diligently pursue and bear any and all costs related to such challenge. The Recipient must notify and regularly update the State Water Board regarding the status of any such challenge.

#### B.4 ADDITIONAL DEBT.

(a) The Recipient's future debt that is secured by Revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Recipient's ability to satisfy its SRF obligation(s).

(b) The Recipient may issue additional parity or subordinate debt only if all of the following conditions are met:

- i. Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the ratio for rate covenants set forth in this Exhibit with respect to any outstanding and proposed additional obligations;
- ii. The Recipient is in compliance with any reserve fund requirement of this Obligation.

**B.5 NO LIENS.**

The Recipient must not make any pledge of or place any lien on the Project, System, or Revenues except as otherwise provided or permitted by this Agreement.



## EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS

### C.1 REPRESENTATIONS & WARRANTIES.

The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement.

#### C.1.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

#### C.1.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

#### C.1.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

#### C.1.4 No Litigation.

There are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain the System or any of the real or personal property related to or necessary for the Project.

#### C.1.5 Property Rights and Water Rights.

The Recipient owns or has sufficient property rights in the Project property for the longer of the Useful Life or the term of this Agreement, either in fee simple or for a term of years that is not subject to third-party revocation during the Useful Life of the Project.

The Recipient possesses all water rights necessary for this Project.

#### C.1.6 Solvency and Insurance.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.

#### C.1.7 Legal Status and Eligibility.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

#### C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.

#### C.1.9 System Obligations

The Recipient has no System Obligations other than those defined in this Agreement.

#### C.1.10 No Other Material Debt.

The Recipient has no Material Obligations other than System Obligations.

#### C.1.11 Compliance with State Water Board Funding Agreements.

The Recipient represents that it is in compliance with all State Water Board funding agreements to which it is a party.

### C.2 DEFAULTS AND REMEDIES

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement.

C.2.1 Return of Funds; Acceleration; and Additional Payments.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, immediately to do each of the following:

- i. return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- ii. accelerate the payment of any principal owed under this Agreement, all of which shall be immediately due and payable;
- iii. pay interest at the highest legal rate on all of the foregoing; and
- iv. pay any Additional Payments.

C.2.2 Reserved.

C.2.3 Judicial remedies.

Whenever the State Water Board determines that an Event of Default shall have occurred, the State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. Without limiting the generality of the foregoing, the State Water Board may:

- i. by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- ii. by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement, including but not limited to the imposition and collection of rates for the services of the System sufficient to meet all requirements of this Agreement; and
- iii. take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.

C.2.4 Termination.

Upon an Event of Default, the State Water Board may terminate this Agreement. Interest shall accrue on all amounts due at the highest legal rate of interest from the date that the State Water Board delivers notice of termination to the Recipient.

C.2.5 Damages for Breach of Tax-Exempt Status.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient must immediately reimburse the

State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

#### C.2.6 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

#### C.2.7 Remedies and Limitations.

None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy.

Any claim of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the claims procedures provided to the Recipient under this Agreement.

#### C.2.8 Non-Waiver.

Nothing in this Agreement shall affect or impair the Recipient's Obligation to pay Payments as provided herein or shall affect or impair the right of the State Water Board to bring suit to enforce such payment. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement.

#### C.2.9 Status Quo.

If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights and remedies as if no such action had been brought.

### C.3 STANDARD CONDITIONS

#### C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, disbursement requests, and supporting documentation submitted hereunder.

#### C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention.

(a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

(b) The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

(c) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- i. Establish an official file for the Project which adequately documents all significant actions relative to the Project;
- ii. Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- iii. Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- iv. Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
- v. Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- vi. If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Costs from Force Account are not eligible for funding.

(d) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

### C.3.3 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

Requests for amendments must be in writing and directed to the contact listed in Section 4 and to the Division's Chief of Loans and Grants Administration Section.

C.3.4 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

C.3.5 Audit.

(a) The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of state or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division.

(b) Audit disallowances must be returned to the State Water Board.

C.3.6 Bonding.

Where contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

C.3.7 Competitive Bidding

Recipient must adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

C.3.8 Compliance with Applicable Laws, Rules, and Requirements.

The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, to the extent applicable, the Recipient must:

(a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;

(b) Comply with the Policy; and

(c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

C.3.9 Computer Software.

The Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

C.3.10 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

C.3.11 Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

C.3.12 Data Management.

The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

C.3.13 Disputes.

(a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

(b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

(c) Recipient must continue with the responsibilities under this Agreement during any dispute.

(d) This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

C.3.14 Drug-Free Workplace.

The Recipient certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act (Gov. Code. §§ 8350-8357). The Recipient shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions to be taken against employees for violations of the prohibition. The Recipient shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations. The Recipient shall provide that every employee who works on the Project receives a copy of the Recipient's drug-free workplace policy statement and agrees to abide by the terms of the statement as a condition of employment on the Project.

C.3.15 Environmental Clearance.

(a) No work that is subject to CEQA or NEPA may proceed under this Agreement unless the State Water Board has provided environmental clearance. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement.

(b) If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

C.3.16 Governing Law.

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

C.3.17 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

C.3.18 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System or the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein,



in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.

#### C.3.19 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

#### C.3.20 Integration.

This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

#### C.3.21 Leveraging Covenants.

(a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Exhibit F of this Agreement.

(b) The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure documents or reports that are disclosed pursuant to (i) the Recipient's continuing disclosure undertaking or undertakings made in connection with any outstanding System Obligation, (ii) the terms of any outstanding System Obligation, or (iii) a voluntary disclosure of information related to an outstanding System Obligation. The Recipient must disclose such documents or reports to the State Water Board at the same time such documents or reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

#### C.3.22 No Discrimination.

(a) The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.

- (b) If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.
- (c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- (d) The Recipient's obligations under this section shall survive the term of this Agreement.
- (e) During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- (f) The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (g) The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (h) The Recipient, its contractors, and subcontractors must comply with all applicable federal civil rights regulations, including statutory and national policy requirements. (2 CFR § 200.300). This includes, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech. (Executive Order 13798).
- (i) The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (j) The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

#### C.3.23 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

#### C.3.24 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.

#### C.3.25 Notice.

Upon the occurrence of any of the following events, the Recipient must provide notice as set forth below.

- (a) Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to [judith.salazar@waterboards.ca.gov](mailto:judith.salazar@waterboards.ca.gov) and [parmdeep.uppal@waterboards.ca.gov](mailto:parmdeep.uppal@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov):
- i. Any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- (b) Within five (5) business days, the Recipient must notify the Division by phone at (916) 327-9978; by email to [Lance.Reese@waterboards.ca.gov](mailto:Lance.Reese@waterboards.ca.gov), [judith.salazar@waterboards.ca.gov](mailto:judith.salazar@waterboards.ca.gov) and [parmdeep.uppal@waterboards.ca.gov](mailto:parmdeep.uppal@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov); and by mail to the contact address set forth in Section 4 of this Agreement of the occurrence of any of the following events:
- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
  - ii. Change of ownership of the Project or the System or change of management or service contracts, if any, for operation of the System;
  - iii. Loss, theft, damage, or impairment to Project, the Revenues or the System;
  - iv. Failure to meet any debt service coverage test in Exhibit B of this Agreement;
  - v. Draws on the Reserve Fund;
  - vi. Listed Events and Events of Default, except as otherwise set forth in this section;
  - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
  - viii. An offer from a public entity to purchase the Project or the System or any portion thereof, or any of the real or personal property related to or necessary for the Project;
  - ix. A proceeding or action by a public entity to acquire the Project or the System by power of eminent domain;
  - x. Incurrence of a System Obligation or other Material Obligation by the Recipient; or
  - xi. A default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a System Obligation or other Material Obligation of the Recipient, any of which reflect financial difficulties.
- (c) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to [judith.salazar@waterboards.ca.gov](mailto:judith.salazar@waterboards.ca.gov) and [parmdeep.uppal@waterboards.ca.gov](mailto:parmdeep.uppal@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov); and by mail to the contact address set forth in Section 4 of this Agreement of the following events:
- i. Material defaults on Material Obligations, other than this Obligation;
  - ii. Unscheduled draws on material debt service reserves or credit enhancements, reflecting financial difficulties;
  - iii. Substitution of credit or liquidity providers, if any or their failure to perform;
  - iv. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence;

- v. Circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System;
  - vi. Consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
  - vii. Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
  - viii. Rating changes on outstanding System Obligations, if any;
  - ix. Issuance of additional Parity Obligations;
  - x. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board; or
  - xi. Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (d) The Recipient must notify the Division promptly by phone at (916) 445-0827, by email to [judith.salazar@waterboards.ca.gov](mailto:judith.salazar@waterboards.ca.gov) and [parmdeep.uppal@waterboards.ca.gov](mailto:parmdeep.uppal@waterboards.ca.gov) and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov), and by mail to the contact address set forth in Section 4 of this Agreement of any of the following events:
- i. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
  - ii. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
  - iii. Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - iv. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
  - v. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
  - vi. Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
  - vii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
  - viii. Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, as required by Exhibit C.4.3(xxvii);
  - ix. Any events requiring notice to the Division pursuant to the provisions of this Agreement;

- x. Completion of Construction of the Project, and actual Project Completion;
- xi. The award of the prime construction contract for the Project;
- xii. Initiation of construction of the Project.

#### C.3.26 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during the Useful Life of the Project in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System must be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient must provide additional funds to restore or replace the damaged portions of the System.

Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

#### C.3.27 Permits, Subcontracting, and Remedies.

Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/fwa/dbp.shtml](http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml)

#### C.3.28 Professionals.

The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

#### C.3.29 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

In addition, the Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in Section 3 of this Agreement.

#### C.3.30 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

#### C.3.31 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

#### C.3.32 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

#### C.3.33 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce,

publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

#### C.3.34 State Water Board Action; Costs and Attorney Fees.

Any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

#### C.3.35 Timeliness.

Time is of the essence in this Agreement.

#### C.3.36 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

#### C.3.37 Venue.

Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

#### C.3.38 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

### C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

#### C.4.1 Reserved.

#### C.4.2 State Cross-Cutters.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:

- i. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- ii. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.

- iii. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- iv. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- v. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- vi. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- vii. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- viii. Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- ix. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- x. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.

C.4.3 Federal Requirements and Cross-Cutters for SRF Funding.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.
- iii. The Recipient must comply with the signage requirements set forth in Exhibit A.
- iv. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the Exhibit C



opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

- v. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- vi. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier, assigned by the System for Award Management, to the State Water Board.
- vii. Reserved.
- viii. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- ix. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- x. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- xi. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- xii. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- xiii. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xiv. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject

the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.

- xv. The Recipient certifies to the best of its knowledge and belief that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

- xvi. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
  - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
  - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
  - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
  - e. 40 CFR Part 7, as it relates to the foregoing.

xvii. Reserved.

xviii. Reserved.

- xix. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows: (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*

*"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.*

*"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

*"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."*

- xx. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
- xxi. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/> .

- xxii. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- xxiii. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxiv. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).
- xxv. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxvi. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxvii. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxviii. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- xxix. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- xxx. The Recipient certifies that no Project Funds will be used on:

- a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- b. Telecommunications or video surveillance services produced by such entities;
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
- d. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).

#### EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Technical:

1. The Recipient shall submit to the Division and the Division of Drinking Water Stockton District Office ("District Office"), the Project's final plans and specifications and bid documents for review and approval prior to bid advertisement of such Project.
2. The Recipient shall submit to the Division and the District Office, the Project's bid results for review and approval prior to awarding the construction contract for such Project.
3. Prior to any start-up testing of the Project treatment facilities, the Recipient shall submit a complete operations plan for the approved Project treatment facilities to the Division and the District Office.
4. The Recipient shall not supply water from the Project treatment facilities to the distribution system without receiving prior written approval from the Division and the District Office.
5. The Recipient shall submit a permit amendment application to the District Office no later than 6 months prior to project completion.

Environmental:

1. The Recipient shall implement the mitigation measures identified in the Initial Study/Mitigated Negative Declaration (IS/MND), titled Well No. 7 Replacement, dated May 2013 (SCH# 2013052019) prepared for the project.
2. As a potential generator of hazardous waste, the Recipient shall comply with all applicable regulations in, CCR Title 22, Division 4.5 Environmental Health Standards for the Management of Hazardous Waste, regarding appropriate handling, management and disposal of residuals from the treatment plant. As soon as practical and prior to operation, the Recipient shall contact the local Certified Unified Program Agency (CUPA) regarding the specific requirements for the potential generation of liquid or solid waste. For more information contact the CalEPA website for programs within the county of operation.  
<http://www.calepa.ca.gov/CUPA/Directory/default.aspx>

#### FUNDS RELATED TO CONTAMINATION

(a) As a condition precedent to this Agreement and prior to any disbursement, the Recipient shall (i) notify the Division of any demands made by the Recipient against third parties for monetary damages, reimbursement of costs, or other relief, including litigation, related to drinking water contamination, including but not limited to contamination by 1,2,3-trichloropropane (1,2,3-TCP); and (ii) unless waived by the Division, notify and provide to the Division copies of any agreements with third parties (e.g., settlement agreements, consent agreements, etc.) or court or administrative orders arising out of litigation or disputes related to contamination of the drinking water associated with the Project.

(b) After execution of this Agreement, the Recipient shall notify the Division promptly of the new occurrence of any matters requiring notice under paragraph (a), above. Upon request, the Recipient shall promptly provide information and copies of documents as requested by the Division.

(c) The Recipient shall place all funds received after the date of this Agreement under any order or agreement described in paragraphs (a)(ii) and (b), above, into a restricted account to be used either for a capital improvement project that addresses the contamination, or for operation and maintenance of treatment or remediation of the contamination. Alternatively, upon consent of the Division, the funds received after the date of this Agreement under any such order or agreement shall be used as match funding for the Project or held in a restricted reserve account to support the financial capacity of the System.

(d) The amount of this Agreement may be reduced, and/or disbursements withheld, to offset amounts received under any contamination-related order or agreement described in paragraphs (a)(ii) or (b), above, to avoid double recovery. Noncompliance with paragraphs (a), (b), or (c) above shall be an Event of Default.

EXHIBIT E – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.



Project No. 5010008-011C - Hughson, City of  
Agreement: D1602057 - based on Projected Disbursements  
  
Well #7 Well Replacement and Arsenic Treatment

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	1/1/2022		0.00	1.400	140,432.28	140,432.28	140,432.28	2,892,030.37	0.00
2	7/1/2022		0.00	1.400	20,313.66	20,313.66	20,313.66	2,958,985.14	0.00
3	1/1/2023		40,878.85	1.400	21,054.62	61,933.47	61,933.47	2,985,061.06	0.00
4	7/1/2023		42,185.49	1.400	21,132.37	63,317.86	63,317.86	3,009,830.35	0.00
5	1/1/2024		43,928.91	1.400	21,813.11	65,742.02	65,742.02	3,081,196.75	0.00
6	7/1/2024		44,173.64	1.400	21,568.38	65,742.02	65,742.02	3,037,023.11	0.00
7	1/1/2025		44,482.86	1.400	21,259.16	65,742.02	65,742.02	2,992,540.25	0.00
8	7/1/2025		44,794.24	1.400	20,947.78	65,742.02	65,742.02	2,947,746.01	0.00
9	1/1/2026		45,107.80	1.400	20,634.22	65,742.02	65,742.02	2,902,638.21	0.00
10	7/1/2026		45,423.55	1.400	20,318.47	65,742.02	65,742.02	2,857,214.66	0.00
11	1/1/2027		45,741.52	1.400	20,000.50	65,742.02	65,742.02	2,811,473.14	0.00
12	7/1/2027		46,061.71	1.400	19,680.31	65,742.02	65,742.02	2,765,411.43	0.00
13	1/1/2028		46,384.14	1.400	19,357.88	65,742.02	65,742.02	2,719,027.29	0.00
14	7/1/2028		46,708.83	1.400	19,033.19	65,742.02	65,742.02	2,672,318.46	0.00
15	1/1/2029		47,035.79	1.400	18,706.23	65,742.02	65,742.02	2,625,282.67	0.00
16	7/1/2029		47,365.04	1.400	18,376.98	65,742.02	65,742.02	2,577,917.63	0.00
17	1/1/2030		47,696.60	1.400	18,045.42	65,742.02	65,742.02	2,530,221.03	0.00
18	7/1/2030		48,030.47	1.400	17,711.55	65,742.02	65,742.02	2,482,190.56	0.00
19	1/1/2031		48,366.69	1.400	17,375.33	65,742.02	65,742.02	2,433,823.87	0.00
20	7/1/2031		48,705.25	1.400	17,036.77	65,742.02	65,742.02	2,385,118.62	0.00
21	1/1/2032		49,046.19	1.400	16,695.83	65,742.02	65,742.02	2,336,072.43	0.00
22	7/1/2032		49,389.51	1.400	16,352.51	65,742.02	65,742.02	2,286,682.92	0.00
23	1/1/2033		49,735.24	1.400	16,006.78	65,742.02	65,742.02	2,236,947.68	0.00
24	7/1/2033		50,083.39	1.400	15,658.63	65,742.02	65,742.02	2,186,864.29	0.00
25	1/1/2034		50,433.97	1.400	15,308.05	65,742.02	65,742.02	2,136,430.32	0.00
26	7/1/2034		50,787.01	1.400	14,955.01	65,742.02	65,742.02	2,085,643.31	0.00
27	1/1/2035		51,142.52	1.400	14,599.50	65,742.02	65,742.02	2,034,500.79	0.00
28	7/1/2035		51,500.51	1.400	14,241.51	65,742.02	65,742.02	1,983,000.28	0.00
29	1/1/2036		51,861.02	1.400	13,881.00	65,742.02	65,742.02	1,931,139.26	0.00
30	7/1/2036		52,224.05	1.400	13,517.97	65,742.02	65,742.02	1,878,915.21	0.00
31	1/1/2037		52,589.61	1.400	13,152.41	65,742.02	65,742.02	1,826,325.60	0.00
32	7/1/2037		52,957.74	1.400	12,784.28	65,742.02	65,742.02	1,773,367.86	0.00
33	1/1/2038		53,328.45	1.400	12,413.57	65,742.02	65,742.02	1,720,039.41	0.00
34	7/1/2038		53,701.74	1.400	12,040.28	65,742.02	65,742.02	1,666,337.67	0.00
35	1/1/2039		54,077.66	1.400	11,664.36	65,742.02	65,742.02	1,612,260.01	0.00

