

AGREEMENT BETWEEN THE TEHAMA COUNTY SOLID WASTE
MANAGEMENT AGENCY, A JOINT POWERS AUTHORITY, AND THE COUNTY
OF TEHAMA CONCERNING ADMINISTRATIVE SERVICES PROVIDED TO THE
TEHAMA COUNTY SOLID WASTE MANAGEMENT AGENCY

This Administrative Services Agreement (“Agreement”) is made effective as of July 1, 2021, by and between the County of Tehama (“County”) and the Tehama County Solid Waste Management Agency (“Agency”).

RECITALS

WHEREAS, the Agency was established through a joint powers agreement by and between the County and the City of Red Bluff on or about June 30, 1997; and

WHEREAS, on or about July 1, 2015, the joint powers agreement was amended and restated, reconstituting the Agency as the Tehama County Solid Waste Management Agency and adding the cities of Corning and Tehama as parties to the joint powers agreement; and

WHEREAS, the principle mission and powers of the Agency are described in the “Amended and Restated Joint Powers Agreement Reconstituting the Tehama County/Red Bluff Landfill Management Agency as the Tehama County Solid Waste Management Agency” entered into on or about July 1, 2015 (“JPA Agreement”); and

WHEREAS, administrative staff, including the Agency Manager, are necessary to the day-to-day operation of the Agency; and

WHEREAS, the Agency desires to have the County provide the administrative staff, not including the position of Agency Manager, necessary for the operation of Agency, wherein the administrative staff would remain employees of County, with the County responsible for providing payroll, personnel, purchasing, warrant preparation, and general accounting services for those staff members and administration of the Agency; and

WHEREAS, the Agency further desires to use County personnel as staff to work under the direction of the Agency Manager; and

WHEREAS, the County is willing to provide staff persons, payroll, personnel, purchasing, warrant preparation and general accounting services to the Agency in return for reimbursement by the Agency for the costs associated with the staffing and administrative services, and under the terms set forth herein.

AGREEMENT

In consideration of the Recitals above and the terms and conditions set forth herein, the parties agree as follows:

1. Contractual Relationship

- A. The County will provide labor, related human resource functions and accounting services for employees assigned to the Agency and the Agency Manager for a fee based upon the actual cost of the employees to the County. The employees provided by the County to perform services for the Agency ("Employees") are identified in Exhibit A which is attached hereto and incorporated herein by this reference.
- B. Employees provided by the County under this Agreement shall remain employees of the County and shall have no claim to wages, benefits, pensions or any other rights provided by the Agency to Agency employees.
- C. The Agency Manager shall in no manner be an employee, contractor or agent of the County. The Agency Manager is an employee of the Agency and serves at the pleasure of that body.
- D. The County and Agency agree that the Agency shall neither have, nor assume any liability for, the direct payment of wages and/or other compensation or benefits due and owing to Employees performing services pursuant to this Agreement. The County will indemnify and hold the Agency harmless from and against all such claims by Employees in accordance with the terms of this Agreement.

2. Responsibilities of the County

- A. The County shall make available and assign to the Agency the Employees to provide the services specified in the JPA Agreement, attached hereto and incorporated herein by this reference. Prior to assignment, the County shall certify that each Employee meets the minimum qualifications for the position and is currently capable of performing all essential functions of the position with or without reasonable accommodation.
- B. The County shall coordinate with the Agency for all new recruitments to fill positions vacated by Employees.
- C. Employees and the Agency Manager shall be covered by the County's health insurance, retirement plan, and worker's compensation liability insurance, at the same terms and rates as all similarly situated County employees. The Agency shall reimburse the County for the cost of this coverage per the terms set forth in this Agreement.
- D. During the term of this Agreement, the County shall be responsible for the full payment of wages, benefits, retirement contributions and any other employment-

related payment to Employees regardless of payment from the Agency to the County.

