

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Solid Waste Program – Regional Recycling Facility Agreement
DATE: November 18, 2003

NEEDS: For the City Council to consider executing an agreement with North San Luis Obispo County Recycling, Inc. for recyclables processing and associated solid waste/recycling services.

- FACTS:**
1. On April 2, 2002, the City Council resolved to join the San Luis Obispo Integrated Waste Management Authority (IWMA), taking a major step toward solid waste/recycling program success in the City. At that time, the City Council also approved solid waste/recycling program changes with the City's solid waste collection franchisee, Paso Robles Waste Disposal (PRWD). These actions followed the recommendations of the Solid Waste Diversion Study, March 21, 2002.
 2. The City and PRWD partner to collect commercial and residential recyclable materials to meet state mandates, and to properly serve the community. The current practice requires PRWD to ship collected recyclables (from the residential curbside collection) to the processing facility at the Cold Canyon Landfill, near San Luis Obispo. The Solid Waste Diversion Study reiterated the finding from the 1994 Source Reduction and Recycling Element (SRRE) that a north county facility would enhance City recycling operations by reducing truck mileage.
 3. A north county recycling facility is available to serve the City, now. North San Luis Obispo County Recycling Inc. has completed constructing a recyclables sorting and processing facility in Templeton (Ramada Drive). The facility, at the time of this report, is in final equipment testing before commencing operations. The owner expects the facility to be ready for processing by mid-November.
 4. This item was continued from the November 4, 2003 meeting.

**ANALYSIS &
CONCLUSION:**

California State law requires all jurisdictions reach 50% diversion (recycling, reuse, etc.) by the year 2000, or face fines of up to \$10,000 per day. The City continues to look at program improvements in solid waste and recycling to better assure long-term compliance with this mandate.

The City is fortunate to have available a new facility for recyclables processing in the north county. North San Luis Obispo County Recycling Inc. has approached the City requesting an agreement for the City to use the facility, and for the facility to use the City's landfill for disposing residuals from the recyclables sorting. The City staff met with representatives of North San Luis Obispo County Recycling Inc., IWMA and PRWD to discuss the terms of an agreement, and to assure all parties reached a consensus, respectful of the partnerships. The attached agreement is the outcome of the meetings by the parties – City staff, IWMA and PRWD jointly concur with the draft agreement.

The agreement provides that North San Luis Obispo County Recycling Inc. will accept commingled recyclable truckloads from the City's curbside recycling collection program. The loads will be deposited, and recyclable materials will be sorted to provide a marketable commodity. Any waste residuals mixed in will be sorted out, and will ultimately be taken to the City's landfill for disposal. Specific terms include:

- Agreement is for 10 years, base, with 5 additional years optional
- The price paid for commingled disposal is \$9 per ton, paid by PRWD, \$2 per ton is returned to the City as a franchise fee

- The City receives all solid waste residuals at the City landfill, and North San Luis Obispo County Recycling Inc. pays posted landfill rates for disposal

The City Council may choose to enter this agreement with North San Luis Obispo County Recycling Inc. to supplement the current solid waste/recycling program. Currently, the City is served by the Cold Canyon Landfill recyclables processing facility, and the City has the option to allow PRWD to continue to use this source. Furthermore, the City could remain neutral, and allow PRWD to enter an agreement on their own with North San Luis Obispo County Recycling Inc. The option for the City to enter the agreement with North San Luis Obispo County Recycling Inc. provides for the City to stipulate residuals being returned to the City's landfill, and provides franchise fee revenue.

POLICY

REFERENCE: Council Resolution 94-115 (adopting the 1994 SRRE)

FISCAL

IMPACT: Paso Robles Waste Disposal (PRWD) indicates there will be no additional cost to use the North San Luis Obispo County Recycling Inc. facility versus the costs now experienced. Therefore, this agreement should not impact current waste/recycling service rates

Franchise fees, at \$2 per ton of commingled recyclables, equates to approximately \$3500 per year of City revenue.

- OPTIONS:**
- A. Authorize the Mayor to execute the Agreement for Services with North San Luis Obispo County Recycling Inc. to provide commingled recyclables processing services to the City.
 - B. Amend, modify or reject the above option.