California DWSRF Payment Schedule

Principal is paid over: 30 Years  
Interest rate: 1.40000%

Project No. 5010008-011C - Hughson, City of  
Agreement: D1602057 - based on Projected Disbursements

Well #7 Well Replacement and Arsenic Treatment

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
36	7/1/2039		54,456.20	1.400	11,285.82	65,742.02	65,742.02	1,557,803.81	0.00
37	1/1/2040		54,837.39	1.400	10,904.63	65,742.02	65,742.02	1,502,966.42	0.00
38	7/1/2040		55,221.26	1.400	10,520.76	65,742.02	65,742.02	1,447,745.16	0.00
39	1/1/2041		55,607.80	1.400	10,134.22	65,742.02	65,742.02	1,392,137.36	0.00
40	7/1/2041		55,997.06	1.400	9,744.96	65,742.02	65,742.02	1,336,140.30	0.00
41	1/1/2042		56,389.04	1.400	9,352.98	65,742.02	65,742.02	1,279,751.26	0.00
42	7/1/2042		56,783.76	1.400	8,958.26	65,742.02	65,742.02	1,222,967.50	0.00
43	1/1/2043		57,181.25	1.400	8,560.77	65,742.02	65,742.02	1,165,786.25	0.00
44	7/1/2043		57,581.52	1.400	8,160.50	65,742.02	65,742.02	1,108,204.73	0.00
45	1/1/2044		57,984.59	1.400	7,757.43	65,742.02	65,742.02	1,050,220.14	0.00
46	7/1/2044		58,390.48	1.400	7,351.54	65,742.02	65,742.02	991,829.66	0.00
47	1/1/2045		58,799.21	1.400	6,942.81	65,742.02	65,742.02	933,030.45	0.00
48	7/1/2045		59,210.81	1.400	6,531.21	65,742.02	65,742.02	873,819.64	0.00
49	1/1/2046		59,625.28	1.400	6,116.74	65,742.02	65,742.02	814,194.36	0.00
50	7/1/2046		60,042.66	1.400	5,699.36	65,742.02	65,742.02	754,151.70	0.00
51	1/1/2047		60,462.96	1.400	5,279.06	65,742.02	65,742.02	693,688.74	0.00
52	7/1/2047		60,886.20	1.400	4,855.82	65,742.02	65,742.02	632,802.54	0.00
53	1/1/2048		61,312.40	1.400	4,429.62	65,742.02	65,742.02	571,490.14	0.00
54	7/1/2048		61,741.59	1.400	4,000.43	65,742.02	65,742.02	509,748.55	0.00
55	1/1/2049		62,173.78	1.400	3,568.24	65,742.02	65,742.02	447,574.77	0.00
56	7/1/2049		62,609.00	1.400	3,133.02	65,742.02	65,742.02	384,965.77	0.00
57	1/1/2050		63,047.26	1.400	2,694.76	65,742.02	65,742.02	321,918.51	0.00
58	7/1/2050		63,488.59	1.400	2,253.43	65,742.02	65,742.02	258,429.92	0.00
59	1/1/2051		63,933.01	1.400	1,809.01	65,742.02	65,742.02	194,496.91	0.00
60	7/1/2051		64,380.54	1.400	1,361.48	65,742.02	65,742.02	130,116.37	0.00
61	1/1/2052		64,831.21	1.400	910.81	65,742.02	65,742.02	65,285.16	0.00
62	7/1/2052		65,285.16	1.400	457.00	65,742.16	65,742.16	0.00	0.00
			3,208,190.00		890,844.57	4,099,034.57	4,099,034.57		0.00

## EXHIBIT F – TAX CERTIFICATE

### F.1 Purpose.

The purpose of this Exhibit F is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Exhibit F sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

### F.2 Tax Covenant.

The Recipient agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project which would result in the loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

### F.3 Governmental Unit.

The Recipient is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof.

### F.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance capital expenditures it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project in accordance with the terms of this Agreement. Such expenditures shall not have previously been financed with the proceeds of any other issue of indebtedness. All Project Funds shall be allocated to expenditures by the Recipient within thirty (30) days of the date of disbursement.

### F.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section F.12 hereof, operates the Project.

### F.6 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Bond Funded Portion of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Bond Funded Portion of the Project Funds on Project Costs. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of the Bond Funded Portion of the Project Funds to Project Costs will proceed with due diligence.

### F.7 Working Capital.

No operational expenditures of the Recipient or any related entity are being, have been or will be financed or refinanced with Project Funds.

#### F.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section F.20 below), (ii) Preliminary Expenditures (as defined in Section F.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

#### F.9 Private Use and Private Payments.

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion of the principal of or interest with respect to the Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

#### F.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section F.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

#### F.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

**F.12 Management and Service Contracts.**

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2017-13, as applicable. The Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2017-13, with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an opinion of counsel, satisfactory to the State Water Board and the Bank and expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

**F.13 No Disposition of Financed Property.**

As of the date hereof, the Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

**F.14 Useful Life of Project.**

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth in Exhibit A hereto.

**F.15 Payments.**

Payments generally are expected to be derived from assessments, taxes, fees, charges or other current Revenues of the Recipient in each year, and such current Revenues are expected to equal or exceed the Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Payments will be depleted once a year except for a reasonable carryover amount not exceeding the greater of earnings on such fund or one-twelfth of the Payments in either case for the immediately preceding year.

**F.16 No Other Replacement Proceeds.**

The Recipient will not use any of the Bond Funded Portion of the Project Funds to replace or substitute other funds of the Recipient that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

**F.17 No Sinking or Pledged Fund.**

Except as set forth in Section F.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

#### F.18 Reserve Amount.

The State Water Board requires that the Recipient maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount") as set forth in Exhibit B. The Recipient represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Recipient and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

#### F.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference.

#### F.20 Reimbursement Expenditures.

Reimbursements are disallowed, except as specifically authorized in Exhibit B or Exhibit D of this Agreement. To the extent so authorized, a portion of the Bond Funded Portion of the Project Funds may be applied to reimburse the Recipient for Project Costs paid before the date hereof, so long as the Project Cost was (i) not paid prior to sixty (60) days before the Recipient's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the Project was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the Bond Funded Portion of the Project Funds.

#### F.21 Change in Use of the Project.

The Recipient reasonably expects to use all of the Bond Funded Portion of the Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of the Bond Funded Portion of the Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code, the Recipient will use the Bond Funded Portion of the Project Funds and the Project solely as set forth in this Agreement.

#### F.22 Rebate Obligations.

If the Recipient satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Bond Funded Portion of the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Recipient fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount calculated by the State Water Board or the Bank.

#### F.23 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Bond Funded Portion of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

F.24 No Notices or Inquiries from IRS.

Within the last 10 years, the Recipient has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Recipient is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

F.25 Amendments.

The provisions in this Exhibit may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

F.26 Reasonable Expectations.

The Recipient warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Exhibit, the expectations of the Recipient as set forth in this Exhibit are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Exhibit.

F.27 Assignment.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation).

IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto.

CITY OF HUGHSON:

By: \_\_\_\_\_  
Name: Merry Mayhew  
Title: City Manager

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

STATE WATER RESOURCES CONTROL BOARD:

By: \_\_\_\_\_  
Name: Joe Karkoski  
Title: Deputy Director  
Division of Financial Assistance

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



IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto.

CITY OF HUGHSON:

By: \_\_\_\_\_  
Name: Merry Mayhew  
Title: City Manager

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

STATE WATER RESOURCES CONTROL BOARD:

By: \_\_\_\_\_  
Name: Joe Karkoski  
Title: Deputy Director  
Division of Financial Assistance

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

**[DATE]**

State Water Resources Control Board  
Division of Financial Assistance  
Attn: Maria Nanca  
1001 I St., 16<sup>th</sup> floor  
Sacramento, CA 95814

Re: City of Hughson ("City/County/District") – Well No. 7 Well Replacement and Arsenic Treatment –Project No. 5010008-011C ("Project") – Agreement No. SWRCB0000000000D1602057 ("Agreement")

Ladies and Gentlemen:

This firm serves as General Counsel to the [City/County/District] in connection with the Project. This opinion is delivered to the State Water Resources Control Board ("State Water Board") at the request of the [City/County/District]. In connection therewith, I have examined the laws pertaining to the [City/County/District], originals of the Agreement, between the [City/County/District] and the State Water Board ("Agreement"), the [City/County/District]'s authorizing resolution [xxx] adopted on [date], the [City/County/District]'s reimbursement resolution [number] adopted on [DATE], the [City/County/District]'s rate-setting resolution [number] adopted on [DATE], (collectively, "the Resolutions"), the [City/County/District]'s debt management policy, documents related to each of the Material Obligations as set forth in the Agreement, and such other documents, legal opinions, instruments and records, and have made such investigation of law, as I have considered necessary or appropriate for the purpose of this opinion.

Based on the foregoing, it is my opinion that:

- a. The [City/County/District], a [general law city/charter city/county/special district/joint powers authority] of the State of California duly organized, validly existing under the laws of the State of California pursuant to [INSERT SPECIFIC LEGAL AUTHORITY], has the requisite legal right, power, and authority to execute and deliver the Agreement and carry out and consummate all transactions contemplated therein.

[and if charter city] [The [City/County/District] is a charter city, the governing board of which is not prohibited, limited or constrained in any way from adopting, requiring, or utilizing a project labor agreement that includes all taxpayer protection provisions of Public Contract Code section 2500.]

- b. The Resolutions have been duly adopted at meetings of the [City/County/District] which were called and held pursuant to law with all public notice required by law and at which a quorum was present and acting when the Resolutions were adopted. The Resolutions are in full force and effect and have not been amended, modified, supplemented, or rescinded, nor has the rate-setting resolution been challenged or the rates become subject of a referendum or initiative or other similar process.

- c. To the best of my knowledge and based upon a reasonable investigation, all proceedings required by law or under the ordinances or bylaws of the [City/County/District] to be taken by the [City/County/District] in connection with the authorization of the Agreement and the transactions contemplated by and related thereto, and all such approvals, authorizations, consents or other orders of or filings or registrations with such public boards or bodies, if any, as may be legally required to be obtained by the [City/County/District] prior to the date hereof with respect to all or any of such matters have been taken or obtained and are in full force and effect, except that no opinion is expressed as to any approvals, obligations or proceedings which may be required under any federal securities laws or state blue sky or securities laws.
- d. To the best of my knowledge and based upon a reasonable investigation, the execution and delivery of the Agreement and the consummation of the transactions therein will not conflict with or constitute a breach of or default (with due notice or the passage of time or both) under (i) the statutes creating the [City/County/District] or any amendments thereto, (ii) the ordinances or by laws of the [City/County/District], (iii) any bond, debenture, note or other evidence of indebtedness, or any material contract, agreement or lease to which the [City/County/District] is a party or by which it or its properties are otherwise subject or bound or (iv) any applicable law or administrative regulation or any applicable court or administrative decree or order.
- e. To the best of my knowledge and based upon a reasonable investigation, the [City/County/District] has sufficient property rights in the Project property for the purposes contemplated in the Agreement and has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) with respect to any property acquired for the purposes of the Project. Project property rights extend/s in perpetuity/until [date].
- f. To the best of my knowledge and based upon a reasonable investigation, there is no action, suit, proceeding, inquiry or investigation before or by any court of federal, state, municipal or other governmental authority pending or threatened against or affecting the [City/County/District]'s System, as defined in the Agreement, or the assets, properties or operations of the [City/County/District] relating to its System which, if determined adversely to the [City/County/District] or its interests would result in any material change in the assets or financial condition of the [City/County/District], the [City/County/District]'s System or the financial condition thereof, and the [City/County/District] is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, municipal, or other governmental agency which default might have consequences that would materially and adversely affect the financial condition of the [City/County/District] or its System.
- g. No facts have come to my attention which lead me to believe that the [City/County/District]'s authorized representative has made any untrue statement of a material fact or omits to state a material fact or has made misleading statements in the Agreement.
- h. The Agreement has been duly authorized, executed, and delivered, and assuming due authorization, execution and delivery of the Agreement by the State Water Board, constitutes legal, valid, and binding obligation of the [City/County/District] enforceable against the [City/County/District] in accordance with its terms, subject to the laws relating to bankruptcy, insolvency, reorganization, or creditors' rights generally and to the application of equitable principles, if equitable remedies are sought.

Sincerely,

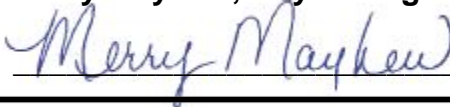
General Counsel  
[City/County/District]

DRAFT



## CITY COUNCIL AGENDA ITEM NO. 5.1

### SECTION 5: PUBLIC HEARING

**Meeting Date:** November 22, 2021  
**Subject:** Conduct a Proposition 218 Public Hearing to Consider Increasing Solid Waste Rates as Set Forth in the Proposition 218 Notice for the City of Hughson and in the Absence of a Majority Protest to the Rate Increase, Adopt Resolution No. 2021-39, Establishing New Solid Waste Rates to Implement an Organics Recycling Program  
**Enclosure:** Proposition 218 Notice  
**Presented By:** Merry Mayhew, City Manager  
**Approved By:** 

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#### Staff Recommendations:

1. Conduct a Proposition 218 public hearing to consider increasing solid waste rates as set forth in the Proposition 218 Notice for the City of Hughson.
2. In the absence of a majority protest to the rate increase, adopt Resolution No. 2021-39, establishing new solid waste rates to implement an organics recycling program.

#### Background:

In 2016, Governor Brown signed Senate Bill 1383 (SB 1383) into law. The new law establishes the most significant waste reduction mandate since Assembly Bill 939 was enacted thirty years ago. SB 1383 requires a 50% reduction in the disposal of organic waste by 2022 and a 75% reduction by 2025. This is equivalent to more than twenty million tons of waste annually statewide. Organic waste currently composes about two-thirds of the State's waste stream, and is composed of green waste, wood waste, food waste, and fibers such as paper and cardboard. Food waste is currently the largest waste stream in California. SB 1383 also requires California to recover twenty percent of currently disposed edible food.

SB 1383 builds upon the current Mandatory Commercial Organics Recycling law, Assembly Bill 1826, which was signed into law in 2014. This new mandate was created to protect the environment through the reduction of methane emissions from landfills. Landfills are the third largest producer of methane behind fossil fuel emissions and animal agriculture. When organic waste is landfilled, the anaerobic breakdown of the material creates methane that is damaging to the environment.

**Discussion:**

SB 1383 and other associated waste management regulations require the implementation of an organics recycling program in the City of Hughson. The regulations require that all waste generators must participate in organic waste recycling and establishes strict deadlines for compliance.

On September 27, 2021, the City Council approved a two-cart residential refuse collection system, for the implementation of an organics recycling program that complies with SB 1383 and its associated regulations, for the residents and businesses that are impacted by these new requirements.

In addition, staff were directed to issue a Proposition 218 solid waste rate increase notice and November 22, 2021, was set as the date for the public hearing and consideration of the increase.

On October 4, 2021, the Proposition 218 notices, a copy of which is attached hereto, including the rates, were mailed to customers, beginning the mandatory 45 day noticing period.

***Proposition 218 Steps***

1. Open the public hearing.
2. Consider all objections or protests to the proposed rates. Any person shall be permitted to present written or oral testimony.
3. Close the public hearing.
4. One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to the increased rates.
5. Written protests must be received prior to the close of the public hearing.
6. If there is a majority protest against the rate increases, the agency shall not increase the rates.
7. The public hearing may be continued.
8. After the close of the public hearing, City Council may take action to adopt the proposed rates.

**Fiscal Impact:**

Due to an increase in solid waste rates and the terms of the Franchise Agreement, the City will generate approximately \$24,500 annually in franchise fees. These funds will cover the cost of the consultant who is working with businesses to implement mandated solid waste regulations, required education, and the staff time to enforce violations as needed.

# NOTICE OF PUBLIC HEARING ON PROPOSED SOLID WASTE RATES

The City of Hughson (“City”) Council will hold a public hearing to consider proposed increases in rates and charges for garbage, recycling, and organic waste services (“Proposed Rates”). Interested parties are invited to attend.

Date: **November 22, 2021**  
Time: **6:00 PM**  
Location: **City Council Chambers**  
**7018 Pine Street, Hughson, CA 95326**

## This Notice Describes:

- Introduction;
- How you can participate;
- How to get more information;
- Reasons for the Proposed Rate changes;
- Basis of the Proposed Rate increase; and
- Amount of proposed garbage, recycling, and organic waste rates.

## Introduction

The safe, environmentally sound, and reliable garbage, recycling, and organic waste collection, transportation, and disposal or processing services are fundamentally important to the health and safety of Hughson residents. In recent years, State and Federal solid waste diversion and recycling regulations have changed and our City must comply with them. No State or Federal funds are available to cities to meet these new regulatory demands. The City has an exclusive franchise solid waste agreement with Gilton Solid Waste Management to collect garbage, recyclables, organic waste, bulky items, and illegal dumps within the city limits.

The Proposed Rates will help the City provide safe and reliable garbage, recycling, and organic waste collection services as mandated by the State. The City relies entirely on customer revenues to provide these services. No local, State or Federal taxes offset the cost of these services.