- E. The County shall be responsible for the administration, collection and disbursement of all Employees' and the Agency Manager's W-2 payroll, including the calculation of the Employees' and Agency Manager's gross wage entitlement, withholdings from Employees' and the Agency Manager's wages and payment of those withholdings.
- F. The County shall be responsible for all employer tax-reporting functions as required by law for all Employees and the Agency Manager.
- G. Annually, the Agency will establish a budget that includes the cost of the Agency Manager and Employees, and all expenses related thereto. To assist in determining the budget, the County will advise the Agency of the total costs required by staff supplied by the County and the projected cost of services provided. Information on these total costs provided by the County will be provided on or around the 1st of the month of April, which will provide the Agency sufficient time to incorporate the information into the Agency budget.
- H. Subject to the provisions of Section 4.B below, the County shall have an independent right to evaluate, reassign, discipline and/or terminate the employment of Employees. The County shall provide prompt written notice to the Agency of any action taken which results in an Employee being unavailable for duty under the terms of this Agreement.
- I. The County shall be solely responsible for collective bargaining with the Employees or their bargaining representative regarding any terms and conditions of employment controlled by the County, or as required by law, or by County ordinances, policies or agreements. The County shall indemnify and hold the Agency harmless from and against any and all claims pertaining to collective bargaining by Employees or their bargaining representative in accordance with the terms of this Agreement.

3. Responsibilities of the Agency

- A. Subject to the approval and direction of the Agency Board of Directors with respect to the level of service to be provided and corresponding number of employees required, the Agency shall have the sole discretion with respect to the number of employees needed and their respective individual hours of work including overtime (if any), taking into account factors such as services needed and the working hours of other similarly situated employees. Unless otherwise approved by the Agency Board of Directors with an approving vote, the County shall not have the authority to reduce the number of Employees providing service under this Agreement or cause Employees to work less than forty (40) hours per week (subject to Employees taking holiday, vacation, or other required or

disciplinary time off), or to otherwise interfere with any rights such Employees have under the law and/or the County's rules, regulations, MOUs, ordinances, resolutions, and/or policies. The parties understand and acknowledge that changes to the hours of work of Employees and/or interference with any rights which such Employees may have under the law and/or the County's rules, regulations, MOUs, ordinances, resolutions and/or policies may be subject to collective bargaining requirements, and the Agency will abide by any changes to the Employees' workweek made by way of collective bargaining. In the event the Agency Board of Directors reduces the level of service such that any particular position is no longer needed to provide services under this Agreement, the position shall be deemed "Vacant," the effected Employee shall no longer be assigned to the Agency under this Agreement, and the County, in its sole discretion, can take any other action the County deems appropriate regarding the Employee in accordance with its rules, regulations, MOUs, ordinances, resolutions and/or other applicable policies.

- B. The Agency shall have the right and responsibility to supervise and direct each Employee providing services pursuant to this Agreement and in compliance with County's rules, regulations, MOUs, ordinances, resolutions, and/or policies. Such supervision and direction shall include, but shall not be limited to, scheduling, training, directing work assignments and tasks, and providing oral and written feedback to Employees regarding their performance. Upon request of the County, the Agency shall provide written input for use in evaluating the Employee's job performance.
- C. The parties acknowledge that many of the Agency's functions are essential, time-sensitive functions for which immediate staffing is critical. The Agency shall have the authority to appointment temporary employees as needed to meet short-term Agency functions within the approved budget as authorized by the Agency Board of Directors. However, notwithstanding this provision, the Agency shall not have the authority to exercise this discretion in a manner which would interfere with any rights which Employees have under the law and/or the County's rules, regulations, MOUs, ordinances, resolutions and/or policies.
- D. The Agency and the County shall cooperate with one another to ensure compliance with all safety and employment-related federal and state laws and regulations, including, but not limited to, the Family Medical Leave Act, California Family Rights Act, California Fair Employment and Housing Act, Americans with Disabilities Act, Fair Labor Standards Act, and OSHA safety rules.
- E. The Agency shall post any and all required Employee notices in a designated location at the Agency's administrative office.
- F. The Agency shall pay all invoices submitted by the County in accordance with this Agreement within 30 days of receipt. At the request of the County, the

Agency may also pay from funds placed on deposit with the County by the Agency for expenses incurred by the Agency. Payment shall be in a manner prescribed by the County and will be made only under procedures established by the County. Such payments may only be made from funds budgeted for the expenditure.