Attachments:

- 1) Agreement for Services

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

PROCESSING COMMINGLED RECYCLABLES

THIS AGREEMENT (hereafter "Agreement") is made upon the date of execution, as set forth below, by, and between North SLO County Recycling Inc., a California corporation (hereinafter "CONTRACTOR"), and the City of Paso Robles, a Municipal Corporation, (hereinafter "CITY").

RECITALS

WHEREAS, CITY has determined it is in the public interest to provide recycling services to residential and commercial properties; and

WHEREAS, CITY franchises the collection of commingled recyclables through a franchise agreement; and

WHEREAS, CONTRACTOR has built a facility in Templeton to process commingled recyclables; and

THEREFORE, the parties hereto, in consideration of the mutual covenants contained herein, hereby agree to the following terms and conditions:

1.00 GENERAL PROVISIONS

1.01 TERM

CONTRACTOR shall commence performance under this Agreement on November 1, 2003 and end performance on October 31, 2013, unless this Agreement is earlier terminated or amended under the provisions herein. By further agreement of the parties this Agreement may be extended using the procedure in paragraph 1.03.

1.02 SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR agrees to perform or provide the services specified in "SCOPE OF SERVICES" attached hereto as "EXHIBIT A" hereby incorporated herein.

1.03 EXTENSION

CONTRACTOR or CITY may request one five-year extension to this Agreement. The nonrequesting party shall consider the request but is not obligated to grant an extension. Any request for extension shall be made in writing and received by the other party no earlier than March 1, 2013 and no later than August 1, 2013.

1.04 COMPENSATION TERMS

CONTRACTOR agrees to pay CITY in accordance with the payment terms of the "PAYMENT ARRANGMENTS" attached hereto as "EXHIBIT B", hereby incorporated herein, and subject to rate adjustments agreed in writing by the parties pursuant to Section 5.06 of this Agreement.

1.05 FRANCHISED HAULER

This AGREEMENT requires that CONTRACTOR accept deliveries of recyclable materials from the CITY'S franchised hauler (hereinafter "Franchised Hauler"). On the effective date of this Agreement the CITY's Franchised Hauler is Paso Robles Waste Disposal. The Franchised Hauler can be contacted at:

Paso Robles Waste Disposal
ATTN: Dale Gomer
2951 Wallace Drive
Paso Robles, CA 93446
tel: 805-238-2381

If there is a change in the Franchised Hauler under this AGREEMENT the CITY will notify the CONTRACTOR.

2.00 RESPONSIBILITIES OF CONTRACTOR

2.01 MINIMUM AMOUNT OF SERVICE BY CONTRACTOR

CONTRACTOR agrees to devote the hours necessary to perform the services set forth in this Agreement to the standards set forth in Section 2.04 of this Agreement. CONTRACTOR may represent, perform services for and be employed by additional individuals or entities (hereinafter "Additional Professional Responsibilities"), in CONTRACTOR's sole discretion, as long as the performance of these extra-contractual Additional Professional Responsibilities does not interfere with or present a conflict with CITY'S business. It is in CITY'S sole discretion to determine whether the CONTRACTOR'S Additional Professional Responsibilities interfere with or present a conflict with CITY business. If CITY determines that CONTRACTOR'S Additional Professional Responsibilities interfere with or present a conflict with CITY business CITY will notify CONTRACTOR in writing of the conflict. The CONTRACTOR must cure or commence to cure the conflict within thirty (30) days from receipt of notice of the conflict from CITY. If CONTRACTOR does not cure the conflict CITY, at its sole discretion, may terminate this Agreement.

2.02 TOOLS, EQUIPMENT AND INSTRUMENTALITIES

CONTRACTOR shall provide all tools, equipment and instrumentalities to perform the services under this Agreement.