**The Proposed Rates generate only the estimated revenue needed to cover actual costs of the garbage, recycling, and organic waste mandated services.**

## How Can I Participate?

Interested parties can comment on the Proposed Rates. California law prohibits the City from implementing the new rates if representatives of a majority of affected properties file written protests opposing the rates before the end of the public hearing. Either the owner of a property or the customer receiving garbage, recycling, and organic waste services at a property may submit a protest. Written protests must be submitted to the City Clerk’s Office before the end of the public hearing, which is scheduled for November 22, 2021. Written protests may be hand delivered or mailed to the City Clerk’s Office at the following address or delivered at the November 22, 2021 public hearing up until the hearing is closed:

**City of Hughson  
City Clerk Office  
PO Box 9  
Hughson CA 95326**

Each protest must identify the affected property (by assessor’s parcel number or street address) and include the signature of a record property owner or the current occupant of the property who pays the utility bill. Email protests will not be accepted. Although oral comments at the public hearing will not qualify as formal protests unless accompanied by a written protest, the City Council welcomes input from the community during the public hearing. Only one protest per affected property will be counted. If you submit a written protest, please ensure that it states whether it is a protest of the solid waste fees. If you mail the written protest, it must be received by the City Clerk before the close of the public hearing item on November 22, 2021 City Council meeting.

## How Can I Get More Information?

If you have any questions regarding the hearing, the Proposed Rates, or how to file a protest, please contact (209) 883-4054 or e-mail [agose@hughson.org](mailto:agose@hughson.org).

## Reasons for the Proposed Rate Changes

The Proposed Rate increase is necessary to continue to provide safe, environmentally sound, and reliable solid waste, recycling, and organic waste collection, transportation and disposal or processing services to the citizens of the City.

Several factors have contributed to these increased costs, including, but not limited to:

- the rising costs associated with the processing of recycling materials;
- increased costs associated with purchase, operation and fuel for vehicles;
- increased labor costs;
- costs associated with the implementation of an Organics Program mandated by California Assembly Bill 1826 (AB 1826) and Senate Bill 1383 (SB 1383).

AB 1826 and SB 1383 requires local jurisdictions to develop a program to divert organic waste from landfills to an authorized composting facility. Organic waste is food waste, green waste, landscape and pruning waste, and nonhazardous wood waste.

## Basis of the Proposed Rate Increase

Total Proposed rate increase is based on the following cost increases and State mandates:

1. The increase in cost for garbage collection are due to increased processing of garbage, recyclables, and organics due to the Organics Program mandated by the State of California.
2. Additional increase in costs for garbage collection are due to increases in operations that include vehicles, equipment, maintenance, fuel, labor, and tipping fees.

Commencing on January 1, 2022, the scheduled increases will begin. Annually, commencing on January 1, 2024, a maximum of 3% COLA increase will occur on January 1<sup>st</sup> of each of the remaining 7 years.

Current and future rates are listed on the attached rate sheet.

MAXIMUM RATES FOR SOLID WASTE COLLECTION										
			No CPI	Maximum of 3% CPI						
	Current Rate	Effective 1/1/2022	Effective 1/1/2023	Effective 1/1/2024	Effective 1/1/2025	Effective 1/1/2026	Effective 1/1/2027	Effective 1/1/2028	Effective 1/1/2029	Effective 1/1/2030
RESIDENTIAL										
64 or 96 gallon	\$ 23.41	\$ 35.02	\$ 35.02	\$ 36.07	\$ 37.15	\$ 38.27	\$ 39.42	\$ 40.60	\$ 41.82	\$ 43.07
Additional Cart	\$ 7.35	\$ 15.42	\$ 15.42	\$ 15.88	\$ 16.36	\$ 16.85	\$ 17.36	\$ 17.88	\$ 18.41	\$ 18.96
Go Back-per event	\$ 8.17	\$ 15.00	\$ 15.00	\$ 15.45	\$ 15.91	\$ 16.39	\$ 16.88	\$ 17.39	\$ 17.91	\$ 18.45
Extra Collection	\$ 10.90	\$ 18.75	\$ 18.75	\$ 19.31	\$ 19.89	\$ 20.49	\$ 21.10	\$ 21.74	\$ 22.39	\$ 23.06
COMMERCIAL										
Garbage										
2 Cubic Yards x 1 per month	\$ 89.01	\$ 113.88	\$ 113.88	\$ 117.30	\$ 120.82	\$ 124.44	\$ 128.17	\$ 132.02	\$ 135.98	\$ 140.06
2 Cubic Yards x 2 per month	\$ 160.93	\$ 210.68	\$ 210.68	\$ 217.00	\$ 223.51	\$ 230.22	\$ 237.12	\$ 244.24	\$ 251.56	\$ 259.11
3 Cubic Yards x 1 per month	\$ 119.05	\$ 156.36	\$ 156.36	\$ 161.05	\$ 165.88	\$ 170.86	\$ 175.98	\$ 181.26	\$ 186.70	\$ 192.30
3 Cubic Yards x 2 per month	\$ 228.77	\$ 303.39	\$ 303.39	\$ 312.49	\$ 321.87	\$ 331.52	\$ 341.47	\$ 351.71	\$ 362.26	\$ 373.13
4 Cubic Yards x 1 per month	\$ 158.81	\$ 208.56	\$ 208.56	\$ 214.82	\$ 221.26	\$ 227.90	\$ 234.74	\$ 241.78	\$ 249.03	\$ 256.50
4 Cubic Yards x 2 per month	\$ 292.24	\$ 391.73	\$ 391.73	\$ 403.48	\$ 415.59	\$ 428.05	\$ 440.90	\$ 454.12	\$ 467.75	\$ 481.78
6 Cubic Yards x 1 per month	\$ 211.84	\$ 286.46	\$ 286.46	\$ 295.05	\$ 303.91	\$ 313.02	\$ 322.41	\$ 332.09	\$ 342.05	\$ 352.31
6 Cubic Yards x 2 per month	\$ 404.61	\$ 553.85	\$ 553.85	\$ 570.47	\$ 587.58	\$ 605.21	\$ 623.36	\$ 642.06	\$ 661.33	\$ 681.17
Go Back - per event	\$ 15.00	\$ 55.00								
Extra dump - per event	\$ 20.00	\$ 45.00								
Lock Installation - locking bar 1 x charge	\$ 30.00	\$ 60.00								
Master Lock (1 x charge)	\$ 25.00	\$ 25.00								
Disk Lock (1 x charge)	\$ 35.00	\$ 35.00								



**CITY OF HUGHSON  
CITY COUNCIL  
RESOLUTION NO. 2021-39**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUGHSON DECLARING  
THE RESULTS OF A PROPOSITION 218 PROTEST PROCEEDING PUBLIC  
HEARING AND ADOPTING SOLID WASTE RATES EFFECTIVE JANUARY 1, 2021.**

**WHEREAS**, the City of Hughson is mandated, by the State of California through Senate Bill 1383, Assembly Bill 1826 and various other solid waste management regulations, to implement an organic waste recycling program; and

**WHEREAS**, the City may face heavy fines for not complying with the mandates; and

**WHEREAS**, rate increases will fund the mandated organic waste collection services to all residents and businesses in the City of Hughson; and

**WHEREAS**, notices were mailed to property owners of record and tenants, pursuant to Proposition 218, Section 4, Sub-Section 4 (c), now California Constitutional Articles XIIIC and XIID, (hereafter referred to as the "Proposition 218") approved by the California voters in November 1996, of a protest ballot proceeding and public hearing to be held on November 22, 2021.

**NOW, THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HUGHSON AS FOLLOWS:**

**Section 1 Public Hearing:** The City Council has conducted the Public Hearing in accordance with Proposition 218 to receive testimony and objections from the public with regards to its intention to adopt the solid waste rates for implementation of State mandated solid waste management regulations.

**Section 2 Tally of Protests:** The City Clerk has tallied the number of protests received and determined them to be less than a majority required under Proposition 218 to prevent adoption of the proposed solid waste rate increase.

**Section 3 Adoption:** The City Council hereby adopts the proposed solid waste rates set forth in Attachment A.

**Section 4 Implementation:** The City Council directs finance department staff to issue billing statements in accordance with the implementation schedule for the solid waste rates.

**PASSED AND ADOPTED** by the Hughson City Council at a regular meeting thereof held on November 22, 2021, by the following vote:

**AYES:**

**NOES:**

**ABSTENTIONS:**

**ABSENT:**

**APPROVED:**

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**GEORGE CARR, Mayor**

**ATTEST:**

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**ASHTON GOSE, Deputy City Clerk**

Attachment A  
Solid Waste Rates  
Effective 1/1/2022

MAXIMUM RATES FOR SOLID WASTE COLLECTION										
			No CPI	Maximum of 3% CPI						
	Current Rate	Effective 1/1/2022	Effective 1/1/2023	Effective 1/1/2024	Effective 1/1/2025	Effective 1/1/2026	Effective 1/1/2027	Effective 1/1/2028	Effective 1/1/2029	Effective 1/1/2030
<b>RESIDENTIAL</b>										
64 or 96 gallon	\$ 23.41	\$ 35.02	\$ 35.02	\$ 36.07	\$ 37.15	\$ 38.27	\$ 39.42	\$ 40.60	\$ 41.82	\$ 43.07
Additional Cart	\$ 7.35	\$ 15.42	\$ 15.42	\$ 15.88	\$ 16.36	\$ 16.85	\$ 17.36	\$ 17.88	\$ 18.41	\$ 18.96
Go Back-per event	\$ 8.17	\$ 15.00	\$ 15.00	\$ 15.45	\$ 15.91	\$ 16.39	\$ 16.88	\$ 17.39	\$ 17.91	\$ 18.45
Extra Collection	\$ 10.90	\$ 18.75	\$ 18.75	\$ 19.31	\$ 19.89	\$ 20.49	\$ 21.10	\$ 21.74	\$ 22.39	\$ 23.06
<b>COMMERCIAL</b>										
<b>Garbage</b>										
2 Cubic Yards x 1 per month	\$ 89.01	\$ 113.88	\$ 113.88	\$ 117.30	\$ 120.82	\$ 124.44	\$ 128.17	\$ 132.02	\$ 135.98	\$ 140.06
2 Cubic Yards x 2 per month	\$ 160.93	\$ 210.68	\$ 210.68	\$ 217.00	\$ 223.51	\$ 230.22	\$ 237.12	\$ 244.24	\$ 251.56	\$ 259.11
3 Cubic Yards x 1 per month	\$ 119.05	\$ 156.36	\$ 156.36	\$ 161.05	\$ 165.88	\$ 170.86	\$ 175.98	\$ 181.26	\$ 186.70	\$ 192.30
3 Cubic Yards x 2 per month	\$ 228.77	\$ 303.39	\$ 303.39	\$ 312.49	\$ 321.87	\$ 331.52	\$ 341.47	\$ 351.71	\$ 362.26	\$ 373.13
4 Cubic Yards x 1 per month	\$ 158.81	\$ 208.56	\$ 208.56	\$ 214.82	\$ 221.26	\$ 227.90	\$ 234.74	\$ 241.78	\$ 249.03	\$ 256.50
4 Cubic Yards x 2 per month	\$ 292.24	\$ 391.73	\$ 391.73	\$ 403.48	\$ 415.59	\$ 428.05	\$ 440.90	\$ 454.12	\$ 467.75	\$ 481.78
6 Cubic Yards x 1 per month	\$ 211.84	\$ 286.46	\$ 286.46	\$ 295.05	\$ 303.91	\$ 313.02	\$ 322.41	\$ 332.09	\$ 342.05	\$ 352.31
6 Cubic Yards x 2 per month	\$ 404.61	\$ 553.85	\$ 553.85	\$ 570.47	\$ 587.58	\$ 605.21	\$ 623.36	\$ 642.06	\$ 661.33	\$ 681.17
Go Back - per event	\$ 15.00	\$ 55.00								
Extra dump - per event	\$ 20.00	\$ 45.00								
Lock Installation - locking bar 1 x charge	\$ 30.00	\$ 60.00								
Master Lock (1 x charge)	\$ 25.00	\$ 25.00								
Disk Lock (1 x charge)	\$ 35.00	\$ 35.00								



## **CITY COUNCIL AGENDA ITEM NO. 6.1**

### **SECTION 6: NEW BUSINESS**

**Meeting Date:** November 22, 2021  
**Subject:** Adopt Resolution No. 2021-40, Approving the Restated and Amended Franchise Agreement with Gilton Solid Waste Management, Inc. for Solid Waste Management and authorize the City Manager to Execute the Agreement, Effective Immediately  
**Enclosure:** Restated and Amended Franchise Agreement  
**Presented By:** Merry Mayhew, City Manager  
**Approved By:** 

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#### **Staff Recommendations:**

1. Adopt Resolution No. 2021-40, approving the Restated and Amended Franchise Agreement with Gilton Solid Waste Management, Inc., for solid waste management, effective immediately.
2. Authorize the City Manager to execute the Restated and Amended Franchise Agreement inclusive of any final edits by the City Attorney.

#### **Summary and Discussion:**

The current Franchise Agreement between the City of Hughson and Gilton Solid Waste Management, Inc. (Gilton), became effective July 1, 2015 for a term of ten years through June 30, 2025.

In early 2021, City staff and Gilton began working together toward a proposal for implementation of an organics recycling program required by Senate Bill 1383 (SB 1383), a State of California unfunded mandate to divert organic waste from landfills.

Gilton proposed staying with a two-cart waste system instead of moving to a three-cart system. In addition, Gilton is implementing a high diversion processing facility (HDPF) and organics composting on-site at Gilton's transfer station site in Modesto. The two-cart system will cause less of a negative impact on the environment than a three-cart system, as there will be fewer trucks on the road each week collecting waste, which in turn reduces air emissions and reduces the wear and tear on City streets.

The two-cart collection system will allow for more organic content to be recovered from the waste stream, as both the black and green carts will be sorted at Gilton's facility providing for the highest amount of clean organic material as mandated by State law. Lastly, two carts will require less physical space on affected properties.

On September 27, 2021, the City Council approved in concept a two-cart residential refuse collection system that complies with the SB 1383 mandate and its associated regulations for the residents and businesses impacted by these requirements.

The public hearing, scheduled for today's meeting as 5.1 on the agenda, was held to increase the solid waste rates to pay for the implementation of organics recycling program. If the City Council held the public hearing and voted to approve the new solid waste rates, then this Restated and Amended Agreement with Gilton is necessary to set forth the expectations, specific to the rates and expectations to comply with current solid waste management regulations, including the diversion of organics from the waste stream.

Specifically, this Agreement reflects the following changes:

- Rate adjustments, as approved through the Proposition 218 process, effective January 1, 2022, due to extraordinary cost increases as allowed for in the current agreement;
- Extends the Agreement for an additional five calendar years through calendar year 2030;
- Clarified expectations regarding compliance with all State mandated waste management laws and regulations;
- Gilton would perform the State mandated contamination monitoring, route reviews and waste audits;
- Gilton would deliver the amount of compost to the city that is required by the State mandate, according to population estimates;
- Sets forth expectations regarding Gilton's high diversion processing facility meeting the 50% diversion rate by 2022 and the 75% diversion rate mandated by the State by 2025, for the City of Hughson, or Gilton will, at no additional cost or expense to the City or customers, transport refuse collected to a facility that does meet the criteria, except to the extent such failure or inability is a direct result of the City's negligent or intentionally wrongful act or omission.

#### **Fiscal Impact:**

There is no impact to the General Fund as a result of the Restated and Amended Franchise Agreement. City residents and businesses will bear the cost of the State of California's solid waste management unfunded mandates.

**CITY COUNCIL  
CITY OF HUGHSON  
RESOLUTION NO. 2021-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUGHSON APPROVING  
THE RESTATED AND AMENDED FRANCHISE AGREEMENT WITH GILTON SOLID  
WASTE MANAGEMENT, INC., FOR SOLID WASTE MANAGEMENT SERVICES AND  
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

**WHEREAS**, on July 1, 2015, the City and Gilton Solid Waste Management, Inc., entered into an agreement (“Agreement”) for Solid Waste Management Services for a term of ten years through June 30, 2025; and

**WHEREAS**, on November 22, 2021, the City Council held a Proposition 218 Public Hearing to increase the solid waste rates, in order to pay for the State mandated organics recycling and composting program; and

**WHEREAS**, the City Council and Gilton Solid Waste Management, Inc., desire to Restate and Amend the Franchise Agreement due to various solid waste regulations mandated by the State of California; and

**WHEREAS**, the parties to the Agreement wish to extend the term of the Agreement through calendar year 2030.

**NOW, THEREFORE**, that the City Council of the City of Hughson does hereby adopt this Resolution approving the Restated and Amended Franchise Agreement with Gilton Solid Waste Management, Inc. for solid waste management services, effective immediately, and authorizing the City Manager to sign the Agreement and related documents inclusive of any final edits by the City Attorney.

**PASSED AND ADOPTED** by the City Council of the City of Hughson at its regular meeting held on this 22nd day of November 2021 by the following roll call votes:

**AYES:**

**NOES:**

**ABSTENTIONS:**

**ABSENT:**

>  
>  
>  
>

**APPROVED:**

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**GEORGE CARR, Mayor**

**ATTEST:**

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**ASHTON GOSE, Deputy City Clerk**

## AMENDED AND RESTATED FRANCHISE AGREEMENT

**THIS AMENDED AND RESTATED FRANCHISE AGREEMENT** (“Agreement”) is made and entered into this 22<sup>nd</sup> day of November, 2021 (the “Effective Date”) by and between the City of Hughson (“City”), a municipal corporation of the State of California, and Gilton Solid Waste Management, Inc., a California corporation (“Collector”). The parties to this Agreement may each be referred to individually as a “Party” or collectively as the “Parties”. There are no other parties to this Agreement.

