

DESIGNATED APPROVED E-WASTE COLLECTOR AGREEMENT

THIS DESIGNATED APPROVED E-WASTE COLLECTOR AGREEMENT (this "Agreement") dated as of [DATE] , by and between the SAN BERNARDINO COUNTY, a political subdivision of the State of California (the "County"), and the , a California corporation organized and existing pursuant to the Constitution and laws of the State of California ("Collector");

W I T N E S S E T H:

WHEREAS, the County is a political subdivision of the State of California (the "State"), duly constituted under the Constitution and laws of the State and pursuant to such laws owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated within the County (the "Disposal System"). The Disposal System includes six active regional landfills, nine transfer stations and three community collection centers;

WHEREAS, the Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code);

WHEREAS, the County wishes to advance the purpose of the Electronic Waste Recycling Act of 2003 (being Chapter 8.5 of Part 3 of Division 30 of the Public Resources Code, commencing with Section 42460) as set forth in Public Resources Code Section 42461(h), in pertinent part, as providing sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state and to end the illegal disposal of covered electronic devices;

WHEREAS, the parties hereto, in consideration of the mutual undertakings, past and present, herein and otherwise, desire to provide for Collector to be designated as a Designated Approved E-Waste Collector;

WHEREAS, official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County;

NOW, THEREFORE, in consideration of the mutual covenants herein contained it is agreed by and between the parties hereto, as follows:

Section 1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below.

"Act" means the Electronic Waste Recycling Act of 2003, being Chapter 8.5 of Part 3 of Division 30 of the Public Resources Code, commencing with Section 42460.

"Agreement" means this Solid Waste Management Agreement between the County and the Collector as the same may be amended or modified from time to time in accordance herewith.

"Collector" or "Designated Approved Collector" means an approved collector, or its subcontractor, as defined in Title 14 California Code of Regulations (CCR) section 18660.5, subsection (a) (2).

"County" means the County of San Bernardino, a political subdivision of the State and party to this Agreement.

"Covered Electronic Waste" or "CEW" means a discarded device that DTSC has determined to be a covered electronic device, as specified by Section 42463(f) of the Public Resources Code and Title 14 CCR section 18660.5.

"Designation" means an arrangement established by a California Local Government with an approved collector in the CalRecycle Covered Electronic Waste (CEW) recovery and recycling program.

"Effective Date" means the first date on which this Agreement has been executed by both parties hereto.

“Proof of Designation (Form 184)” means the CalRecycle provided Form 184 used by a California Local Government when establishing and issuing a Designation.

“State” means the State of California.

“Term” means the Term of this Agreement.

“Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of 40 CFR part 273:

Batteries as described in §273.2;

Mercury containing equipment described in §273.4;

Lamps as described in §273.5

Section 2. Interpretation. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(I) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

Section 3. Term. The Term of this Agreement and the designation provided for herein shall commence on the Effective Date and shall be in full force and effect and shall be legally binding upon Collector and the County from the Effective Date and shall continue in full force and effect until the date that is five (5) years after the Effective Date, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

Section 4. Locations. The location(s) at which the E-Waste collection services will be provided are set forth in Exhibit A, attached hereto and incorporated herein by this reference.

Section 5. Collections Activities and Reporting. The nature of collections activities to be provided by the Collector (i.e., drop-off receipt, curbside service, illegal disposal clean-up, etc.) shall be those activities described in Exhibit B attached hereto and incorporated herein by this reference. Collector must provide to the County a report of all CEW collection activities conducted pursuant to this designation at least annually on or before September 1 of every calendar year during the term of this Contract, covering the preceding reporting period of July 1 through June 30. In the County's sole discretion, it may request the Collector to submit CEW collection activity reports on a more frequent basis. While acting pursuant to this designation, Collector shall only conduct CEW recovery activities at the locations as specified herein in Exhibit A.

Section 6. Legal Compliance. In performing under this Agreement, Collector shall fully comply with all Federal, state and local laws, regulations, ordinances, programs, orders, rules and policies, including without limitation, the Act and the regulations promulgated pursuant thereto.

Section 7. Breach. The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder.

Section 8. Termination. This Agreement may be terminated by the parties hereto upon thirty (30) days written notice from the terminating party to the other party. In the event CalRecycle terminates the designation of Collector for the County, this Contract and accompanying designation shall be immediately terminated.

Section 9. Former County Officials. Collector agrees to provide or has already provided information on former County administrative officials (as defined below) who are employed by or represent Collector. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Collector. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit C, List of Former County Officials)

Section 10. Improper Consideration. Collector shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement.

The County, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to this Agreement or any solicitation for consideration was not reported. This prohibition shall

apply to any amendment, extension or evaluation process once this Agreement has been executed and becomes effective.

Collector shall immediately report any attempt by an officer, employee or agent of County to solicit (either directly or through an intermediary) improper consideration from Collector. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

Section 11. Indemnification. Collector agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of or alleged to arise out of any acts, errors or omissions of Collector, its agents, employees, affiliates, officers, directors, shareholders and subcontractors in connection with or related to Collector's performance of this Agreement, and including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. Collector's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. This Section 12 shall survive the termination of this Agreement.

Section 12. Notices. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

Section 14. Miscellaneous.

(A) No Waivers. No action of the County or Collector pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or Collector in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or Collector under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

(B) Forum for Dispute Resolution. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

(C) Attorney's Fees. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the County, including such costs and attorneys' fees payable under Section 8 Indemnification.

(D) Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

(E) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion.

(F) Binding Effect. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 11(E) hereof.

(G) Subcontractor Agreement. The Collector may request to have a subcontractor listed as the Designated Approved Collector on the CalRecycle Proof of Designation (Form 184) only after a separate agreement between the Collector and subcontractor which obligates the subcontractor to comply with the terms of this Agreement is established. Once a copy of the signed subcontractor agreement is provided to the County, the Collector's subcontractor can be listed on the Form 184 as the Designated Approved Collector on the County's behalf in the geographic area described in Exhibit A of the agreement.

(H) Electronic Signatures. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request

IN WITNESS WHEREOF, COUNTY and COLLECTOR have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth below.

SAN BERNARDINO COUNTY

[COLLECTOR NAME]

By: _____
DIRECTOR/DESIGNEE NAME, TITLE

By: _____
AUTHORIZED SIGNATURE NAME,
TITLE

Date: _____

Date: _____

EXHIBIT A

LOCATIONS

EXHIBIT B

COLLECTION ACTIVITIES

EXHIBIT C

LIST OF FORMER COUNTY ADMINISTRATIVE OFFICIALS