2.03 PERMITS, LICENSES AND CRV PERMITS

CONTRACTOR shall obtain and maintain during the full term of this Agreement all permits, licenses, and California Redemption Value (hereinafter "CRV") permits necessary to perform CONTRACTOR'S obligations under this Agreement. The CITY will not pay the cost or reimburse CONTRACTOR for any permit fees, license fees, or CRV permit fees paid by CONTRACTOR to enable it to perform its obligations set forth in this Agreement.

2.04 INDEPENDENT CONTRACTOR

In the performance of services pursuant to this Agreement, CONTRACTOR is an independent contractor and is not an agent or employee of CITY. CONTRACTOR, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONTRACTOR has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONTRACTOR in the performance of said service hereunder. CONTRACTOR shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

2.05 WORKERS' COMPENSATION AND OTHER EMPLOYEE BENEFITS

CITY and CONTRACTOR agree that CONTRACTOR is an independent contractor. CITY and CONTRACTOR agree that CONTRACTOR's employees and agents have no right to any of the benefits of a CITY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation. CONTRACTOR agrees to hold harmless and indemnify CITY for any and all claims arising out of any claim for injury, disability, or death of any of CONTRACTOR's employees or agents.

2.06 STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatever nature which CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. If CITY, in its sole discretion, determines that services performed or products delivered by CONTRACTOR do not meet the standard provided in this Section 2.06 the City shall notify CONTRACTOR in writing. CONTRACTOR shall correct or revise any errors, omissions or substandard performance upon receipt of notice from CITY's without additional compensation. If CONTRACTOR fails to cure or commence to cure the defect within thirty (30) days from receipt of notice from CITY, CITY, at its sole discretion, may terminate this Agreement. If CONTRACTOR has not cured defect within ninety (90) days of the receipt of notice from CITY, CITY, at its sole discretion, may terminate this Agreement.

2.07 TAXES

CITY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should CITY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse CITY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

2.08 CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no interests and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. A conflict of interest which arises from CONTRACTOR'S Additional Professional Responsibilities is grounds for termination of this Agreement by CITY pursuant to Section 2.01 of this Agreement.

2.09 PERFORMANCE BOND

CONTRACTOR shall post a performance bond which will be kept on file with CITY, payable to CITY securing the CONTRACTOR's full and faithful performance of its obligations under this Agreement. The bond shall be kept in full force and effect by the CONTRACTOR throughout the full term of this Agreement. The principal sum of the bond shall be in the amount equal to three months of operation and maintenance costs of the services under this Agreement, but in no instance will the amount of the bond be less than \$30,000.00.

2.10 INDEMNIFICATION

A. Indemnification; General. CONTRACTOR shall protect, indemnify, defend and hold harmless CITY and Franchised Hauler, their officials, officers, employees, agents, shareholders, assigns and any successor or successors to CITY and Franchised Hauler, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively the "Claims"), arising out of or occasioned in any way by, directly or indirectly, CONTRACTOR's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of CITY and/or Franchised Hauler, their officials, officers, employees, shareholders, or agents, but shall apply if the Claim is caused by the joint negligence of CONTRACTOR or other persons. Upon the occurrence of any claim, CONTRACTOR, at CONTRACTOR's sole cost and expense, shall defend (with attorneys reasonably acceptable to CITY and Franchised Hauler), CITY and Franchised Hauler, their officials, officers, employees, shareholders, agents, assigns and any successor or successors to CITY and Franchised Hauler. CONTRACTOR's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

B. Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend, protect and hold harmless CITY and its Franchised Hauler, their officials, officers, employees, shareholders, agents, assigns and any successor or successors to CITY and Franchised Hauler's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to

attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by , or asserted against, CITY and Franchised Hauler or their officials, officers, employees, shareholders, agents, assigns and any successor or successors to CITY and Franchised Hauler arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste accepted for disposal by CONTRACTOR pursuant to this Agreement which is or has been transported, transferred, processed, stored, disposed of which has otherwise come to be located by CONTRACTOR or its activities pursuant to this Agreement resulting in a release of a Hazardous Waste into the environment.

These indemnifications are intended to be an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify CITY and Franchised Hauler and CONTRACTOR from all forms of liability under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 *et seq.* or other similar federal, state or local law or regulation. This provision shall survive the expiration of the period during which disposal services are to be provided under this Agreement.