### RECITALS

**A.** The California State Legislature enacted the California Integrated Waste Management Act of 1989 (“AB 939”) which authorizes local jurisdictions to make adequate provisions for solid waste handling within their jurisdictions; and

**B.** On October 6, 2011, the Legislature passed Assembly Bill 341 (“AB 341”), amending the California Public Resources Code (the “Public Resources Code”) therein requiring cities to encourage and document commercial solid waste recycling programs; and

**C.** Both California Assembly Bill 1594 (“AB 1594”) and Assembly Bill 1826 (“AB 1826”) became law effective September 28, 2014, each modifying some of AB 939’s provisions; and

**D.** California State Senate Bill 1383 became law effective September 19, 2016 (“SB 1383”). Among other things, it established waste reduction mandates more stringent than those mandated under AB 939; and

**E.** The collection and disposition of garbage, refuse and waste is governed and regulated by applicable provisions set forth in Chapter 8.12 of the Hughson Municipal Code (the “Code”), which may be amended from time to time and is incorporated herein by this reference; and

**F.** The City has entered into a Regional Solid Waste Partnership Proposal Memorandum of Understanding (“MOU”) with Stanislaus County (“County”) setting forth the City’s obligations for waste disposal using County facilities and the County’s tipping fees for a ten (10) year period beginning on June 1, 2015 and expiring on June 30, 2025, a copy of which is attached hereto as **Exhibit F**; and

**G.** On or about May 20, 2015, the City and Collector did enter into a Franchise Agreement whereby the City engaged Collector to provide refuse collection and disposal services for residential and commercial collection (“2015 Franchise Agreement”).

**H.** The City and Collector desire to enter into this Agreement for the purpose of restating portions of and amending the 2015 Franchise Agreement to, among other things (but subject to the more specific terms and conditions contained within this Agreement): (i) extend its term to end December 31, 2030, (ii) adjust the rates Collector may charge Customers; (iii) establish Collector’s obligations to comply with, and to assist City in meeting, the mandates established under AB 939, AB 341, AB 1594, AB 1826, and SB 1383, and the Regulations; and (iv) provide that the

City of Hughson and Gilton Solid Waste Management, Inc.  
Restated and Amended Franchise Agreement

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performance of the Collector set forth in this Agreement will be performed in accordance with the City's obligations in the MOU; and

**I.** City and Collector intend the City's refuse program will be consistent with the County Solid Waste and Integrated Waste Management Plan and comply with all regulations promulgated by the local Stanislaus County enforcement agency and the Department of Resources Recycling and Recovery.

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

**Section 1. Recitals.** The recitals set forth above (the "Recitals") are incorporated herein by this reference and made a part of this Agreement. In the event any inconsistencies arise as between the Recitals and Sections 1 through 33 of this Agreement, Sections 1 through 33 shall prevail.

**Section 2. Definitions.** Unless otherwise noted in this Agreement, capitalized terms herein shall have the meanings set forth in **Exhibit A**. Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the Public Resources Code or the City's Code, those definitions shall apply unless the term is otherwise defined in **Exhibit A**. In the event there is a discrepancy between the definitions contained in the Public Resources Code and the City's Code, the definitions set forth in the Public Resources Code shall supersede all other definitions.

### **Section 3. Franchise Area.**

**3.1. Franchise Area Defined.** The franchise area granted by this Agreement shall be all residential and commercial premises located within city limits of City, as more particularly shown on **Exhibit B** ("Franchise Area"). As provided below, the Franchise Area may be changed by annexation, de-annexation or re-organization.

**3.2. Annexation Covered by Existing Franchise.** All territories annexed during the Term of this Agreement shall be subject to this Agreement. However, properties served by another collector at the time of annexation, shall continue to be served by that source until the end of such collector's franchise agreement or service contract with the subject landowner, whichever is sooner. Collector agrees to defend, indemnify and hold the City harmless against any claims by such other collector regarding its right to continue to serve the annexed area.

### **Section 4. Waste Collection and Disposal.**

**4.1. Scope of Services.** Except as set forth in Section 4.4, the City hereby grants Collector the exclusive franchise, right and privilege to collect all Solid Waste, Green Waste and Recyclables within the Franchise Area and to transport the same to a sanitary landfill, transfer station, compost/mulching site, or waste-to-energy facility outside the City, which has been approved by the governmental agency having jurisdiction of the territory in which said site is

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located (the “Services”). City may designate alternative processing facilities if public health, safety, or fiscal interest requires, or compliance with applicable law necessitates the alternative. Collector shall furnish all labor, supervision, materials, permits, licenses, and Equipment necessary to provide residential and commercial Refuse collection Services for Customers within the Franchise Area of City. Collector shall perform its obligations under this Agreement in accordance with all applicable local, state, or federal laws and in a manner that maximizes the City’s Solid Waste diversion rate to the extent possible.

**4.2. Residential Service.** Collector shall provide Solid Waste and Organic Waste collection services to all residential premises within the City using a two Cart and “One Pass” truck system. Collector’s service to residential premises will be in compliance with, and will be such that City will be in compliance relative to such service with, all Waste Management Laws.

**4.3. Commercial Service.** Collector shall provide Solid Waste collection services to all commercial premises within the City. Collector shall provide Organic Waste collection services to commercial premises within the City as mandated by AB 1826. Pursuant to the requirements set forth within any of the Waste Management Laws, Collector shall offer to provide Organic Waste collection services to any business or multifamily residential dwelling that generates Organic Waste in quantities that require collection or management (or both) under any of the Waste Management Laws, and may provide Organic Waste collection services to other commercial Customers and multifamily residential dwellings not meeting these criteria. Collector’s service to commercial premises will be in compliance with, and will be such that City will be in compliance relative to such service with, all Waste Management Laws.

**4.4. Excepted Services.** Collector’s exclusive franchise in this Agreement shall not include or prevent or restrict the City or other parties from any of the following:

4.4.1. Governmental entities if and to the extent the City has no legal power to require such entities to use Collector’s Services.

4.4.2. The City or any officer or employee thereof or any employee of the State, or any governmental subdivision thereof, collecting, removing, and disposing of Solid Waste, Recyclables, or Organic Waste from the City or State facilities.

4.4.3. Private parties from donating or selling a recyclable or salvageable material (other than Food Waste) that has been segregated by such party from other materials to any party of their choice.

4.4.4. Allowing the self-hauling and disposal of construction and demolition debris, grass clippings, prunings and other discarded materials, generated by an individual from non-commercial or non-industrial activities on his or her property, or which are generated directly as a result of the work of specialized and distinct business operations whose primary business is not janitorial, cleaning, or waste transportation or collection, including, without limitation, various contractors such as, landscapers, tree trimmers or gardeners.

4.4.5. Allowing third parties with permits issued by the City to collect, haul and dispose of particular types of Refuse (e.g., Hazardous Waste, E-Waste requiring special handling, Refuse resulting from or related to construction or demolition, etc.) distinct from the typical residential and commercial services described in Sections 4.2 and 4.3 above or as otherwise approved by the City Manager.

4.4.6. Delivery of self-haul materials directly to a transfer station, materials recovery facility, or disposal facility in a manner consistent with the Waste Management Laws; provided, however, that this provision does not create an exemption from any law requiring payment for Collection services, whether those services are utilized or not.

4.4.7. Permitting other entities to haul and dispose of septic tank, sand trap and grease trap contents.

4.4.8. Providing the collection of Refuse in connection with the City's street cleaning service.

4.4.9. Permitting other entities to carry out the City's annual weed abatement program.

4.4.10. Provision of any other service that is not specified in this Agreement and that normally would not be considered to fall within Franchise Services, and that the Contractor explicitly waives its right to provide, by written notice to the City.

**4.5. Compliance with MOU.** Collector agrees to perform its obligations under this Agreement so as to not cause the City to be in violation of the MOU.

## **Section 5. Collection and Bins.**

**5.1. Provision of Receptacles.** Collector agrees to provide and maintain all Carts, Bins and Roll-Off Boxes for the proper and secure storage of Solid Waste and Organic Waste for all residential and commercial Customers. All residential Cart Customers shall be serviced once per week between Monday and Friday, and commercial Bin Customers shall be serviced from one (1) to six (6) times per week between Monday and Saturday as requested by the Customer. Roll-Off Box Customers will be serviced as arranged between the Customer and Collector.

**5.2. Hours of Collection.** Collection service of all Carts in residential areas shall not start before 6:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the Hughson City Council ("City Council"). Collection service of all Carts, Bins, and Roll-Off Boxes in commercial areas shall not start before 5:00 a.m. or continue after 9:00 p.m., subject to change by resolution of the City Council. For commercial premises immediately adjacent to residential areas, collection services shall not start before 6:00 a.m. if an adjacent residential property owner complains about collection prior to 6:00 a.m. The hours of collection may be extended temporarily as a result of extraordinary circumstances or conditions with the prior consent of the Hughson City Manager ("City Manager"). In the event scheduled collection services fall on a Holiday, the Collector shall provide collection services on the following day, but under no circumstances on a Sunday.

**5.3. Receptacle Replacement.** Collector, without expense to City or any Customer, and within seventy-two (72) hours after notice, shall provide one replacement every four (4) years of lost or stolen Carts. Collector shall clean, paint over, or replace, at its discretion, graffiti-tagged Carts as needed. Collector shall replace Carts damaged due to normal wear and tear within the time frame of one collection cycle. Collector shall maintain records of lost, stolen, damaged and graffiti-tagged Carts by specific address. Collector may charge customers for additional replacement Carts based on the actual cost of the Carts and their delivery.

**Section 6. Term of Agreement.** The term of this Agreement shall commence on the Effective Date and expire on December 31, 2030, unless extended by the mutual consent of the Parties (the “Term”).

**Section 7. Acceptance; Waiver.** Collector agrees to be bound by and comply with all the requirements of this Agreement. Collector waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

## **Section 8. Rates and Fees.**

**8.1. Rates.** The maximum rates to be charged by Collector to Customers under this Agreement are set forth in **Exhibit C** (“Rate” or “Rates”). Beginning January 1, 2024, and each January thereafter during the Term, Collector may adjust any or all of the Rates to reflect annual changes (if any) in the Consumer Price Index for All Urban Consumers (“CPI”) published by the U.S. Department of Labor for the San Francisco-Oakland-San Jose, CA statistical area; provided however, such adjustments shall not exceed three percent (3.0%) per year. Any adjustment will be based on the previous twelve month index analysis from October to September. To adjust the Rates as provided in this Section 8.1, Collector must provide written notice to the City Manager on or before October 25, 2023 and each year thereafter during the Term specifying which Rates it wants to adjust for the upcoming calendar year. During the Term, the City Council, by ordinance or resolution, may increase the Rates separately from the increases Collector may enact as provided in this Section 8.1 or provided elsewhere in this Agreement.

**8.2. Reimbursement for Notices.** Collector shall be responsible for providing, or reimbursing the City for providing all required notices of any rate changes or increases expressly including, but not limited to, notices required under Proposition 218 and any law or regulations adopted to implement Proposition 218. City reserves the right to specify the form and content of any such notice required by law or by the Code. City shall determine when a notice of a Rate change is required in its sole and complete discretion.

**8.3. Tipping Fees.** The Parties acknowledge and agree that the maximum Rates include compensation to Collector for tipping, gate or other disposal fees charged by any applicable disposal facilities. Notwithstanding any provision in this Agreement to the contrary, Collector, except in the case of Roll-Off Box Customers, shall not be entitled to receive from City, or any Customer, a separate or additional payment for tipping or gate fees. In addition to any other rate adjustments to which Collector may be entitled, Collector may request to increase its rates to the

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extent necessary to recover increased landfill, waste-to-energy facility, transfer station, and material recovery facility tipping or gate fees, provided that the landfill, waste-to-energy facility, transfer station, or material recovery facility is not owned or operated by Collector. Collector shall provide City with notice of the proposed new rates within thirty (30) days of such notice being received from Stanislaus County or other applicable authority, and shall provide the City with a copy of any notice regarding an increase in landfill or waste-to-energy facility tipping or gate fees. Collector shall not increase the Rates to recover increased tipping or gate fees, without prior written approval from City.

**8.4. Extraordinary Cost Increases.** Collector may petition City for an extraordinary rate adjustment or adjustments at any time during the Term of this Agreement, provided that such petition may be made based only upon increases in fuel costs or increased costs as a result of federal, state, or county mandates, or other documented impacts, which require changes in Collector's Services or operations under this Agreement. Collector shall include in its petition a financial presentation which demonstrates the extraordinary increase in operating costs. Any petition shall be heard by the City Council at a public hearing held after providing any required notices pursuant to this Section and applicable law. The City Council may grant or reject any such petition in its sole and complete discretion.

**Section 9. Additional Services.** In exercising the right and privilege to collect Solid Waste, Organic Waste, or Recyclables within the boundaries of City as herein granted, Collector agrees to provide without additional charge to the City or its customers:

**9.1. Curbside Bulky Item Collection Program.** Collector shall collect and dispose of bulky item wastes, as defined in **Exhibit D**, from residential Customers up to two (2) times per calendar year. Such collections will be made by appointment as arranged between Customer and Collector.

**9.2. Illegal Dump Program.** Collector shall provide for the collection and disposal of non-hazardous wastes from Public Property.

**9.3. Curbside E-Waste Collection Program.** Collector shall collect, recycle or dispose of specified E-Wastes (as defined in **Exhibit E**) from residential Customers up to four (4) times per calendar year. Such collections will be made by appointment as arranged between the Customer and Collector.

**9.4. Christmas Tree Program.** Collector will provide a residential Christmas tree collection and recycling program. Each year, during the first two (2) full weeks of January, Collector will pick-up Christmas trees from the front of residential properties in the City. Collections will be scheduled to coincide with the normal waste collection days.

**9.5. City Facilities.** Collector shall provide Solid Waste and Organic Waste collection services to all City owned and operated facilities at no additional charge to the City. This does not include C&D Debris generated from City owned and operated facilities.

**9.6. Community Events.** At the City's request, Collector will provide staffing resources and waste containers, plus some combination of Solid Waste, Organic Waste and Recyclables removal and disposal services for four (4) community events per year.

**9.7. Data and Analysis Required Under Waste Management Laws.** Collector agrees to assist City in data collection and reporting pertaining to compliance with the Waste Management Laws, including any State required waste composition studies. Collector will perform all contamination monitoring, route reviews, waste audits, and other reports, studies, and analyses required by the State or any of the Waste Management Laws (and the regulations promulgated thereunder), or any combination thereof.

**9.8 Compost.** Collector will deliver to City Compost in amounts, and quality, as requested by City and as otherwise required by the Waste Management Laws.

**9.9 HD Facility.** On or before January 1, 2022, Collector will operate a HD Facility in such a manner so that Refuse from the City is processed in compliance with the Waste Management Laws (including, without limitation, the mandate within SB 1383 and the Regulations requiring a 50% reduction by 2022 in the disposal of organic waste generated by Customers and a 75% reduction by 2025). If by January 1, 2022 Collector is not operating a HD Facility sufficient to meet the criteria in the prior sentence, Collector will, at no additional cost or expense to City or any Customer, transport Refuse collected pursuant to this Agreement to another HD Facility that does meet that criteria. Collector will, within twenty (20) days of its written notice from City, reimburse City for all costs, expenses, fees, fines, and other liabilities incurred by the City as a result of or in connection with Collector's failure or inability to operate a HD Facility on or before January 1, 2022 in such a manner to allow the City to achieve organic waste reduction mandates as required by the Waste Management Laws, except to the extent such failure or inability is a direct result of City's negligent or intentionally wrongful act or omission.

## **Section 10. Specific Service Requirements.**

**10.1. Collector Duty of Care and Diligence.** Collector and Collector's employees, contractors, sub-contractors, operators, officers, directors, supervisors, owners, board members, representatives, and agents ("Collector's Agents") shall exercise all reasonable care and diligence in performing their obligations under this Agreement. Every effort will be made to prevent spilling, scattering or dropping Refuse during the collection or transportation process. However, in the event that Refuse is spilled, scattered or dropped, the truck operator shall immediately clean up the material and place it in the truck and promptly notify the City Manager of the event. Every Cart, Bin and Roll-Off Box (collectively, "Container") must be replaced in an upright position. If a Container falls over, the operator must immediately set the Container in an upright position. It shall be further noted that Refuse collection easements are frequently co-located with other utility easements. Particular attention must be given to the location of water meters, transformers, guy wires, utility poles and irrigation structures. Authorization to use the easement does not abrogate Collector's responsibility to exercise caution to not infringe upon, damage, or trespass the property rights of other authorized users or property owners. Collector shall be familiar with, and operate within the guidelines set forth by the Occupational Safety Health Act (29 U.S.C. section 651 *et seq.*). Collector is granted the right to use dedicated streets, alleys and refuse collection easements

City of Hughson and Gilton Solid Waste Management, Inc.  
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for the purpose of performing the Services, but this right is not exclusive. The Collector shall handle the Services in a manner that will cause the least inconvenience or annoyance to the general public and to property owners. Whenever the Collector's operations create a condition hazardous to traffic or to the public, Collector shall furnish, erect, and maintain such fences, barricades, lights, signs, and other devices, structures, or warnings and take any other protective measures as are necessary to prevent accidents or damage or injury to the public and immediately notify the City Manager of the hazard and the corrective measures taken by the Collector to address the hazard. Any barricade, lights, signs or other devices erected must conform to the requirements of the City Engineer and the Code.