4. Changes in Employees' County Employment Status

- A. The County may not terminate, lay-off, or cause to retire Employees, nor request payment for any increase or reduction in pay, without first providing the Agency with thirty (30) days advance written notice. In the event of an emergency, the County shall provide the Agency with notice as soon as practicable. The Agency's liability for payment of Employees' wages and benefits is for the wage and benefit levels in place on the effective date of this Agreement along with any wage increases or concessions provided to the Joint Council of International Union of Operating Engineers, Stationary Engineers, Local 39, AFL-CIO, and Service Employees International Union, Local 1292, AFL-CIO bargaining unit as a whole. Without pre-approval of the Agency, the Agency will not be responsible for paying the cost of any additional benefits or wages for Employees beyond what the County agrees to provide this bargaining unit as a whole through the collective bargaining process.
- B. The County agrees to the Agency's involvement in addressing and resolving employee disciplinary issues. For any County employees assigned to the Agency, the Agency will assess performance and determine when to pursue disciplinary action in compliance with County's rules, regulations, MOUs, ordinances, resolutions, and/or policies. The Agency will consult with the County as to appropriate disciplinary action, and the Agency (based on the input of the relevant supervisory and managerial employees) will make the determination as to what discipline (if any) is appropriate. Thereafter, if disciplinary action is warranted, the County will expeditiously process disciplinary action in a manner consistent with the County's disciplinary process. Employees will be afforded all due process rights available to them. If termination is warranted, the County will assume responsibility for processing the termination, preparing the documentation, and addressing any subsequent appeals in accordance with the applicable rules. The Agency will be responsible for Employee cost up to the date of the termination. The position will be declared "vacant" as of the effective date of the termination set forth in the notice of final discipline issued following the Skelly hearing (and from which the administrative appeal, if any, may be taken). The parties understand, acknowledge, and agree that a breach of this provision would constitute a material breach of this Agreement and that pecuniary compensation could not afford adequate relief and/or it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief and, thus, injunctive relief may be sought in addition to any other relief which may otherwise be available by law, but only after the parties first mediate this dispute in accordance with Section 5.H.

5. Processing, Fees and Payments

- A. Timecards or similar timekeeping records used to report the basis of Employees' and the Agency Manager's hours worked shall be supplied by the County or provided to the County in a format acceptable to the County. These forms shall be completed by the Employees and the Agency Manager at the end of each pay period and it is the Employees' and Agency Manager's responsibility (with certification by the Agency Manager and review by County payroll staff) to report accurately and timely the hours worked and other basis for compensation of Employees. Once completed, the forms shall be submitted by the Agency to the County for processing in a method acceptable by the County.
- B. Employees and the Agency Manager will be paid wages by the County in accordance with the County's regular payroll method and schedule.
- C. Each month, the County shall provide the Agency an accounting of all payments made.
- D. The County shall provide to the Agency an accounting of all money deposited with the County and all disbursements made by the County on behalf of Agency.
- E. In the event the Agency Manager or Employees provide services other than to the Agency, the County shall account for, document and bill for such services and the revenue shall be deposited in the account maintained by the County for payment of Agency expenses.
- F. The County may charge, and the Agency agrees to pay, the County's actual cost of the services provided in accordance with the terms and conditions of this Agreement, which are described in Exhibit D attached hereto and incorporated herein by this reference.
- G. In addition to actual costs associated with the Agency Manager and Employees, the County may charge, and the Agency agrees to pay, a flat fee for administrative services in the amount of \$18,416 per fiscal year beginning the 2021-2022 fiscal year. The amount to which the County is entitled shall be adjusted each fiscal year, compounded by a percentage equal to the percentage change in the average cost of salary and benefits for job classes within the Tehama County Auditor-Controller's office during the calendar year ending the preceding December 31.
- H. Any dispute between the parties, including disputes regarding the actual cost or administrative services fee, or calculation thereof, shall be submitted to mediation prior to initiation of litigation. The mediator shall be an individual approved by both parties and any and all costs associated with the mediation shall be equally shared by the parties. No party shall unreasonably delay the mediation process nor refuse to participate. Both parties shall act in good faith to resolve the dispute in a