2.11 INSURANCE REQUIREMENTS

Without limiting CONTRACTOR'S indemnification of CITY, CONTRACTOR shall procure and maintain for the term of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, his/her agents, representatives, or employees. Failure to comply with the insurance requirements shall place CONTRACTOR in default of this Agreement.

A. Minimum Scope and Limits of Insurance

CONTRACTOR shall maintain broad coverage and limits no less than:

1. Workers' Compensation Insurance - Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by CITY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 *et seq.* during the entire period of this Agreement and CONTRACTOR submits a written statement to CITY stating that fact.
2. General Liability - \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general

aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

3. Automobile Liability - \$1,000,000 per accident for bodily injury and property damage.
4. Employee's Liability - \$1,000,000 per accident for bodily injury or disease.

B. 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 as respects CITY, its trustees, officers, employees and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its trustees, officers, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.
2. For any claims related to this project, the CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its trustees, officers, employees and volunteers. Any insurance or self-insurance maintained by CITY, its trustees, officers, employees or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, and are admitted insurance companies in the State of California, unless otherwise approved by the CITY in writing.

E. Verification of Coverage

CONTRACTOR shall furnish CITY with original certificates and amendatory endorsements effecting coverage required by this clause. CONTRACTOR shall submit to the office of the designated CITY representative certificate(s) of

insurance documenting the required insurance as specified above prior to this Agreement becoming effective. CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. Upon request by CITY, CONTRACTOR shall provide a certified copy of any insurance policy to CITY within ten (10) working days.

3.00 RESPONSIBILITIES OF CITY

3.01 DELIVERY

Upon notification by CONTRACTOR that the facility in Templeton is ready to receive material, CITY agrees to direct its franchised waste hauler to deliver for processing commingled recyclables to the CONTRACTOR. The franchised waste hauler or any other party shall not remove any recyclables from the commingled recyclables prior to delivery of the commingled recyclables to CONTRACTOR. Commingled recyclables include the following: paper products (newspaper, magazines, mail, office paper, telephone books, cardboard, chipboard, etc.), plastic (soda bottles, milk and water jugs and other rigid plastic containers with number 1 through 7 plastic), glass (food and beverage containers), cans (aluminum cans, tin cans, aluminum foil, metal food trays). The density of the commingled recyclables delivered to the Contractor shall not exceed 375 pounds per cubic yard.

3.02 COOPERATION

CITY agrees to comply in good faith with all reasonable requests by CONTRACTOR necessary to the performance of CONTRACTOR'S obligations under this Agreement. CITY retains sole discretion to determine which requests are reasonable. CITY'S failure to comply with any request from CONTRACTOR does not provide grounds for termination of this Agreement.

4.00 TERMINATION OF AGREEMENT

4.01 BY CITY

Notwithstanding any other provision of this Agreement, if Contractor fails to perform any obligation of this Agreement the CITY may terminate this Agreement if such failure is not remedied by CONTRACTOR within thirty (30) days of written notice to CONTRACTOR of such failure. The CITY may terminate this Agreement, in whole or in part, by written notice of termination to the CONTRACTOR. Upon receipt of notice of termination, CONTRACTOR shall immediately discontinue all services effected by the notice of termination (unless the notice directs otherwise), and deliver to CITY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process.

4.02 BY CONTRACTOR

Notwithstanding any other provision of this Agreement, should CITY fail to perform all or any part of its obligations under this Agreement, CONTRACTOR may, at CONTRACTOR's option, terminate this Agreement if such failure is not remedied by

CITY within thirty (30) days of written notice to CITY of such failure.

4.03 TERMINATION ON OCCURRENCE OF STATED EVENTS

This Agreement may terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of any party;
2. The end of the thirty (30) days as set forth in Section 4.02 of this Agreement;
3. End of this Agreement term or any extension.