**10.2. Hazardous Waste.** Under no circumstance shall Collector's employees knowingly collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste from Customer premises. If Collector determines that material placed in a container for collection is Hazardous Waste, Excluded Waste, or other material that may not be legally accepted at an approved sanitary landfill, transfer station, compost/mulching site, waste-to-energy facility or other permitted disposal facility or that presents a hazard to Collector employees, Collector shall have the right to refuse to accept such material. Collector shall leave, at the time of non-collection, a non-collection notice with Customers indicating the reason for refusing the material. Collector shall contact the generator and request that the generator arrange for proper disposal service. If the Hazardous Waste, Excluded Waste, or other objectionable material is identified at time of delivery to the approved sanitary landfill, transfer station, compost/mulching site, waste-to-energy facility or other permitted disposal facility and the generator cannot be identified, Collector shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste, Excluded Waste, or other objectionable material.

**10.3. Force Majeure.** Collector shall not be in default under this Agreement in the event that the collection transportation, recycling and disposal services of Collector are temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods earthquakes, landslides and fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Collector. Force Majeure does not include: Collector's financial inability to perform; Collector's failure to obtain any necessary permits or licenses from other governmental agencies; or Collector's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Collector.

**10.4. Independent Contractor.** Collector is an independent contractor and not an officer, agent, servant or employee of City. Collector is solely responsible for the acts and omissions of its officers, agents, employees, contractors, and sub-grantees. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Collector. Neither Collector nor its officers, employees, agents or sub-grantees shall obtain any right to retirement or other benefits or right, which accrue to City employees. Collector shall obtain and maintain a business license with the City during the term of this Agreement.

**10.5. Property Damage.** Collector shall be responsible for any damage to City's driving surfaces, whether or not paved, resulting from vehicles providing Services under this Agreement. Collector shall be responsible for repairing or replacing any private or public property which is

City of Hughson and Gilton Solid Waste Management, Inc.  
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damaged due to the acts or omissions of employees, contractors, or agents of Collector to private or public property shall be repaired or replaced.

**10.6 Right of Entry.** Collector shall have the right, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting Refuse pursuant to this Agreement. This right of entry shall last until the sooner of the termination of this Agreement or receipt by Collector of a written notice from City revoking Collector's right of entry. This right of entry is limited to carrying out the Services required by this Agreement.

## **Section 11. Customer Service Requirements.**

**11.1 Availability of Representatives.** A responsible representative of Collector who is qualified to respond to public inquiries shall be available at Collector's office during office hours, excluding lunchtime closure, for communication with City, Customers or the public.

**11.2. Employees.** Collector shall exercise reasonable care to hire responsible employees, to supervise the work of such employees, and to discipline and, if necessary, discharge an employee failing to meet reasonable standards for performance of work set forth in this Agreement. Collector shall comply with applicable state and federal law pertaining to employment, including, but not limited to, applicable equal opportunity employment and affirmative action requirements.

**11.3. Enforcement and Clean-up of Illegal Dumps.** Collector and City shall cooperate to eliminate illegal dumping within the City. When illegal dumps are found on public property the City will attempt to identify the responsible party and advise them to clean-up the wastes or utilize the Bulky Item Collection Program to eliminate the problem. If no responsible party is identified, the City will request for Collector to remove any such waste. Collector will have three (3) working days following the notification by the City to remove the illegally dumped material.

**11.4. Manner of Collection.** Collector shall perform all collection services in a quiet and courteous manner and ensure that all Carts are placed on the premises from which they were removed in an upright position, with lids closed, and within five (5) feet of where they were originally placed before collection.

**11.5. Office Hours.** Collector's office hours shall be, at a minimum, from 8 a.m. to 5 p.m. daily, except for a lunch hour and closed on Saturdays, Sundays, and federal or State recognized holidays. A representative of Collector shall be available during office hours for communication with the public at Collector's principal place of business.

**11.6. Service Complaints.** All Service complaints shall be directed to Collector. Collector shall respond to all complaints, other than missed pickups, within twenty-four (24) hours if the twenty-four (24) hour period ends during the office hours specified in subsection 12.5, otherwise on the next business day. Collector shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints and shall use its best efforts to resolve any complaints within the two (2) business days following the date on which such complaint is received. Complaints that cannot be reasonably resolved may be appealed to the City Manager or designee for final resolution.



**11.7. Complaint Log.** Collector agrees to maintain a log of all oral and written service complaints registered with Collector from Customers or the public within the City (“Complaint Log”). Collector shall record in the log all written and oral complaints, noting the name and address of the complainant, date and time of complaint, nature of complaint, and method and date of resolution. Such log shall be kept so that representatives of the City, upon request, may conveniently inspect it. Collector shall deliver, along with the quarterly reports specified in Section 13 or otherwise upon request of the City, a summary of complaints by number and type and excerpts from the log reflecting action to date.

**11.8. Missed Pickups.** In the event of a missed pickup, Collector shall complete the pickup the same day if the complaint is received by 12:00 p.m. or by 12:00 p.m. the following business day if the complaint is received after 12:00 p.m.

**Section 12. Reports.** Collector shall provide the City with quarterly reports detailing Collector’s operations within City during that time. Reports will contain the information required by the City for compliance with the Waste Management Laws and for City to measure Collector’s performance of items in this Agreement. Collector agrees to provide additional reports regarding its collection services as may be reasonably requested by the City to meet future reporting requirements of the City or the State. City or a consultant to City, on request, shall have the right to review the collection records of Collector at reasonable times and upon reasonable notice.

### **Section 13. Vehicles.**

**13.1. Compliance with Applicable Regulations.** Collector shall at all times comply with all applicable rules, statutes, orders, and requirements adopted by any governmental agency with jurisdiction over air quality, including, but not limited to, the California Air Resources Board and the San Joaquin Valley Air Pollution Control District. In addition to any indemnification obligations set forth in this Agreement, Collector shall defend, indemnify, and hold harmless the City against any fines, penalties, losses, or claims arising out of Collector's failure to comply with this Section. All vehicles used by Collector under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, be kept clean and in good repair, shall be uniformly painted, and shall be washed at least once every seven (7) calendar days. Collector’s name, phone number, and vehicle number shall be prominently displayed on its vehicles.

**13.2. Fluids and Waste.** Collector shall immediately clean up any fluids or waste spilled from collection vehicles, and shall deploy and remove absorbent materials to the extent necessary to absorb all fluids. Collector shall provide the City with a copy of any spill report that Collector is required to provide, and at the same time it is provided, to the State Office of Spill Prevention and Response. When necessary, Collector shall apply a suitable cleaning agent to the street surface or shall employ hydraulic steam cleaning to provide adequate cleaning. Collector shall comply at all times with all recommendations or limitations concerning laden weight of collection vehicles established by the State or any government agency, or the vehicle manufacturer. Collector will be required to comply with City’s Municipal Separate Storm Sewer System (MS4) permit requirements.

## **Section 14. Collector's Employees.**

**14.1. Prohibition of Drugs or Alcohol.** Collector will prohibit use of intoxicating substances by Collector's Agents, including its drivers and crewmembers, while on duty or in the course of performing the Services. Upon request by City, Collector will demonstrate compliance with the federal alcohol and drug testing statutes and regulations.

**14.2. Employee Uniform.** Collector's employees shall be required to wear a clean uniform bearing Collector's name. Employees who normally and regularly come into direct contact with Customers, including drivers, shall bear some means of individual identification such as a name tag or identification card.

**14.3. Identification Required.** Collector shall provide every employee, contractor, grantees, or sub-grantees that are in contact with the public with identification cards and badges. Upon request of City, Collector shall notify all Customers of the form of identification that each employee shall be carrying or displaying so that all Customers may easily identify one of Collector's employees. Collector shall provide City with a list of current employees, contractors, grantees, and sub-contractors to City upon request.

**14.4. Valid Driver's License.** Employees driving Collector's vehicles shall at all times possess and carry a valid and appropriate vehicle operator's license issued by the State of California, including a commercial driver's license, if required.

**14.5. No Employment Relationship with City.** Collector's Agents are not and shall not identify themselves as being employees of the City at any time, for any reason.

**14.6. Employee Behavior.** All contact by Collector with Customers will be done with courtesy and respect. Any incident with a Customer must be reported immediately to the City.

**14.7. Employee Conduct.** All superintendents, foremen and workers, or contractors employed by the Collector shall be capable and safety conscious workers, skilled in their respective trades. Collector shall not employ any person who is incapable or negligent in the due and proper performance of his or her duties. Collector shall furnish such supervision, labor and Equipment as is considered necessary for the fulfillment of the Services in an acceptable manner at a satisfactory rate of progress. City reserves the right to request for any worker of Collector to be prohibited from providing Services to City without cause for any reason.

**14.8. Supervision.** It is the Collector's responsibility to supervise the Services rendered and to provide direction to its employees and agents in the field. While City employees may suggest possible solutions to problems or unusual situations, Collector retains the responsibility for all Services and how the Services will be delivered and conducted to the City and the Customers.

## **Section 15. Franchise Fees, Billing and Reports.**

**15.1. Franchise Fees.** Collector agrees to pay the City for the privilege herein granted to Collector, a sum equal to Eight (8.0%) percent of the Gross Revenues from residential accounts

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and the Collector shall pay the City Seven (7.0%) percent of the gross revenues from commercial accounts received by Collector for the removal of Solid Waste, Organic Waste or Recyclables from within the boundaries of City during the Term, or any extension thereof (the "Franchise Fees"). The Franchise Fees shall be paid by Collector to City on or before the last day of the month following the previous calendar quarter that the monies are collected by Collector. In the event that City Manager at any time during the term of this Agreement elects to have the Collector responsible for billing of residential customers, the Franchise Fees shall be a sum equal to Seven (7.0%) percent.

**15.2. Billing.** Collector shall provide regular billing statements to commercial or industrial customers for which Collector provides billing service covering the monthly period in which services are rendered. In the event that the Collector becomes responsible for billing of residential customers, regular billing statements will also be required as stated herein.

**15.3. City and Collector Billing.** As of the commencement of this Agreement, the Parties acknowledge that City is responsible for billing residential and the Collector is responsible for billing commercial customers. At any time during the term of this Agreement, subject to Section 16.1, the City Manager may elect to have the Collector responsible for billing of residential customers upon sixty (60) days' notice. City may request to audit the Collector's records for proper residential, commercial and industrial service billing, franchise fee computation and franchise fee payment. If upon request and completion of an audit the City determines that Collector's billing practices do not meet reasonable standards, City may take over the billings and collection for Collector's service to commercial customers under the terms of this Agreement at any time hereafter upon giving Collector ninety (90) days' notice of its intention to do so. The City shall be entitled to retain Eight (8.0%) percent of the amounts collected from any commercial Customer for which City is providing billing service. City shall pay Ninety-two percent (92.0%) of the monies collected by City to Collector for such services when the amount has been determined and approved by the City at the second meeting of the City Council following the monthly period in which Services are rendered.

**Section 16. Collector's Books and Records: Audits.** The books and records of Collector shall be subject to audit and inspection for the purpose of reviewing billing operations, accounts receivable and customer service, by City, its auditors or agents. Collector shall maintain all records relating to the Services, including, but not limited to, Customer lists, billing records, maps, compliance with all Waste Management Laws, and Customer complaints (collectively, the "Records"), for no less than three (3) years after the termination or expiration of the Term, or as may or any longer period required by applicable law. City shall have the right, upon five (5) business days' advance notice, to inspect all Records, and other like materials of Collector which reasonably relate to Collector's compliance with the provisions of this Agreement.

Collector's Records shall be made available to City at a City facility, if reasonably practicable, or at Collector's regular place of business during regular business hours. The City shall initially bear the cost of such audit. If such audit discloses an underpayment of the Franchise Fees or other sums due under this Agreement in excess of three percent (3%) of the amount which should have been paid, Collector shall promptly tender to the City the amount of such underpayment, together with interest at the rate of ten percent (10%) computed from the date of

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underpayment, and shall further reimburse the City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than three percent (3%), Collector shall promptly tender to City the amount of such underpayment, together with interest at the rate of ten percent (10%) per annum computed from the date of underpayment, and City shall bear the costs of the audit. If such audit discloses an overpayment, the City shall promptly repay such underpayment to Collector and the City shall bear the costs of the audit.

## **Section 17. Indemnification.**

**17.1. Indemnification of City.** Collector agrees that it shall protect, defend, indemnify and hold harmless City, its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents") from and against any claim, action or proceeding that arises from this Agreement or any Services performed pursuant to or in connection with this Agreement ("Claim"), including but not limited to all losses, liabilities, fines, penalties, claims, damages, liabilities, judgments, attorney's fees, costs incurred for staff time, court costs, other expenses of litigation, or expenses of litigation awarded to the prevailing Party or Parties. This indemnification does not include gross negligence or willful acts of the City, or City's Agents. At City's discretion, Collector shall satisfy the obligation of this Section by reimbursing City for tendering its own defense. If Collector undertakes the defense of a Claim by providing City-approved representation, City may, participate in the defense of any such Claim.

To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by Collector's breach of or noncompliance with a provision of this Agreement, Collector agrees to protect and defend City or City's Agents, with counsel selected by the City, and to indemnify and hold harmless City or City's Agents from and against all fines or penalties imposed by the State if the waste diversion goals specified in the Public Resources Code are not met by the City with respect to the Solid Waste collected by Collector under this Agreement. Collector shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City and City's Agents from and against all claims, damages (including but not limited to special, consequential, and natural resources damages), injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and attorney and expert fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or City's Agents arising from or attributable to the negligence or willful misconduct of Collector or its affiliates and their respective officers, directors, employee and shareholders in handling Hazardous Waste either knowingly or under circumstances in which a reasonable person would or should have known that Hazardous Waste was being handled. The foregoing indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability.

**17.2. Indemnification of Collector.** City shall indemnify, defend and hold Collector, its affiliates and their respective officers, directors, employees and shareholders harmless from and

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against any and all liabilities, losses, damages, claims, actions and causes of action, costs and expenses (including reasonable attorney's fees) arising from or in any manner arising out of City's obligations in this Agreement as well as the grossly negligent or willful acts of City or City's Agents. Subject to this indemnification, and upon demand of Collector, made by and through Collector's counsel, City shall appear in defense of Collector, and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the exercise of this Agreement.

**Section 18. Insurance.** Collector will continue to carry insurance, which shall be placed with insurers with a current A M Best's rating of no less than A VII, and which shall include all of the following:

**18.1. Required Insurance.**

**18.1.1 Worker's Compensation.** Collector shall obtain and maintain in full force and effect throughout the Term, worker's compensation insurance in accord with the provisions and requirements of the California Labor Code. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the Term. The policy providing coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, agents or representatives for losses which arise from the Services performed by the Collector pursuant to this Agreement.

**18.1.2. General Commercial Liability Insurance.** Collector shall carry commercial or comprehensive general liability insurance with a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence / aggregate for bodily injury, personal injury and property damage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form GG 00 01 11 88).

**18.1.3. Automobile Liability Insurance.** Collector shall carry automobile insurance with a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury, personal injury, and property damage, and which shall provide coverage for rented and non-owned vehicles. Coverage shall be at least as broad as Insurance Service form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).

**18.1.4. Public Liability Insurance.** Collector shall carry public liability insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage.

**18.1.5. Pollution or Environmental Liability Insurance.** Collector shall carry Environmental or Pollution liability coverage appropriate for the waste activity contemplated in this Agreement, including sudden and accidental upset pollution liability for the amount of One Million Dollars (\$1,000,000.00) per claim or occurrence and One Million Dollars (\$1,000,000.00) in the aggregate.

**18.2. Additional Insurance Requirements.** Within five (5) days of the Effective Date, Collector shall provide City with certificates of insurance for all of the policies required under this Section 18 (“Certificates”), excluding the required worker’s compensation insurance. With the exception of the worker’s compensation insurance, all of the insurance policies required in this Section 18 shall: provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days’ prior written notice, or ten (10) days’ in the case of non-payment of premium by Collector (as per insurance industry standard), to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; name City, and City’s Agents as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Collector or operations performed by or on behalf of the Collector to perform the Services including materials, parts, or Equipment furnished in connection with the Services or operations by endorsement; be primary with respect to any insurance or self-insurance programs covering City or City’s Agents and any insurance or self-insurance maintained by City or City’s Agents shall be excess of Collector’s insurance and shall not contribute to it; and contain standard separation of insured provisions.

**18.3. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City and City’s Agents, or Collector shall provide a financial guarantee satisfactory to City guaranteeing payment of loss related investigations, claim administration and defense expenses.

**18.4. Verification of Coverage.** Before the Services commence, Collector shall furnish City with original Certificates and endorsements effecting coverage required by this Section 18. The endorsements shall be on forms approved by the City which contain all of the information required in this Section 18.

**18.5. Subcontractors.** Collector shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Section 18.

Said insurance shall protect Collector and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from the Services, whether such operations be by Collector itself, or by its agents, employees, contractors or sub-grantees. Copies of the policies or endorsements evidencing the above insurance coverage shall be filed with the City Clerk. All of the following endorsements are required to be made a part of the insurance policies required by this Agreement.

**18.6. Increase in Coverage Requirements.** The limits for the insurance coverage required under this Section 19 and the ratings required for insurance companies shall be subject to review and approval by the City Attorney every year and may be increased at that time, at the City Attorney’s discretion, to match the coverage provided by the City’s own liability insurance policy.

**Section 19. Collector Liability for Damage to Street.** Any physical damage caused by the negligent or willful acts or omissions of employees of Collector to public or private property shall

be repaired or replaced by Collector at Collector's sole expense. Collector shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear.

**Section 20. Title to Solid Waste.** All Solid Waste, Recyclables, and Organic Waste collected pursuant to this Agreement shall remain the property of the Customer until such time as it is collected for disposal. It is expressly understood that all Solid Waste, Recyclables, and Organic Waste collected under this Agreement becomes the property of Collector upon collection, subject to the requirement of delivery to an appropriate disposal site. Collector is hereby granted the right to retain, dispose of, and otherwise use such Solid Waste, Recyclables, and Organic Waste, or any part thereof, in any fashion or for any lawful purpose desired by Collector, and to retain any benefit or profit resulting therefrom. Solid Waste which is disposed of at a disposal site shall become the property of the owner or operator of the disposal site once deposited there by Collector.

