

## ATTACHMENT G GUARANTY

THIS GUARANTY (the "Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_, 20\_\_ by \_\_\_\_\_ (hereafter "Guarantor") to {insert name of Agency}, a public agency (hereafter "Agency").

THIS GUARANTY is made with reference to the following facts and circumstances:

**A.** \_\_\_\_\_, hereinafter ("Contractor") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by \_\_\_\_\_, which is owned by \_\_\_\_\_ (Guarantor).

**B.** Contractor and the Agency have negotiated an Agreement for Solid Waste, Recyclable Materials, and Organics Materials Collection Services dated as of \_\_\_\_\_, (hereinafter "Agreement"). A copy of this Agreement is attached hereto and incorporated herein by this reference.

**C.** It is a requirement of the Agreement, and a condition to the Agency entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

**D.** Guarantor is providing this Guaranty to induce the Agency to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

**1. Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the Agency the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Contractor or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the Agency of any damages, costs or expenses which might become recoverable by the Agency from Contractor due to its breach of the Agreement.

**2. Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement.

**3. Waivers.** The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the Agency's rights or remedies against the Contractor; or (4) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the Agency to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the Agency may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the Agency may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledge and without proceeding against or exhausting any security or collateral the Agency may hold now or hereafter hold. Agency may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledge without impairing the Agency's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the Agency to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Contractor's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the Agency's approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the Agency as a preference, fraudulent transfer or otherwise, irrespective of (a) any

notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the Agency of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the Agency against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers by Agency.** No delay on the part of the Agency in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the Agency to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the Agency and by Guarantor, nor shall any waiver by Agency be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the Agency in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws and rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the Agency to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to authority over it by such courts. Guarantor appoints the following Person as its agents for service of process in California:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be sever able and continue in full force and effect.

**9. Binding On Successors.** This Guaranty shall inure to the benefit of the Agency and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

**10. Authority.** Guarantor represents and warrants that it has the corporate power to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and by-laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

**11. Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the Agency:

Agency Manager \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to the Agency Counsel at the same address.

To the Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The party may change the address to which notice is to be sent giving the other party nature of the change as provided in this Attachment.

*{Remainder of Page Intentionally Blank}*

**IN WITNESS WHEREOF**, Guarantor have executed this Agreement as of the day and year first above written.

Proper notarial acknowledgment of execution by Guarantor must be attached.

**Chairman, president or vice-president and secretary or assistant secretary must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.**