This Agreement may be terminated at the option of the non-defaulting party on the occurrence of the following events:

1. Failure of CONTRACTOR to cure conflict of interest as set forth in Section 2.01 of this Agreement;
2. Failure of CONTRACTOR to cure substandard performance as set forth in Section 2.06 of this Agreement;
3. Failure of the parties to agree to a reasonable rate adjustment as set forth in section 5.06 of this agreement;
4. Assignment of this Agreement by CONTRACTOR without the written consent of the CITY as set forth in Section 6.03 of this Agreement.

5.00 SPECIAL PROVISIONS

5.01 BREACH OF CONTRACT

If CONTRACTOR materially breaches the terms of this Agreement, CITY shall, in addition to other remedies provided by law, have the following cumulative remedies:

- A. CITY may elect to continue unfinished work, under this Agreement, with a different service provider; and
- B. Charge CONTRACTOR for the costs incurred by CITY for the work performed by a different service provider until such time that CITY has a CITY Council approved agreement with a new service provider.

5.02 NONDISCRIMINATION

During the performance of this Agreement, CONTRACTOR will not discriminate against any employee or applicant because of race, religion, creed, color, national origin, sex, age, or disability, whether physical or mental. CONTRACTOR will take affirmative action to insure that applicants employed, are treated during employment, without regard to their race, religion, creed, color, national origin, sex, age, or disability, whether physical or mental.

5.03 OWNERSHIP OF DOCUMENTS

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of CITY. CITY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared pursuant to this Agreement.

5.04 RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. CITY shall have the right to audit and review all such documents and records at any time during CONTRACTOR'S regular business hours or as otherwise arranged upon reasonable notice. Once CITY receives records, they may become public records unless exempted by law.

5.05 AMENDMENT

Either party to this Agreement may request with sixty (60) days written notice that any portion of this Agreement be renegotiated. This Agreement may only be altered, amended or modified by an instrument in writing, executed by the parties to this Agreement. Each party to this Agreement waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel. Failure to agree to alter, amend or modify this Agreement pursuant to this Section 5.05 shall not be grounds for default or termination of this Agreement. This Section 5.05 does not affect a party's right to terminate this Agreement for failure to grant a rate adjustment under Section 5.06 of this Agreement.

5.06 RATE ADJUSTMENT

Three (3) years from the effective date of this Agreement, either party may request an adjustment to the rates in EXHIBIT B, Section B. Subsequent rate adjustments can be requested by either party not more frequently than every eighteen (18) months. All requested rate adjustment must be reasonable. A requested rate adjustment is reasonable if it increases or decreases the rate under this Agreement at the time the rate adjustment is requested by no more than fifteen-percent (15%), unless some other rate is determined to be reasonable by the parties to this Agreement because of prevailing industry conditions. If a reasonable rate adjustment is not granted, the party requesting the rate adjustment may terminate this Agreement upon ninety (90) days notice. For the purpose of this Section 5.06 the rates in Exhibit B are 1) the per ton rate which the CONTRACTOR charge the CITY'S Franchised Hauler for delivered recyclable material and 2) the monthly per ton franchise fee which the CITY charges the CONTRACTOR.

6.00 MISCELLANEOUS

6.01 RIGHTS AND REMEDIES CUMULATIVE

Except as otherwise expressly stated in this Agreement, the rights and remedies set forth in this Agreement shall not be exclusive but shall be cumulative with, and in addition to, all rights and remedies now or hereafter allowed by law or equity. Exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

6.02 NO WAIVER

No delay or omission of CITY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to CITY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of CITY.

6.03 ASSIGNMENT

The CONTRACTOR shall not assign this Agreement to any person or entity without the prior written consent of CITY. CITY may withhold its consent for any reason and is under no obligation to approve an assignment. Any assignment or attempt to assign by CONTRACTOR, without the written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and is a material breach of this agreement giving rise to a right to terminate as set forth in Section 4.03.

6.04 COSTS AND ATTORNEY FEES

If either party commences any legal action against the other party arising out of this Agreement or performance thereof, the prevailing party shall be entitled, in addition to other such relief as may be granted, to its costs, including a reasonable sum for attorneys' fees.