**Section 21. Rights of City to Perform During an Emergency.** Should Collector, for any reason whatsoever, excluding a Force Majeure as defined in Section 10.2, be unable to perform any of the Services required by this Agreement, for a period of more than seventy-two (72) hours, and the City Manager reasonably finds that the resulting accumulation of Refuse in City endangers or menaces the public health, safety or welfare, then, City shall have the right to temporarily take possession of and use Collector's Equipment to carry out Collector's obligations under this Agreement, upon twenty-four (24) hour prior written notice to Collector. Collector agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use.

Collector agrees that, in such event, City may take temporary possession of and use all of said Equipment and facilities without paying Collector any rental or other charge, provided that when City takes possession of Collector's Equipment and facilities under this Section 21, City shall assume complete responsibility for the proper and normal use of such Equipment and facilities. City agrees that it shall immediately relinquish possession of all of the above-mentioned property to Collector upon receipt of written notice from Collector stating it is able to resume its normal responsibility under this Agreement.

**Section 22. Customer Confidentiality.** Collector shall strictly observe and protect the right of privacy of the Customers. Information identifying individual Customers, or the composition or contents of a Customer's Refuse, shall not be revealed to any person, governmental unit, private agency or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Collector from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by any of the Waste Management Laws. Collector shall not market or distribute, without City's advance written consent, which City may withhold in its sole and absolute discretion, mailing lists with the names or addresses of Customers. The rights accorded Customers pursuant to this Section shall be in addition to any other privacy right accorded Customers pursuant to federal or state law.

**Section 23. Reports and Adverse Information.**

**23.1. Reports.** Within ninety (90) days after the close of Collector's fiscal year, or as required under the Waste Management Laws, Collector shall submit a written annual report, in a form approved by City, including, but not limited to, the following information:

**23.1.1.** A report on City's progress in meeting and maintaining its ability to meet its goals under AB 939, as amended, and under any other Waste Management Law, as applied to the Franchise Area, along with any recommended changes. Collector shall also provide the City's Public Works Director with quarterly reports (or more frequently as required by any of the Waste Management Laws) on the quantity (by weight) of all Commercial Solid Waste, Residential Solid Waste, Recyclables, and Organic Waste collected.

**23.1.2.** A list of Collector's officers and member of its board of directors.

**23.1.3.** A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Collector and any subsidiaries.

**23.1.4.** The most current annual audited financial statement, upon request. To the extent permitted by the Public Records Act, this document shall remain confidential.

**23.1.5.** A current financial statement, upon request.

**23.2. Adverse Information.** Collector shall provide City two (2) copies of all reports, or other material adversely affecting this Agreement, which Collector submits to: the State or federal Environmental Protection Agency; the Department of Resources Recycling and Recovery; or any other federal, State, or local agency. Copies shall be submitted to City simultaneously with Collector's filing of such matters with said agencies. Collector's routing correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

Collector shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Collector to any federal, state and local courts, regulatory agencies and other government bodies relating to Collector's performance of Services pursuant to this Agreement, as well as copies of all decisions, correspondence and actions by such agencies. Any confidential data exempt from public disclosure shall be retained in confidence by City or its authorized agents and shall only be made available for public inspections, as required by law.

Collector shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

All reports and records required under this or any other section herein shall be furnished to City at the sole expense of Collector.

**23.3. Failure to Report.** The refusal, failure, or neglect of Collector to file any report required, or the inclusion of any materially false or misleading statement or representation made intentionally, willfully, or knowingly by Collector in such report, may be deemed a material breach



of this Agreement, and may subject Collector to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

## **Section 24. Bonds and Security.**

**24.1 Performance Bonds.** Contemporaneously with the execution of this Agreement, Collector shall secure and execute a performance bond to be held by the City (the “Performance Bond”) to ensure performance of Collector for the total amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). The Performance Bond shall be on terms and in a form acceptable to the City Attorney and shall be issued by a California admitted insurer. The Performance Bond shall serve as security for the faithful performance by Collector of all the provisions and obligations of this Agreement.

Thirty (30) days following Collector’s failure to pay City an amount owed under this Agreement, if ever, the Performance Bond may be assessed by City upon five (5) days prior written notice to Collector for purposes including, but not limited to:

- A. Failure of Collector to pay City any sums due under the terms of the Agreement.
- B. Reimbursement of costs borne by City to correct violations of this Agreement, after five (5) days’ advance written notice to Collector.
- C. Monetary remedies or damages assessed against Collector due to a breach of this Agreement.

**24.2. Replenishment of Bond.** Collector shall restore the bond to its original amount of Twenty-Five Thousand Dollars (\$25,000.00), within thirty (30) days receipt of notice from the City that any amount has been withdrawn from or assessed against the Performance Bond

## **Section 25. Breach of Agreement.**

**25.1. Determination of Breach.** If the City Manager reasonably determines that Collector’s performance pursuant to this Agreement has not been in conformity with reasonable industry standards obtained in similar cities in Central California, the provisions of this Agreement, the requirements of the Department of Resources Recycling and Recovery, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to the laws governing transfer, storage or disposal of Hazardous Waste, the City Manager may advise Collector in writing of such deficiencies. If Collector commits a material breach of this Agreement (“Breach”), City may terminate this Agreement, impose Liquidated Damages, or avail itself of any and all remedies set forth in Section 26 of this Agreement, in addition to all other remedies available to the City in law or equity.

**25.2. Events that Constitute a Breach.** A Breach includes but is not limited to the following:

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**25.2.1. Misrepresentation.** Collector commits, or attempts to commit, any fraud, intentional material misrepresentation or deceit upon the City in relation to this Agreement or in the statements or materials submitted to City by Collector in connection with this Agreement as of the time the representation or disclosure is made.

**25.2.2. Seizure or Attachment of Equipment.** There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating Equipment of Collector, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Collector's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and City-approved holidays.

**25.2.3. Collector Bankruptcy.** Collector files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Collector or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator, or similar official of Collector for a part of Collector's operating assets or any substantial part of Collector's property, or shall make any general assignment for the benefit of Collector's creditors, or shall fail generally to pay Collector's debts as they become due.

**25.2.4. Court Order or Decree.** Any court having jurisdiction enters a decree or order for relief with respect to Collector, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Collector consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of Collector or for any part of Collector's operating equipment or assets, or order the winding up or liquidation of the affairs of Collector.

**25.2.5. Failure to Notify City.** Collector fails to notify City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, and Green Waste collection, transport, processing, or disposal activities.

**25.2.6. Lapse of Financial Requirement.** If Collector fails to provide or maintain in full force and in effect, the following: any of the insurance policies required pursuant to Section 15 herein; the full amount of the Performance Bond required under Section 24.1 herein; or the full amount of the Payment Bond required under Section 24.2 herein.

**25.2.7. Regulatory Violation.** Collector violates any orders or filings of any regulatory body having jurisdiction over Collector relative to this Agreement, provided Collector may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

**25.2.8. Cessation of Services.** Collector ceases to provide collection, transportation, processing, or recycling services as required under this Agreement for a period of three (3) consecutive business days or more, for any reason within the control of Collector.

**25.2.9. Failure to Meet Payment or Reporting Requirements.** Collector fails to make any payment required under this Agreement or refuses to provide City with required information, reports, or records in a timely manner as provided for in the Agreement.

**25.2.10. Violation of the Waste Management Laws.** Any other act or omission by Collector, which materially violates the terms, conditions or requirements of any of the Waste Management Laws, as such may be amended from time to time; or any other directive rule or regulation issued thereunder; unless the violation is corrected or remedied within the time set on the written notice of violation; or if Collector cannot reasonably correct or remedy the violation within the time set forth in such notice, Collector commences to correct or remedy such violation within the time set forth in such notice and diligently and in good faith continues to cure, correct, or remedy such violation thereafter.

**25.2.11. Unremedied Acts or Omissions.** Collector commits any act or omission which violates the terms, conditions, or requirements of this Agreement, or any other applicable laws and which is not corrected or remedied within the time set in the written notice of the violation or, if Collector cannot reasonably correct or remedy the breach within the time set forth in such notice, Collector should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

**25.2.12. Failure to Correct Breach.** Collector fails to correct any Breach within the applicable Cure Period.

**25.3. Cure Rights.** Notwithstanding any other provision of this Section 25 to the contrary, City shall provide Collector with reasonable notice of and a reasonable opportunity to cure any Breach of this Agreement during the time periods set forth below (the “Cure Period”). Collector shall begin cure of any Breach as soon as it becomes aware of the Breach, whether discovered by Collector or through notice from the City. Upon becoming cognizant of the Breach, Collector shall proceed to cure such Breach as follows:

**25.3.1.** Immediately, if the City determines the Breach endangers the health, safety, or welfare of the public; or

**25.3.2.** Within thirty (30) days of giving or receiving notice of the Breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Collector shall have such additional time as is reasonably needed, no longer than sixty (60) days to expeditiously complete a cure. During any Cure Period, Collector shall provide City weekly written status updates informing City of Collector’s progress curing the Breach.

**25.4 Right to Appeal.** Collector may submit a response to claims of Breach contained in any written notice from the City within thirty (30) days of receipt of such notice. The City Manager shall review Collector’s response and refer the matter to the City Council or decide the

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matter and notify Collector of that decision, in writing. A decision or order of City Manager shall be final and binding on Collector, if the Collector fails to file a “Notice of Appeal” with the Council within thirty (30) days of receipt of the City Manager’s decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall refer any Collector Notice of Appeal timely received to the City Council for proceedings in accordance which shall be conducted as follows:

Upon receiving a Notice of Appeal the City Council, shall set the matter for hearing within a reasonable time. City shall give Collector and any other person requesting the same, fourteen (14) days written notice of the time and place of the City Council hearing on the appeal. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Collector, or its representatives and any other interested person a reasonable opportunity to be heard. Based upon the evidence presented at the public hearing, the City Council shall determine whether the decision or order of the City Manager should be upheld. If, based upon the record, the City Council determines that the performance of Collector is in breach of any material term of this Agreement or any material provision of any applicable federal, state or local statute of regulation, the City Council has sole and absolute discretion to terminate this Agreement or impose damages as set forth herein. The decision of the City Council shall be final and conclusive, and there shall be no appeal of the City Council decision. Collector’s performance under this Agreement is not excused during the period of time prior to the Council’s final determination as to whether such performance is deficient.

## **Section 26. Termination, Liquidated Damages and other Remedies.**

**26.1. Termination.** In the event Collector commits a Breach of this Agreement, City shall have the right to terminate this Agreement (“Termination”).

### **26.2. Liquidated Damages.**

**26.2.1.** City finds, and Collector agrees, that as of the Effective Date of this Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which will be incurred by City as a result of a Breach by Collector of its obligations under this Agreement. Some reasons for the impracticability of ascertaining damages include, but are not limited to: the difficulty in estimating the substantial damage that results to Customers who are denied Solid Waste disposal services or denied quality or reliable service; and the difficulty valuing the damage caused from the inconvenience, anxiety, frustrations and deprivation of the benefits provided under the Agreement to individual members of the general public for whose benefit this Agreement exists. The Parties agree that these damages manifest in subjective ways and in varying degrees of intensity, and are incapable of measurement in precise monetary terms. The Parties agree that any remedy for such breaches, including the termination of this Agreement are, at best, a means of future correction and not remedies, which can adequately make the public whole for past breaches.

**26.2.2.** The City Council may, at its discretion, assess liquidated damages not to exceed the sum of Two Thousand Dollars (\$2,000) per day, for each calendar day that the Services are not provided by Collector in accordance with this Agreement for a period not to exceed forty-five (45) days (“Liquidated Damages”). In addition, the City Council may order assessment

City of Hughson and Gilton Solid Waste Management, Inc.  
Restated and Amended Franchise Agreement

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against the Performance Bond and Payment Bonds required by Section 25 as set forth herein, the termination of this Agreement, or both.

**26.2.3.** The City finds, and Collector acknowledges and agrees that the above-described liquidated damages provision represent a reasonable sum in light of all of the circumstances. Said liquidated damage sums shall be applicable to each calendar day of delay during which Collector has been found by the City Council to be in Breach pursuant to Section 26. Collector shall pay any Liquidated Damages assessed by the City Council within thirty (30) days after they are assessed. If they are not paid within the thirty-day (30) period, City may withdraw said amount from the Performance Bond or Payment Bond, as appropriate, pursuant to Section 25, order the Termination of the Franchise granted by this Agreement, or both.

**26.3. Remedies Not Exclusive.** The right of Termination or to impose Liquidated Damages are in addition to all other rights of City upon a failure of Collector to perform its obligations under this Agreement, including but not limited to the rights provided in Section 27.

**Section 27. City's Additional Remedies.** In the event Collector commits a Breach of this Agreement, and the City has terminated this Agreement, in addition to the remedies set forth in Section 26, City shall have the following rights:

**27.1. Rental of Collector Equipment.** Notwithstanding the provisions set forth in Section 22 of this Agreement, City shall have the right to rent or lease Equipment from Collector for the purpose of collecting, transporting and disposing of Refuse which Collector is obligated to collect, transport and dispose of pursuant to this Agreement, for a period not to exceed six (6) months. If such Equipment is not owned by Collector, Collector shall assign to City, to the extent possible, the right to possess the Equipment. If City exercises its rights under this Section, City shall pay to Collector the reasonable rental value of the Equipment so taken for the period of City's possession thereof.

**27.2. Right to License others to Provide Disposal Services for the City.** City shall have the right to license others to perform the Services otherwise to be performed by Collector hereunder, or to perform such Services itself.

**27.3. Right to Other Damages.** City shall have the right to obtain damages or injunctive relief. The Parties recognize and agree that in the event of Breach by Collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Agreement by Collector and to enjoin the Breach thereof.

**Section 28. Compliance with Applicable Law.** Collector agrees that it shall comply with all applicable federal, state, and local laws and regulations, expressly including the provisions set forth in the Code which are applicable to the work or business in which it is herein franchised, and with any and all amendments to such applicable provisions during the Term.

**Section 29. Assignment.** The Franchise granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part nor shall title thereto, either legal or

City of Hughson and Gilton Solid Waste Management, Inc.  
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equitable, or any right, interest or property therein, pass to or vest in any person, except Collector, either by act of the Collector or by operation of law, without the prior written consent of City expressed by a resolution or ordinance approved by the City Council, which may be withheld for any reason, conditioned or granted in the City's sole discretion. Any attempt by Collector to assign this Franchise without the consent of City shall be null and void.

If Collector attempts to transfer the Franchise prior to obtaining City consent, all of the profits or twenty-five percent (25%) of the gross revenues received pursuant to the Services provided under this Agreement, from the date of attempted transfer until the date of City consent, whichever is greater, shall be returned to City.

**Section 30. Franchise Transfer: Fees.** Any application for a Franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by the City by resolution or ordinance of the City Council, to cover the cost of all direct and indirect administrative expenses, including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In the event that City's actual costs exceed the amount of the transfer fee, Collector shall reimburse City for all additional costs which are not covered by the transfer fee, up to, but not exceeding Five Thousand Dollars (\$5,000.00). Bills shall be supported with evidence of the expense or cost incurred. The applicant, for any such transfer, shall pay such bills within thirty (30) days of receipt. The Franchise transfer fees detailed in this Section are over and above any franchise fees specified in the other portions of this Agreement.

**Section 31. City Must Approve Change in Control of Collector.** The prior written consent of City is required for any change in control of Collector. Any acquisition or transfer of more than twenty-five percent (25%) of Collector's voting stock, or the acquisition or transfer of more than twenty-five percent (25%) of the voting stock, partnership interests, membership interests, or other equity interest of any entity that owns at least 25% of Collector's voting stock, by any person or entity shall be deemed a change in control. Any change in control of the Collector occurring without prior written City approval shall constitute a material breach of this Agreement. Collector may not convert to a limited liability company, partnership or other form of entity, or convert to a corporation or other entity of another state, without City's prior written consent.

**Section 32. Amendment to Agreement.** This Agreement is intended to carry out City's obligations to comply with the provisions of the Waste Management Laws, and implemented by regulations of the Department of Resources Recycling and Recovery ("Regulations"), as they may from time to time be amended. In the event that the Waste Management Laws, or other state or federal laws or regulations enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except for Rate adjustments made pursuant to Section 9, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both the City and Collector.

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**33.1. Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for all legal proceedings arising from this Agreement shall be in the Superior Court for the County of Stanislaus in the State of California. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Eastern District of the State of California.

To City: City of Hughson  
7018 Pine Street  
Hughson, CA 95326  
Attn.: City Clerk  
Tel: (209) 883-4054  
Fax: (209) 883-2638

With courtesy copy to: City of Hughson  
7018 Pine Street  
Hughson, CA 95326  
Attention: City Manager  
Tel: (209) 883-4054  
Fax: (209) 883-2638

///

And  
Neumiller & Beardslee  
P.O. Box 20  
Stockton, California 95201-3020  
Attention: Daniel J. Schroeder, Esq.  
Tel: (209) 948-8200  
Fax: (209) 948-4910

To Collector:  
Gilton Solid Waste Management, Inc.  
755 S. Yosemite Ave.  
Oakdale CA 95361  
Attention: President  
Tel: (209) 527-3781  
Fax: (209) 527-0422

With courtesy copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**33.3. Severability.** If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

**33.4. Exhibits Incorporated.** The following “Exhibits” are attached hereto and incorporated herein by this reference:

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Exhibit A	Definitions
Exhibit B	Franchise Area
Exhibit C	Rates
Exhibit D	Bulky Item Collection Program
Exhibit E	Specified E-Waste
Exhibit F	Memorandum of Understanding between the City of Hughson and Stanislaus County

**33.5. Time of Essence.** Time is of the essence for the Agreement and each provision contained within and each provision is made and declared to be a material, necessary and essential part of the Agreement.