fair and equitable matter. Notwithstanding the foregoing, if the dispute has not been resolved within ninety (90) days of the date of the original invoice which is the subject of the dispute, the obligation to mediate shall be excused and either party may immediately initiate litigation.

- I. All fees and costs shall be invoiced by the County on a minimum of a quarterly basis. The Agency shall pay the County in accordance with Section 3.F above.

6. Insurance

- A. The Agency and the County shall each maintain at their sole respective cost and expense, and keep in force during the term of this Agreement, the insurance coverages set forth in Exhibit C to protect Employees' activities which are performed under the Agency's supervision and direction, including "contract employees" in the definition of "employees."
- B. If the policies or coverages required by Exhibit C are terminated for any reason during the term of this Agreement, then the party whose coverage has terminated shall either purchase a replacement policy with a restorative date coinciding with or preceding the retroactive date of the terminating policy, or shall purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement and a replacement policy with a retroactive date coinciding with or preceding the expiration date of the terminating policy.
- C. If this Agreement is terminated, both the Agency and the County shall maintain the respective policies required by Exhibit C above in effect on the date of termination for a period of not less than two years therefrom. If either party's policy is terminated for any reason during the two year period, then the party whose policy has terminated shall purchase an extended reporting provision at least covering the balance of the two year period to report claims arising from work performed in connection with this Agreement or a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy.

7. Safe Work Environment

The Agency agrees to comply with all legally imposed safety practices, procedures, and policies adopted by the County, with respect to Employees and their activities. The Agency shall advise the County of all work-related accidents, injuries and/or illnesses of Employees or the Agency Manager. The Agency further agrees to provide a DWC-1 form or equivalent (for the purpose of workers' compensation) promptly to any Employee involved in a work-related accident, injury or illness, and facilitate the Employees' receipt of medical care if needed.

8. Term and Termination of Agreement

- A. Commencement of the Agreement shall be effective July 1, 2021 and shall continue until terminated by mutual agreement of the parties or upon sixty (60) days written notice by one party to the other party.
- B. This Agreement shall automatically terminate upon the effective date of the dissolution of the Agency. Upon dissolution of the Agency, if any remaining liabilities exist pursuant to the terms of this Agreement, those liabilities shall be contributed to the Members of the Agency pursuant to the terms of the Joint Powers Agreement which created the Agency, or otherwise as permitted by California law.

9. Indemnification

- A. Except as otherwise provided in this Agreement, the Agency shall indemnify, defend and hold harmless the County, members of the Tehama County Board of Supervisors, its officers, agents, and employees from any and all claims, loss, cost, expenses (including, but not limited to, attorney's fees and litigation costs incurred by the County), injury, or damage that arise in any way from any acts or omissions or intentional tortious conduct of the Agency, members of the Agency Board of Directors, its officers, agents and employees, or any of its subcontractors or subconsultants used in performance of this Agreement.
- B. Except as otherwise provided in this Agreement, the County shall indemnify, defend, and hold harmless the Agency, members of the Agency Board of Directors, its officers, agents and employees from any and all claims, loss, cost expenses (including, but not limited to, attorney's fees and litigation costs incurred by the Agency), injury, or damage that arise in any way from any acts or omissions or intentional tortious conduct of the County, members of the Tehama County Board of Supervisors, its officers, agents and employees, or any of its subcontractors or subconsultants used in performance of this Agreement.
- C. The provisions of paragraphs A and B above shall survive termination of this Agreement. The parties agree to notify each other immediately upon assertion or possible assertion of any such claim and to cooperate with one another in the investigation and defense of said claim.