6.05 FORCE MAJEURE AND TIME FOR PERFORMANCE

Except as otherwise expressly provided for in this Agreement, should the performance of any act required by this Agreement to be performed by either party be prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, or any other cause, except financial inability, not in the control of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that nothing contained in this Section 6.05 shall excuse the prompt payment by either party as required by this Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

6.06 NOTICES

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any party to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid to the following address for each respective party:

CITY: Public Works Director
1000 Spring Street
Paso Robles, CA 93446

CONTRACTOR: Mr. Brad Goodrow
North SLO County Recycling Inc.
3730 Calf Canyon Road
Creston, CA 93432

or to such other person that the parties may from time to time designate. Notices and other communications under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

6.07 GOVERNING LAW AND CHOICE OF FORUM

This Agreement and all matters relating to this Agreement shall be governed by the laws of the State of California. Any litigation arising out of this Agreement shall be brought in the Superior Court of San Luis Obispo County.

6.08 COMPLIANCE WITH LAW

CONTRACTOR shall, at his sole cost and expense, comply with all city, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement or the services to be provided by CONTRACTOR under this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether CITY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and CITY.

6.09 BINDING EFFECT

This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this Section 6.09 shall be construed as a consent by CITY to any assignment of this agreement or any interest in this Agreement.

6.10 INTEGRATION CLAUSE

This Agreement, including EXHIBITS A and B, attached hereto and incorporated into this Agreement, constitutes the sole and entire agreement between the parties with respect to the subject matter hereof. This Agreement correctly sets forth the rights and

obligations of the parties hereto to each other as of the effective date of this Agreement. All agreements or representations between the parties respecting the subject matter of this agreement not expressly set forth or referred to in this Agreement are null and void.

6.11 SEVERABILITY

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, which shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.12 TIME

Time is expressly declared to be of the essence of this agreement.

6.13 DUE AUTHORITY

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

6.14 SECTION HEADINGS

The Section headings of this Agreement, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the terms of this Agreement.

6.15 PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered Sections.

6.16 CITY'S DESIGNATED REPRESENTATIVE

CITY'S designated representative under this Agreement is the CITY'S Director of Public Works.

*AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR
PROCESSING COMMINGLED RECYCLABLES
SIGNATURE PAGE*

IN WITNESS WHEREOF, the parties have executed this AGREEMENT to be effective on the date executed by CITY.

NORTH SLO COUNTY RECYCLING, INC.

By: _____
BRAD GOODROW

CITY OF EL PASO DE ROBLES

By: _____
FRANK MECHAM, MAYOR

Attest:

By _____
Sharilyn M. Ryan
Deputy City Clerk

Approved as to Form:

By: _____
Iris P. Yang, City Attorney

**EXHIBIT A:
SCOPE OF SERVICES**

PROCESSING AND MARKETING OF COMMINGLED RECYCLABLES

I. Processing

- A. The CONTRACTOR shall supply all labor and equipment necessary to receive, process, and market all commingled recyclable material resulting from this Agreement. For purposes of this Agreement, “recyclable material” is defined as all material delivered to the CONTRACTOR’s facility located at 3360 La Cruz Way, Templeton, collected pursuant to the CITY’s source separated residential and commercial recycling program, excluding residual materials. CONTRACTOR shall divert all recyclable materials in a manner that is acceptable for diversion credit under AB939. CONTRACTOR shall not landfill, burn or convert for burning the materials diverted, unless otherwise authorized by CITY.
- B. The CONTRACTOR shall receive and process recyclable materials without limitation as to amount, weight or periodic variances in quantity generated. The exact quantity, quality, mix or percentage of recyclables to be delivered under this Agreement cannot be guaranteed.
- C. All process loss and residual from CITY delivered commingled recyclables shall be delivered and disposed of in the Paso Robles Landfill during the term of this Agreement. For purposes of this section “process loss” shall mean the difference between the incoming tonnage, and the sum of saleable recyclable tonnage plus contamination.
- D. All recyclable materials diverted shall meet or exceed secondary material market specifications for each class of recovered product.
- E. CONTRACTOR’s facility shall be available to receive commingled recyclable materials Monday through Friday between 8:00 am and 3:00 p.m., and other times as mutually agreed by the parties to this Agreement.
- F. The CITY and CONTRACTOR must agree, in writing, to any changes to the recyclable materials collected and processed prior to the addition of the materials to a CITY route and prior to any notification to the customers of such additions or deletions of materials.
- G. CONTRACTOR will assume all liability, ownership and control for the CITY’s recyclable materials, including inadvertent hazardous waste contamination, and the disposal of such materials.