**33.6. Authority.** All Parties to the Agreement warrant and represent that they have the power and authority to enter into the Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the

City of Hughson and Gilton Solid Waste Management, Inc.  
Restated and Amended Franchise Agreement

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state or federal law in order to enter into the Agreement. By entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**33.7. Drafting and Ambiguities.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of the Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

**33.8. Entire Agreement.** This Agreement, together with its specific references, attachments and Exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

**33.9. Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

**33.10. Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**33.11. Mandatory and Permissive.** “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

**33.12. Successors and Assigns.** All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

**33.13. Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**33.14. Attorney’s Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**33.15. Necessary Acts and Further Assurances.** The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of the Agreement.

**33.16. Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between City and Collector as of the Effective Date.

**CITY:**

City of Hughson, a municipal corporation of the State of California

By: \_\_\_\_\_  
Merry Mayhew, City Manager

Date Signed: \_\_\_\_\_

Approved as to Form:

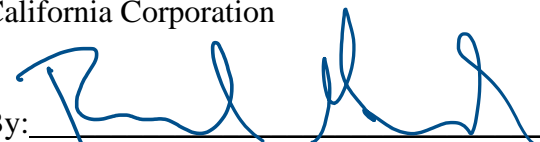
By:  \_\_\_\_\_  
Daniel J. Schroeder, City Attorney

Attest:

By: \_\_\_\_\_  
Ashton Gose, City Clerk

**GILTON:**

Gilton Solid Waste Management, Inc., a California Corporation

By:  \_\_\_\_\_  
Richard Gilton, President

Date Signed: 11.17.2021

## **EXHIBIT A**

### **Definitions**

Capitalized words in the Agreement shall have the following meanings:

1. “2015 Franchise Agreement” shall be as defined in the Recitals.
2. “AB” shall mean an Assembly Bill of the California Legislature.
3. “AB 341” shall mean the amendments to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), Chapter 476, as amended, supplemented, superseded, and replaced from time to time.
4. “AB 939” shall mean the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.
5. “AB 1594” shall mean the amendments to the California Integrated Waste Management Act of 1989, as amended, supplemented, superseded, and replaced from time to time.
6. “AB 1826” shall mean the amendments to the California Integrated Waste Management Act of 1989, as amended, supplemented, superseded, and replaced from time to time.
7. “Agreement” shall mean this Franchise Agreement between the City and Collector, including all exhibits and future amendments.
8. “Bin” or “Bins” shall mean receptacles provided by Collector for commercial customers which is picked up by Collection trucks by means of a front-loading apparatus.
9. “Bulky Items” shall mean large items of Solid Waste such as appliances, furniture, branches, and other oversize wastes whose large size precludes or complicates their placement in containers or handling by normal collection, processing, or disposal methods, but excluding Excluded Waste; items larger than five cubic yards or heavier than 500 pounds; and items of excessive size or density, such as engine blocks, spas, boats, and trailers. A list of acceptable and unacceptable Bulky Items is attached as **Exhibit D**.
10. “Breach” shall be as defined in Section 26.1 of this Agreement.
11. “Cart” or “Carts” shall mean industry standard receptacles for disposal of residential Solid Waste, Organic Waste, and Recyclables, in a range of sizes. A Cart has wheels, a handle for ease of movement, and a tight-fitting, attached lid and is designed to be dumped manually or mechanically into a Solid Waste collection vehicle.
12. “Certificates” shall be as defined in Section 18.2 of this Agreement.
13. “City” shall mean the City of Hughson, Stanislaus County, State of California.

14. “City’s Agents” shall be as defined in Section 17.1 of this Agreement.
15. “City Attorney” shall mean the city attorney for the City of Hughson.
16. “City Council” shall mean the City Council of the City of Hughson.
17. “City Engineer” shall mean the city engineer for the City of Hughson.
18. “City Manager” shall mean the city manager for the City of Hughson.
19. “Claim” shall be as defined in Section 17.1 of this Agreement.
20. “Code” shall be as defined in the Recitals .
21. “Collector” shall be as defined in the Preamble to this Agreement.
22. “Compost” means the product resulting from the controlled biological decomposition of Organic Wastes that are source separated from the Solid Waste stream, or which are separated at a centralized facility. “Compost” includes vegetable, yard, and wood wastes which are not Hazardous Waste..
23. “Construction and Demolition Debris” or “C&D Debris” shall mean waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements and on houses, commercial buildings, and other structures, but not including any Excluded Waste.
24. “Container” or “Containers” shall be as defined in Section 10.1 of this Agreement.
25. “Cure Period” shall be as defined in Section 25.3. of this Agreement.
26. “Customer” or “Customers” shall mean an individual(s), entity or entities that receive any services provided by Collector pursuant to this Agreement. Customer shall also mean the person, organization, or corporation receiving services to which billing statements are sent.
27. “Effective Date” shall be as defined in the Preamble to the Agreement.
28. “Electronic Waste” or “E-Waste” shall mean waste containing or consisting of electronic devices and components, such as computers, monitors, terminals, computer cards and components, computer peripheral devices, main frame computers, keyboards, mice, printers and scanners, mini-systems, power supply units, servers, connectors/cables, storage discs, consumer electronics, printed circuit boards, televisions, chips and components, cellular and other phones, telecommunications equipment, and fax machines and copiers, but not including Excluded Waste.

29. “Equipment” shall mean Collector’s vehicles, tools, and equipment for the Services for which it is responsible under this Agreement.
30. “Excluded Waste” shall mean Hazardous Waste; Medical and Infectious Waste; liquid wastes; volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material; waste that Collector reasonably believes would, as a result of or upon disposal, be a violation of local, state, or federal law, regulation, or ordinance, including land use restrictions or conditions; waste that cannot be disposed of in Class III landfills; waste that in Collector’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Collector or the City to potential liability. Excluded Waste does not include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Wastes in compliance with Sections 41500 and 41802 of the Public Resources Code.
31. “Exhibits” shall be as defined in Section 33.4. of this Agreement.
32. “Force Majeure” shall be as defined in Section 10.3. of this Agreement.
33. “Franchise Area” shall be as defined in Section 3.1. of this Agreement.
34. “Franchise Fees” shall mean both the fees retained by City and paid by Collector to City as defined in Section 15.1.
35. “Green Waste” shall mean all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and similar plant materials, but not including Excluded Waste, palm material, or items longer than five (5) feet or with a diameter greater than six (6) inches.
36. “Gross Revenues” shall mean the total revenue received before any deductions or allowances.
37. “Hazardous Waste” shall mean a waste, or combination of wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may do either of the following:
- a. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
  - b. Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (Public Resources Code Section 40141.)
38. “HD Facility” shall mean a High Diversion Organic Waste Processing Facility as more specifically defined under 14 CCR section 18982(a)(33).

39. “HDPE (High Density Polyethylene)” shall mean a recyclable plastic that includes, but is not limited to, milk jugs.
40. “Holiday” shall mean New Year’s Day, July 4<sup>th</sup>, Thanksgiving Day, Christmas Day.
41. “Household Hazardous Waste” shall maintain the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.
42. “Liquidated Damages” shall be as defined in Section 26.2 of this Agreement.
43. “Medical and Infectious Waste” shall mean biomedical waste generated at residences in excess of legal limits or at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.
44. “Notice of Appeal” shall be as defined in Section 25.4 of this Agreement.
45. “Organic Waste” means food waste, Green Waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.
46. “Party” or “Parties” shall be as defined in the Preamble to this Agreement.
47. “Payment Bond” shall be as defined in Section 24.2 of this Agreement.
48. “Performance Bond” shall be as defined in Section 24.1 of this Agreement.
49. “PET (Polyethylene, Terephthalate)” PET means a recyclable plastic that includes, but is not limited to, 2-liter soda bottles.
50. “Rates” shall mean the rates charged by Collector or City to Customers within the City as set forth in Section 8.1.
51. “Recitals” shall be as defined as Section A through G of this Agreement.
52. “Records” shall be as defined in Section 16 of this Agreement.
53. “Recyclable Materials” or “Recyclables” shall mean those materials that may be separated on a commercially reasonable basis from Solid Waste and returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Subject to mutually agreed revision by the Parties, Recyclable Materials or Recyclables include, newspaper (including inserts, coupons, and store advertisements), corrugated cardboard, mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, Kraft bags and Kraft paper, paperboard, egg containers, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, and cereal

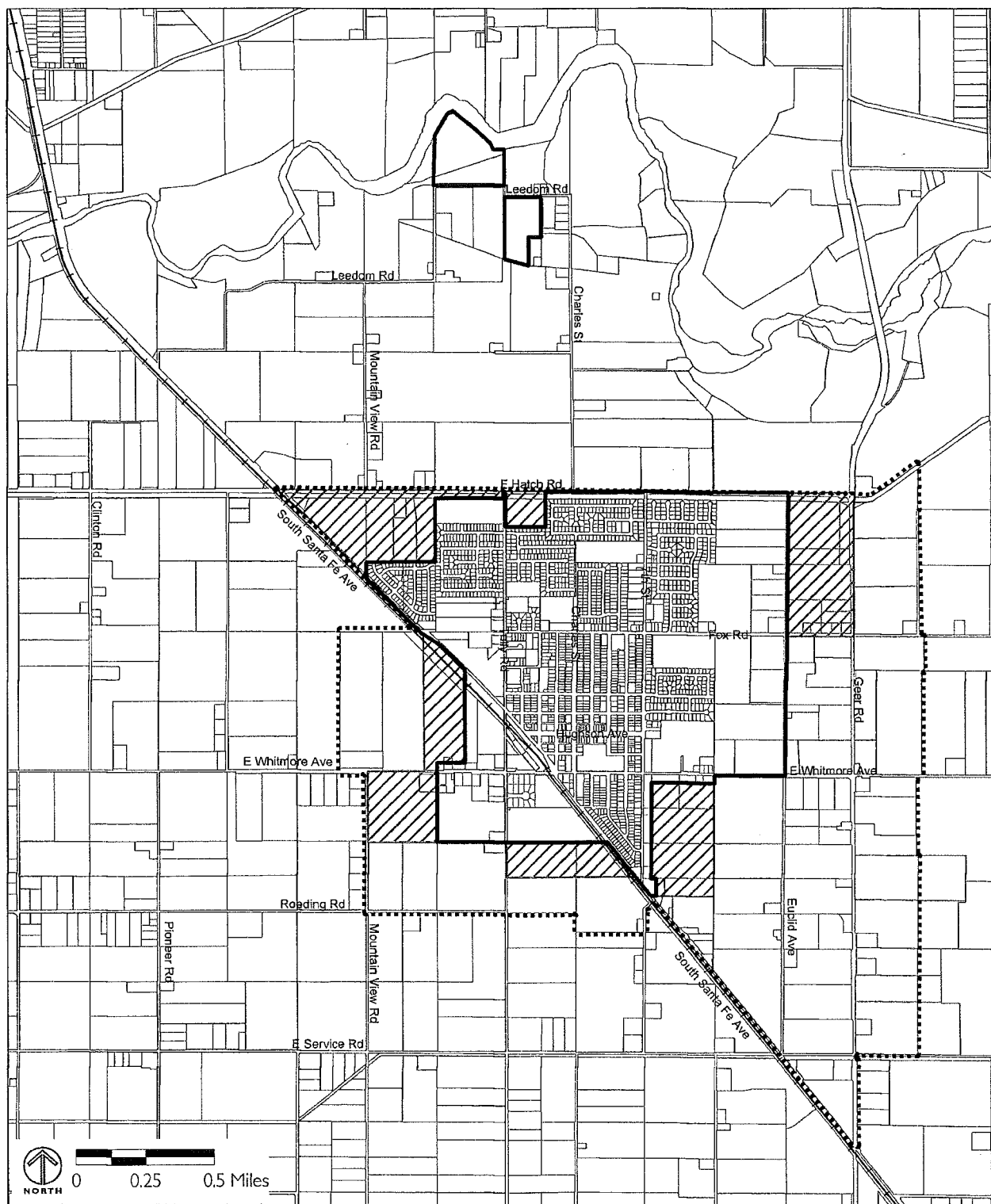
and other similar food boxes), glass containers (including colored glass bottles and jars), aluminum (including beverage containers, foil, food containers, and small scrap metal), plastic milk and juice containers, steel or tin cans, small scrap metal, PETE and HDPE plastic containers (natural and colored), used motor oil and oil filters, and any other commercially viable recyclable materials mutually agreed to by Collector and the City.

54. “Refuse” shall mean general term for waste, including Solid Waste and Organic Waste.
55. “Regulations” shall be as defined in Section 32 of this Agreement.
56. “Roll-Off Box” shall mean a container, with a minimum capacity of ten cubic yards, designed for mechanical emptying with a vehicle, and used for the storage and transportation of solid waste, green waste, recyclables, and other commodities.
57. “SB” shall mean a Senate Bill of the California Legislature.
58. “SB 1383” shall mean the amendments to the California Integrated Waste Management Act of 1989, as amended, supplemented, superseded, and replaced from time to time.
59. “Services” shall be as defined in Section 4.1 of this Agreement.
60. “Solid Waste” shall mean and include all forms of residential and commercial waste generated within City limits and intended for disposal. Solid Waste as defined in Public Resources Code, Section 40191 and regulations promulgated thereunder and without limitation includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes. Excluded from the definition of Solid Waste are Excluded Waste, Recyclable Materials, and Organic Waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the Resources Code. For the purposes of this Agreement the Collector may, but is not required, to collect, haul, dispose or recycle any liquid wastes, abandoned vehicles, and parts thereof, industrial appliances; dewatered, treated or chemically fixed sewage sludge or manure.
61. “State” shall mean the State of California.
62. “Term” shall be as defined in Section 6 of this Agreement.
63. “Termination” shall be as defined in Section 26.1 of this Agreement.

64. “Universal Waste” shall mean any waste matter which the State of California classifies as 'universal waste,' including, but not limited to, items and materials listed in 22 CCR 66261.9, as it may be amended, as well as any items listed below not classified by the State of California as 'universal waste.' Universal Waste includes, but is not limited to, the following:
- E-Waste;
  - Batteries (except automobile batteries);
  - Thermostats;
  - Lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics;
  - Cathode ray tubes;
  - Aerosol cans;
  - Mercury-containing items, including light switches, pressure gauges, and thermometers;
  - Appliances, devices, and other objects containing electronic components, including (but not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCRs, and televisions; and
  - Prescription and non-prescription drugs, not including controlled substances.
65. “Waste Management Laws” shall mean collectively: (i) AB 939, AB 341, AB 1594, AB 1826, SB 1383; (ii) the Regulations; (iii) Stanislaus County’s Solid Waste and Integrated Waste Management Plan (as amended) and all County ordinances and regulations related thereto; and (iv) the Code.






EXHIBIT B  
FRANCHISE AREA



Data Source: Stanislaus County GIS

FIGURE LU-6

-  Primary Sphere of Influence
-  Secondary Sphere of Influence
-  City Limits

PRIMARY AND SECONDARY  
SPHERE OF INFLUENCE

CITY OF HUGHSON  
GENERAL PLAN

**EXHIBIT C**  
**Solid Waste Rates**

<b>Residential</b>	<b>Current Rate:</b>	<b>Effective 1/1/2022:</b>
64 or 96 Gallon Cart	\$23.41	\$35.02
Additional Cart	\$7.35	\$15.42
Go Back/Event	\$8.17	\$15.00
Extra Collection	\$10.90	\$18.75
<b>Commercial</b>		
2 cubic yds x 1/mo	\$89.01	\$113.88
2 cubic yds x 2/mo	\$160.93	\$210.68
3 cubic yds x 1/mo	\$119.05	\$156.36
3 cubic yds x 2/mo	\$228.77	\$303.39
4 cubic yds x 1/mo	\$158.81	\$208.56
4 cubic yds x 2/mo	\$292.24	\$391.73
6 cubic yds x 1/mo	\$211.84	\$286.46
6 cubic yds x 2/mo	\$404.61	\$553.85
Go Back/Event	\$15.00	\$55.00
Extra dump/Event	\$20.00	\$45.00
Lock Installation:		
Locking bar	\$30.00	\$60.00
Master lock	\$25.00	\$25.00
Disk lock	\$35.00	\$35.00

**EXHIBIT D**  
**City of Hughson**  
**Bulky Item Collection Program**

*[see attached following page]*



## RESIDENTIAL BULKY ITEM COLLECTION PROGRAM

- Scheduled by appointment only. To arrange a pick up, please call our office at (209) 527-3781
- Program available to residents who currently subscribe to garbage service\*
- Qualifying residents can have bulky item picked up at their home two times per year
- Verify that items you want to set out for pick up are **Acceptable Items** (see lists below)
- Once appointment for pick up has been scheduled, items must be set out in front of home **after 6:00 p.m. the day before scheduled appointment**. Place items on the street one foot from curb. Do **NOT** block sidewalks, driveways or mailboxes. Items should be at least 3 feet away from garbage cart
- Do **NOT** place pile under low hanging wires or low hanging tree branches
- Items set out for collection should not exceed a dimension of 6 feet tall, 6 feet wide and 6 feet deep
- Items will be picked up after 6:00 a.m. on scheduled pick up day

### ACCEPTABLE ITEMS

- ✓ Refrigerators & Freezers – Doors taped shut or doors removed – Limit 1
- ✓ Washers & Dryers – Limit 1 of each
- ✓ Water Heaters, Water Softener – drained – Limit 1 of each
- ✓ Air Conditioning Units – Limit 1
- ✓ Dishwashers – Limit 1
- ✓ Toilets, Sinks, Bath Tubs
- ✓ Hot Tubs – Limit 1
- ✓ Couches, Sofas, Recliners
- ✓ Table and Chairs
- ✓ Dressers, Desks
- ✓ Mattress, Box Springs, Bed Frame – Limit 2
- ✓ Barbeques, Grills – remove propane tank
- ✓ Patio Furniture
- ✓ Doors
- ✓ Ladders
- ✓ Lawn Mowers – gas & oil removed
- ✓ Bicycles
- ✓ Exercise Equipment
- ✓ Plywood Sheets – limit 2
- ✓ Wood – limit 10 pieces no longer than 8 feet
- ✓ Carpet – rolled up
- ✓ Dry, flattened cardboard - Bundled

### UNACCEPTABLE ITEMS

- ✓ Tires
- ✓ Automobile Parts
- ✓ Household Garbage-No bags, boxes or containers with small items inside
- ✓ Hazardous Waste, Chemicals, Toxic Materials
- ✓ Liquids, Paints, Solvents
- ✓ Plate Glass
- ✓ TVs
- ✓ Computer Monitors
- ✓ Concrete, Asphalt, Sheetrock
- ✓ Construction & Demolition Debris
- ✓ Fencing, Treated Wood
- ✓ Yard Waste
- ✓ Tree Stumps
- ✓ Items Associated with Business
- ✓ Dead Animals
- ✓ Fluorescent Light Tubes
- ✓ Sod, Dirt
- ✓ Glass, Mirrors
- ✓ Items Small Enough to Fit in Garbage Can

**EXHIBIT E**  
**Acceptable E-Waste**  
**for**  
**Curbside Collection Program**

Computers  
Printers  
Copiers  
Scanners  
Fax Machines  
Telephones  
Cellular Telephones  
Stereos  
DVD / VHS Players

Televisions (Cathode Ray Tubes)  
Computer Monitors  
Flat Screen Televisions  
Lap Top Computers  
Networking Equipment  
Printed Circuit Boards  
Servers  
Main Frame Units

**EXHIBIT F**  
**Regional Solid Waste Disposal Plan**  
**Memorandum of Understanding Between**  
**The City of Hughson and Stanislaus County**

[see attached following page]

**REGIONAL SOLID WASTE DISPOSAL PLAN  
MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF HUGHSON AND STANISLAUS COUNTY**

This Regional Solid Waste Disposal Plan Memorandum of Understanding (the "Agreement") is made and entered into by and between the County of Stanislaus, ("County") and the City of Hughson ("City") on \_\_\_\_\_, 2015. City and County may herein be referred to individually as a "Party" and collectively as the "Parties". There are no other parties to this agreement.