10. Subcontracts/Assignments

The parties shall not assign or subcontract this Agreement without the written consent of the other party.

11. Waiver

A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement shall not constitute a waiver of such performance, right, or remedy. No waiver is binding unless set forth in writing signed by the waiving party.

12. Notices

Any notices required by this Agreement shall be sent as follows:

To County: County of Tehama
ATTN: County Chief Administrator
727 Oak Street
Red Bluff, CA 96080

To Agency: Tehama County Solid Waste Management Agency
ATTN: Agency Manager
20000 Plymire Road
Red Bluff, CA 96080

13. Severability

If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases, the remainder of the Agreement shall continue in full force and effect.

14. Governing Law and Venue

This Agreement shall be deemed to be made in and shall be governed by and construed in accordance with the laws of the State of California. Venue for any acting arising in this Agreement shall be in Tehama County, California.

15. Amendments

This Agreement may be modified only by a written agreement executed by all parties to the Agreement.

16. Entire Agreement

The parties agree that this understanding is a complete agreement and supersedes all previous understandings, whether written or oral, of the parties. This Agreement shall not be amended, except in writing that is executed by authorized representatives of both parties.

17. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

18. Audit

The following audit requirements apply from the effective date of this Agreement until three years after termination of this Agreement:

- A. Each party shall allow the other and the State of California, or their duly authorized representatives, to inspect, audit and copy the other party's records as needed to evaluate and verify any invoices, payments and claims that either party submits or that any payee of the other party submits to that party in connection with this Agreement. The term "records" includes, but is not limited to, correspondence, accounting records, subcontract files, task orders, change order files and any other supporting evidence relevant to the invoices, payments or claims.
- B. The parties shall be subject to the examination and audit of the State of California Auditor, at the request of either party or as part of any audit of either the County or the Agency. Such examinations and audits shall be confined to matters connected with the performance of this Agreement, including, but limited to, administration costs.
- C. This section shall survive the termination of the Agreement.

19. Employment Practices

Each party, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex disability, marital status, or any other status protected by applicable federal or state law in its employment practices.

20. Compliance with Laws

All services and obligations set forth in this Agreement shall be performed in accordance with all applicable federal, state, county, district, and municipal laws, ordinances, regulations, and rules.

21. Authority

Each party executing this Agreement and each person executing this Agreement in any representative capacity hereby warrant to all other parties that they have

On dates listed below, the parties agreed to the terms, conditions and covenants set forth above.

EXHIBIT A

The positions to be created by the Agency and staffed with County employees during the term of this Agreement shall be:

Position	Number of FTEs
Recycling Coordinator I/II	2
Organic Materials Program Coordinator	1

These classification specifications are collectively attached hereto in Exhibit B. The Agency has agreed to staff these positions with these specified County employees and to use these position titles and descriptions during the term of this Agreement. Each Employee will perform the duties as specified in the applicable job description along with any other related tasks which the Employee has historically been called upon to perform.

EXHIBIT B

Classification Specifications

EXHIBIT C

Insurance Requirements

The Agency and the County shall procure and maintain, for the term set forth in Section 8, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work described in the Agreement and the results of that work by Agency or County, his/her agents, representatives, employees or subcontractors. At a minimum, Agency and County shall maintain the insurance coverage, limits of coverage and other insurance requirements as described below.

Commercial General Liability (including operations, products and completed operations)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If coverage is subject to an aggregate limit, that aggregate limit will be twice the occurrence limit, or the general aggregate limit shall apply separately to this project/location.