II. Liability and Permits

- A. CONTRACTOR warrants that it possesses, and will possess throughout the term of this contract, all federal, state, and local permits needed to operate the facility that will accept and process the recyclables. CONTRACTOR shall provide current copies of its certifications and permits for Materials Recovery Facilities ("MRF") operations to the CITY for the term of this contract.
- B. In the case that the CONTRACTOR or the CONTRACTOR's facility is unable to accept recyclables for any reason (equipment failure, permit problems, failure to open facility, etc.), the CONTRACTOR will divert recyclables to an alternate location arranged by the CONTRACTOR and approved by the CITY. The CONTRACTOR shall pay for all transportation costs and fees charged at the alternate facility arranged by the CONTRACTOR.
- C. In the event that the CONTRACTOR is responsible for transporting processed or unprocessed recyclables and for any reason is unable to do so, the CONTRACTOR will arrange for alternative transportation arrangements and pay for costs charged by the alternate transporter.

III. Reporting, Record Keeping and Invoices

- A. CONTRACTOR shall have a certified truck scale on-site to weigh all loads of materials. The weigh scales shall be calibrated in accordance with procedures established by the applicable state and local authorities. Each vehicle shall be weighed upon entering and exiting (for those vehicles without tare weight) the CONTRACTOR's processing facility with a certified weight receipt given to driver after tipping the recyclable materials. A copy of the weigh slip shall be submitted to the CITY with each monthly invoice in a form approved by the CITY. CONTRACTOR shall maintain a daily log of the sequential ticket number, vehicle number, gross vehicle weight, and tare vehicle weight. Copies of this information will be available to the CITY when requested.
- B. CONTRACTOR shall be required to document, in a form approved by the CITY, the average amount of contamination and process loss in each load as determined in an annual waste characterization study. A random sort audit of the collected recyclable material may be conducted at the CONTRACTOR's facility when requested by the CITY to verify contamination rates and will be observed by a CITY designated representative.
- C. On a monthly basis, CONTRACTOR shall submit an invoice, including a compilation of the weight logs as well as the contamination and process loss logs, to the franchised waste hauler with a copy to the CITY representative designated in the Agreement by the fifteenth of the month following the service period. CONTRACTOR shall also submit a report on the City of Paso Robles processed recyclables which will include the commodity and gross tonnage for each commodity, percentage of mixture to the total tonnage, residue tonnage, total tonnage, recycled tonnage, and invoice to the franchised waste hauler with a copy to the CITY for the recycled tonnage in accordance with EXHIBIT B, Section B.
- D. CONTRACTOR will prepare all paperwork and provide the CITY with all necessary information to allow CITY to prepare necessary reports to State for AB939 reporting.

Exhibit B

PAYMENT ARRANGEMENTS

A. Payment for delivery of commingled recyclables shall be based upon the scope of services contained in Exhibit A.

B. Monthly, CONTRACTOR shall invoice the CITY's Franchised Hauler for the gross materials received from the CITY's residential and commercial commingled recycling program over the period specified. The CITY's Franchised Hauler will be charged \$9 per ton for delivered recyclable materials from the CITY's residential and commercial recycling program, delivered in the CITY's Franchised Hauler's authorized vehicles.

Residual from the CITY's recycling program, processed through the CONTRACTOR's Material Recovery Facility located at 3360 La Cruz Way, Templeton, shall be disposed of by CONTRACTOR at Paso Robles Landfill. CONTRACTOR will pay the CITY the landfill tipping fee.

The CONTRACTOR will pay every month to the CITY a franchise fee of \$2.00 per ton on every ton of the gross materials received that month from the CITY's residential and commercial commingled recycling program.

C. CITY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of CITY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.