**RECITALS**

WHEREAS, pursuant to Public Resources Code section 40976 the County and the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford entered into a Memorandum of Understanding, dated August 26, 1994, regarding the use and distribution of AB-939 funds to achieve the waste reduction and diversion goals specified in AB-939 (the "AB-939 MOU");

WHEREAS, on or about December 30, 1999, the County and the above cities entered into Amendment 1 of the AB-939 MOU to provide for payment of the cities' proportional share of the costs for services provided by the County pursuant to AB-939;

WHEREAS, on August 1, 2001, the City of Riverbank and on March 29, 2012, the City of Waterford entered into Amendment 2 of the AB-939 MOU to provide for payment of each city's proportional share of the costs for services provided by the County pursuant to AB-939;

WHEREAS, revenue to fund the AB-939 and Household Hazardous Waste services provided by the County is derived in part from tipping fees to the Waste-to-Energy Facility;

WHEREAS, the County, together with the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford formed the Stanislaus County Regional Solid Waste Planning Agency (hereinafter referred to as "Regional Agency") by entering into a Joint Powers Agreement on June 19, 2001, and the formation of the Regional Agency was approved by the California Integrated Waste Management Board on July 9, 2002.

WHEREAS, the purpose of the formation of the Regional Agency JPA was to allow the participating entities to share diversion credits and to prepare a single planning document for the entire region;

WHEREAS, the purpose of this Agreement is for members of the Regional Agency to implement a Regional Solid Waste Disposal Plan (the "Plan") to support the continued operations of the Fink Road Landfill (hereinafter referred to as "Landfill"), and the WTE Facility by ensuring sufficient solid waste is delivered to both facilities to ensure their economic viability, and to provide regional AB 939 and Household Hazardous Waste services;

WHEREAS, the Plan (as set forth by this Agreement and the exhibits incorporated hereto) includes a ten (10) year commitment from the Regional Agency cities to guarantee delivery of a portion of their solid waste to the Landfill and WTE Facility, and a ten (10) year schedule of tipping fees ("Disposal Rates") to be paid to the County pursuant to the Plan; and

WHEREAS, by entering this Agreement the Parties desire to terminate the AB-939 MOU and its amendments and to implement the Plan.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the Parties hereby agree as follows:

### AGREEMENT

1. Incorporation by Reference. The above Recitals are incorporated into this Agreement by this reference. Schedule 1 and Schedule 2 are attached to this Agreement and are incorporated hereto and made a part of this Agreement by this reference.
2. Term. The term of this Agreement ("Term") shall begin on June 1, 2015 (the "Effective Date") and end June 30, 2025 (the "Termination Date"). If mutually agreeable to both Parties, this contract may be extended up to an additional five (5) year period, unless one Party delivers to the other written notice of nonrenewal, which notice shall be delivered no later than 90 days prior to the termination date. Either Party may terminate this Agreement by providing 90 days prior written notice to the other.
3. City's Guaranteed Delivery of Solid Waste to WTE Facility and Landfill.
  - a. The Cities shall deliver to the WTE Facility and the Fink Road Landfill no less than the committed percentage of their Acceptable Solid Waste as set forth in Schedule 1 and the Waste to Energy (WTE) tonnage as set forth in Schedule 2 each month.
  - b. "Acceptable Solid Waste" means that portion of Solid Waste which has characteristics such as that collected and disposed of as part of the normal collection of Solid Waste in the Contracting Cities, such as, but not limited to: garbage, trash, rubbish, refuse, offal, beds, mattresses, sofas, bicycles, baby carriages, automobile or small vehicle tires, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than four (4) feet long and six (6) inches in diameter, branches, leaves, twigs, grass and plant cuttings, excepting, however, unacceptable waste and hazardous waste.
  - c. "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes normally collected by the City's solid waste hauler. Solid Waste does not include hazardous waste, radioactive waste, or medical waste.
4. Tipping Fees.
  - a. For the Term of this Agreement, the City's franchise hauler shall pay the Disposal Rates set forth in Schedule 1 and Schedule 2.



5. County's Obligations. The County agrees to provide and maintain the following programs and services for the City:

a. All AB 939 Program Services as required by law including but not limited to the following:

- i. Preparation of all required State diversion reporting and tracking;
- ii. Countywide public education/outreach;
- iii. Administration of the Recycling Market Development Zone;
- iv. Application for and administration of regional grants for used oil recycling, used tire recycling, and tire enforcement;
- v. Serve as staff to the Local Task Force on Solid Waste and Regional Solid Waste Planning Agency (Regional Agency);
- vi. Monitor proposed solid waste legislative and regulatory changes;
- vii. Administration of the County's Food Processing By-Product Program; and
- viii. Administration of the Waste to Energy Service Contract with the City of Modesto.

b. The following Household Hazardous Waste (HHW) Programs:

- i. The County will conduct a minimum of two mobile collection events each year for each Regional Agency city, except Ceres;
- ii. Access to the permanent Household Hazardous Waste Facility for the collection of Countywide residents' e-waste, used oil, oil filters, paints, pesticides, batteries, sharps, medications and other miscellaneous household chemicals;
- iii. Access to the permanent Household Hazardous Waste Facility for the collection of Countywide qualified/approved Conditionally Exempt Small Quantity Generators' hazardous waste; and
- iv. Countywide public education/outreach.

6. Default.

- a. Cure. In the event a Party fails to perform pursuant to the terms and conditions of this Agreement, the Party to whom an obligation is owed will provide the non-performing Party with at least 30 days prior written notice of said non-performance, upon which the non-performing Party will have the opportunity to comply with the request for performance, or in the event of continued non-performance, the Parties shall have the right to then pursue any and all available legal remedies.

- b. Failure to give Notice. Failure to give, or delay in giving, Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delay by either Party in asserting any of its rights and remedies shall not deprive such Party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.
7. Attorney Fees. In the event that a Party commences litigation to enforce the performance of this Agreement, the prevailing Party shall be entitled to an award of its costs of litigation, including the cost of expert and attorneys' fees.
8. Severability. In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.
9. Necessary Acts. The Parties hereby authorize their respective officers and employees to do all things reasonably necessary to accomplish the purposes of this Agreement.
10. Modification Only in Writing. This Agreement may not be modified, amended, changed, added to, or subtracted from, except by written mutual consent of the Parties hereto and only if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to this Agreement to maintain continuity. Notwithstanding anything to the contrary, no oral agreement or directive from or between either Party, or their designees, shall operate to amend or change the terms of this Agreement.
11. Entire Agreement. This Agreement contains the entire Agreement of the Parties, and no representations, inducements, promises, or agreements otherwise between the parties, not embodied herein, or incorporated herein by reference shall be of any force or effect. Notwithstanding anything to the contrary, no term or provision hereof may be changed, waived, discharged, or terminated unless the same is in writing executed by the Parties.
12. Amendment. This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the Parties hereto if such amendment or change is in written form and executed by the City and by the County.
13. Duplicate Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart, executed telecopy, fax or photocopy shall be deemed to be an original instrument, but all of which together shall constitute one and the same Agreement.

14. Legal Requirements. The Parties shall comply with all applicable federal, state, and local laws in performing this Agreement.

15. Force Majeure. Except as otherwise expressly provided in this Agreement, if the performance of any act required to be performed by either County or City is prevented or delayed or made impracticable by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, Change in Law or regulations, or any other cause (except financial inability) not the fault of the Party required to perform the act, the time for performance of the act will either be extended for a period equivalent to the period of delay or performance of the act will be excused.

- a. "Change in Law" as used herein means the enactment, promulgation, amendment or official interpretation or reinterpretation by any order, decision or judgment of any federal, state or local court, administrative agency or governmental body after the Effective Date of (i) any federal statute or regulation not enacted, promulgated, amended, interpreted or reinterpreted on or before the Effective Date, as applicable, or (ii) any state, County or City statute, ordinance, or regulation that was not so enacted, promulgated, amended, interpreted or reinterpreted on or before the Effective Date, as applicable, or establishes requirements making the ownership, operation or maintenance of the Landfill more burdensome than the most stringent requirements (x) in effect as of the Effective Date, (y) agreed to in any applications of the County for official permits, licenses, or approvals, or (z) contained in any official permits, licenses, or approvals with respect to the Landfill obtained as of the Effective Date; provided that a lawful change in federal, State, County, City, or any other tax law shall not be a Change in Law.
- b. If there is a Change in Law that materially affects operations of the Fink Road Landfill and/or the WTE Facility, the Parties hereto agree to act in good faith to amend or renegotiate this Agreement to effectuate the purpose of this Agreement as stated herein above.
- c. If there is a Change in Law that materially affects the requirements for the Cities regarding the reuse, recycling, composting or any other form of diversion of solid waste from disposal, including, but not limited to an increase in the percentage of solid waste required to be diverted, as well as changes to applicable diversion credits, the Parties hereto agree to act in good faith to amend or renegotiate this Agreement.
- d. The Party whose performance of this Agreement is affected pursuant to this Section shall give notice of the conditions affecting performance to the other Party within thirty (30) calendar days that the Party becomes aware that any Change in Law will materially affect performance of this Agreement.
- e. Upon receiving notice pursuant to this Section, the Parties will have one hundred eighty (180) days to renegotiate this Agreement. If the Parties do not agree that a Change in Law materially affects performance of this Agreement pursuant to this Section, then either Party may request binding mediation, to be paid equally by both Parties, to determine whether the Change in Law is material. Either Party may terminate the Agreement upon three days written notice if it is

determined that a material Change in Law has occurred, and the Parties do not renegotiate the Agreement within one hundred eighty (180) days.

16. Venue. The laws of the State of California shall apply to the construction and enforcement of this Agreement. Any action at law, suit in equity, or judicial proceedings for the enforcement of this Agreement or any provision hereto shall be in the Superior Court of Stanislaus County.

17. Notices. All notices permitted or required by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

**To: County of Stanislaus:**  
Department of Environmental Resources  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attn: Susan M. Garcia, C.P.M

**To: City of Hughson:**  
Raul Mendez, City Manager  
Office of the City Manager  
P.O. Box 9  
Hughson, CA 95326

18. Indemnification.

- a. County will indemnify, defend and hold harmless the Cities, their officers, board members, employees and agents, from any claim, expense or cost, damage or liability imposed for injury occurring by reason of the negligent acts or omissions or willful misconduct of the County arising out of and/or relating to the provision of the programs and services described in paragraph 5 herein above.
- b. Cities will indemnify, defend and hold harmless the County, its officers, board members, employees and agents, from any claim, expense or cost, damage or liability imposed for injury occurring by reason of the negligent acts or omissions or willful misconduct of the Cities arising out of and/or relating to their performance under this Agreement.

19. Insurance. The Parties shall maintain their own liability insurance coverage, against any claim of civil liability arising out of the performance of this MOU, and provide appropriate evidence of such coverage of the other Party upon request.

*Signatures on Following Page*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

COUNTY OF STANISLAUS

CITY OF HUGHSON

By: \_\_\_\_\_  
Terrance Withrow,  
Chairman

By:  \_\_\_\_\_  
Matthew Beekman,  
Mayor

Date: April 13, 2015

ATTEST:  
Christine Ferraro Tallman,  
Clerk

ATTEST:

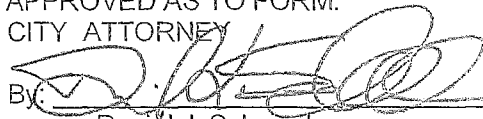
By: \_\_\_\_\_  
Liz King,  
Assistant Clerk

By:  \_\_\_\_\_  
Dominique Spinhale Romo  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Jami Aggers  
Director

APPROVED AS TO FORM:  
CITY ATTORNEY

By:  \_\_\_\_\_  
Daniel J. Schroeder  
City Attorney

APPROVED AS TO FORM:

John P. Doering  
County Counsel

By: \_\_\_\_\_  
Thomas E. Boze,  
Deputy County Counsel

## SCHEDULE 1

### SOLID WASTE TONNAGE GUARANTEE

<u>CITY</u>	<u>GUARANTEED PERCENTAGE<sup>(1)</sup></u>
CERES	90%
HUGHSON	90%
NEWMAN	90%
OAKDALE	50%
PATTERSON	90%
RIVERBANK	40%
TURLOCK	90%
WATERFORD	50%

### DISPOSAL RATES (per ton) <sup>(2)</sup>:

<u>Fiscal Year</u>	<u>Waste To Energy Facility</u>	<u>Fink Road Landfill</u>
2015/2016	\$33.78	\$26.00
2016/2017	\$34.78	\$26.00
2017/2018	\$35.78	\$26.00
2018/2019	\$37.00	\$27.00
2019/2020	\$38.00	\$27.00
2020/2021	\$39.00	\$27.00
2021/2022	\$40.00	\$28.00
2022/2023	\$41.00	\$28.00
2023/2024	\$42.00	\$29.00
2024/2025	\$43.00	\$29.00

(1) Percentage of total Acceptable Solid Waste under the City's jurisdictional authority.

(2) The total tonnage delivered by each agency shall be billed as follows: 62% of total tonnage at the WTE rate up to the scheduled tonnage per Schedule 2 and 38% of total tonnage at the Fink Road Landfill rate.

## SCHEDULE 2

### WTE PROPOSED MONTHLY DELIVERY SCHEDULE

CITY OF TURLOCK		CITY OF CERES	
July	1,895.94	July	1,429.56
August	2,086.75	August	1,573.43
September	1,895.94	September	1,429.56
October	1,848.23	October	1,393.59
November	1,895.94	November	1,429.56
December	1,895.94	December	1,429.56
January	2,153.63	January	1,623.86
February	2,003.56	February	1,510.70
March	2,091.62	March	1,577.10
April	1,464.31	April	1,104.11
May	2,084.37	May	1,571.63
June	1,896.41	June	1,429.92
<b>Total</b>	<b>23,212.64</b>	<b>Total</b>	<b>17,502.58</b>

CITY OF HUGHSON		CITY OF OAKDALE	
July	182.50	July	425.83
August	200.86	August	468.68
September	182.50	September	425.83
October	177.90	October	415.11
November	182.50	November	425.83
December	182.50	December	425.83
January	207.30	January	483.70
February	192.86	February	450.00
March	201.33	March	469.77
April	140.95	April	328.88
May	200.63	May	468.15
June	182.54	June	425.93
<b>Total</b>	<b>2,234.37</b>	<b>Total</b>	<b>5,213.54</b>

**CITY OF PATTERSON**

July	456.24
August	502.16
September	456.24
October	444.76
November	456.24
December	456.24
January	518.25
February	482.14
March	503.33
April	352.37
May	501.59
June	456.36

**Total** 5,585.92

**CITY OF NEWMAN**

July	299.09
August	329.19
September	299.09
October	291.57
November	299.09
December	299.09
January	339.74
February	316.07
March	329.96
April	231.00
May	328.82
June	299.17

**Total** 3,661.88

**CITY OF RIVERBANK**

July	273.74
August	301.30
September	273.74
October	266.86
November	273.74
December	273.74
January	310.95
February	289.28
March	302.00
April	211.42
May	300.95
June	273.81

**Total** 3,351.53

**CITY OF WATERFORD**

July	101.39
August	111.59
September	101.39
October	98.84
November	101.39
December	101.39
January	115.17
February	107.14
March	111.85
April	78.31
May	111.46
June	101.41

**Total** 1,241.33