Automobile Liability

Automobile liability insurance is required with minimum limits of \$1,000,000 per accident for bodily injury and property damage, including owned and non-owned and hired automobile coverage, as applicable to the scope of services defined under this agreement.

Professional Liability (Contractor/Professional services standard agreement only)

If the County or Agency employs a state-licensed architect, engineer, contractor, counselor, attorney, accountant, medical provider, and/or other professional licensed by the State of California to practice a profession, the Agency or County shall provide and maintain in full force and effect while providing services pursuant to this contract a professional liability policy (also known as Errors and Omissions or Malpractice liability insurance) with single limits of liability not less than \$1,000,000 per claim

and \$2,000,000 aggregate on a claims made basis. However, if coverage is written on a claims made basis, the policy shall be endorsed to provide coverage for at least three years from termination of agreement.

All such insurance coverage, except professional liability insurance, shall be provided on an “occurrence” basis, rather than a “claims made” basis.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions of \$25,000 or more must be declared to, and approved by, the Agency or the County. The deductible and/or self-insured retentions will not limit or apply to Agency or the County’s liability and will be the sole responsibility of policy holder.

Acceptability of Insurers

The Agency’s and the County’s insurance shall be placed with an insurance carrier holding a current A.M. Best & Company’s rating of not less than A:VII unless otherwise acceptable to both parties. Both parties reserve the right to require rating verification. Both parties shall ensure that the insurance carrier shall be authorized to transact business in the State of California.

Subcontractors

Both parties shall require and verify that all subcontractors maintain insurance that meets all the requirements stated herein.

Material Breach

If for any reason, either party fails to maintain insurance coverage or to provide evidence of renewal, the same shall be deemed a material breach of contract. Either party, in its sole option, may terminate the contract and obtain damages from the other entity resulting from breach.

Policy Obligations

Neither the Agency's nor the County's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

EXHIBIT D
JPA Agreement

EXHIBIT E

Schedule of Cost Factors

The Agency will pay to the County the following items for Employees assigned under this Agreement and the Agency Manager, including the following specific categories of payments and no others:

- A. Payroll and benefit expenses for Employees assigned to the Agency under this Agreement and the Agency Manager, including the following costs and no others:
 - a. Wages for hours actually worked, which includes overtime expenses for time devoted to the Employees' usual and customary work assignment;
 - b. Any other compensation or allowance provided to employees represented by the Joint Council of International Union of Operating Engineers, Stationary Engineers, Local 39, AFL-CIO, and Service Employees International Union, Local 1292, AFL-CIO bargaining unit as a whole;
 - c. Any other compensation or allowance provided to the Agency Manager as agreed upon and explicitly stated in the Employment Agreement between the Agency Manager and the Agency Board of Directors;
 - d. The employer's share of required state and federal tax and Social Security payments made on behalf of Employees assigned to the Agency under this Agreement, during the term of this Agreement, and the Agency Manager.
 - e. Paid leave (whether in the form of sick leave, vacation, personal days, holidays, compensatory time off) when taken by Employees during the employment or upon separation of employment when that separation occurs during the term of this Agreement (the payout of accrued leave upon separation); and
 - f. Benefit payments, including the employer contribution for retirement and the actual cost of County-provided group insurance plans provided to eligible Employees, under any applicable MOU for all Employees assigned to the Agency and the Agency Manager. This includes the cost of the employer's portion of retirement benefits, group health insurance, group dental insurance, group life insurance, and group vision insurance.
- B. Actual labor cost for accounting services provided by the Tehama County Auditor-Controller's Office;
- C. Workers' Compensation for the Agency Manager and Employees assigned to the Agency under the terms of this Agreement;
- D. An administrative services fee to compensate the County for all administrative services provided to the Agency not explicitly stated above, including, but not limited to, personnel support, purchasing, warrant preparation, and safety.