

MEMORANDUM OF UNDERSTANDING
between
THE COUNTY OF NEVADA
and
THE COUNTY OF PLACER
for
DISCARDED MATERIAL PROCESSING AND DISPOSAL
SERVICES

JANUARY 28, 2020

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DISCARDED MATERIALS PROCESSING AND DISPOSAL MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into on this 14th day of January, 2020, by and between the County of Placer, California (Placer County), a political subdivision of the State of California, and the County of Nevada (Nevada County), a political subdivision of the State of California, which parties agree as follows:

RECITALS

WHEREAS, Placer County owned and operated the Eastern Regional Landfill until its closure in 1995; and

WHEREAS, Placer County continues to own and operate 292 acres of the former Eastern Regional Landfill as a materials recovery facility, transfer station, buyback center, household hazardous waste collection facility, and other uses, which facility is now known as the Eastern Regional Material Recovery Facility (ERMRF); and

WHEREAS, solid waste from within the eastern portion of Nevada County was disposed of at the Eastern Regional Landfill (ERL) from 1972 to 1995, and has been processed at the ERMRF and disposed of at Lockwood Landfill in the State of Nevada from 1995 to present and;

WHEREAS, Placer County and Nevada County are parties to a prior Memorandum of Understanding dated December 9, 1997 under which Placer County agreed to accept solid waste originating from within Nevada County for processing at the ERMRF, and both parties wish to replace and supersede the prior Memorandum of Understanding with this amended and restated MOU; and

WHEREAS, the State of California has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste reduction, reuse, Recycling, and Composting options in order to reduce the amount of refuse that must be Disposed; and,

WHEREAS, Nevada County has, in the exercise of its police power and powers under state law, entered into a franchise agreement with a private waste hauler for the collection and transportation of Discarded Materials generated within Nevada County Service Area 7 limits; and

WHEREAS, Nevada County has determined that execution of this MOU will serve the public health, safety, and welfare of Nevada County and its residents by ensuring the availability of facilities for Processing Discarded Materials, and the continuation of sound environmental management; and

WHEREAS, Placer County has determined that execution of this MOU will serve the public health, safety, and welfare of Placer County by providing a stable and reliable supply of Discarded Materials for Processing, and that the resulting revenue stream will help offset the cost of operating and maintaining the ERMRF and related facilities, and monitoring and maintaining the closed Eastern Regional Landfill;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this MOU, and for other good and valuable consideration, it is mutually agreed between the parties hereto as follows:

SECTION 1. TERM OF MOU

This MOU supersedes the December 9, 1997 Memorandum of Understanding between Placer County and Nevada County, as such Memorandum of Understanding has been amended from time to time, which shall be of no further force and effect as of the Effective Date of this MOU. This MOU, including the Exhibit, represents the full and entire agreement between Nevada County and Placer County with respect to the matters covered herein. Exhibit "A" is attached hereto and incorporated herein and made a part hereof by this reference.

This MOU shall expire December 31, 2029, provided that it may be terminated earlier as provided in Section 6 below, or under the following circumstances:

1.1 Nevada County Option to Terminate

Nevada County may terminate this MOU at any time by sending a certified letter to Placer County's designated representative stating its intention to cease hauling Discarded Materials to the ERMRF. Nevada County shall provide Placer County with as much notice as possible, but not less than 180 days' notice of the effective date of such cessation and termination.

1.2 Placer County Option to Terminate

At any time, Placer County may terminate this MOU if all of the following conditions are met: (a) a viable Disposal site outside of Placer County cannot be found for Residual Waste remaining following Processing of Discarded Materials accepted at the ERMRF; (b) Placer County is forced to utilize another facility for Disposal of Residual Waste remaining following Processing of Discarded Materials accepted at the ERMRF; and (c) the other facility does not approve acceptance of Nevada County's Discarded Materials. Placer County shall provide Nevada County as much notice as possible of any anticipated disruption in Placer County's ability to dispose of Residual Waste outside Placer County, and shall use its best efforts to obtain approval for the acceptance of Nevada County Discarded Materials from any other facility that Placer County will use.

1.3 Placer County's Operations Contractor Agreement

The current term of the Solid Waste Handling Agreement between Placer County and Placer County's Operations Contractor (Eastern Regional Landfill, Inc, (ERL, Inc.)), expires on June 30, 2022. If Placer County subsequently enters into an operations agreement with a new contractor or negotiates a new agreement with the Operations Contractor which includes significant changes in ERMRF operations or tipping fees, Placer County shall provide as much notice as possible, but not less than one hundred and eighty (180) days' notice to Nevada County and shall negotiate in good faith any necessary revised terms and conditions of this MOU.

SECTION 2. NEVADA COUNTY'S DUTIES AND RESPONSIBILITIES

2.1 Nevada County Delivery of Discarded Materials

To the extent it has the authority to do so under State and Federal decisional or statutory law, Nevada County shall require its Collection Contractor to send all Discarded Materials collected within Nevada County Service Area 7 limits to the ERMRF, and to pay the Rates for Discarded Materials Processing set forth in Section 5 of this MOU.

2.2 No Minimum Delivery Amount

There is no minimum volume of material required to be delivered by Nevada County under this MOU. Nothing in this MOU is intended or shall be interpreted to prohibit or impair the ability of Nevada County to meet the Diversion goals established by Nevada County policy or Applicable Law, or to restrict the right of the residents, businesses, or organizations in Nevada County to practice source reduction, Source Separation, Recycling, Composting or other materials recovery activities, or to restrict Nevada County's right to conduct, sponsor, encourage, or require such activities in any form. No reduction in the amount of Discarded Materials generated in Nevada County and delivered to ERMRF by or on behalf of Nevada County which may result from any such source reduction, Source Separation, or Recycling program shall cause Nevada County any liability hereunder and shall not constitute a breach of this MOU.

Placer County or Nevada County, upon request from either party, agree to meet and discuss the establishment of Recycling and waste Diversion programs to assist Nevada County and Placer County in meeting their respective Diversion goals as established by Applicable Law.

SECTION 3. PLACER COUNTY'S DUTIES AND RESPONSIBILITIES

3.1 General

Notwithstanding occasional special incidents or occurrences, Placer County shall provide or cause the provision of the services described in this Section 3 in a manner which is compliant with Applicable Law, including all applicable license(s) and/or permit(s). Nevada County acknowledges that operations at the ERMRF are managed and overseen by Placer County and performed by Placer County's Operations Contractor. Placer County shall cause the services described in this Section 3 to be performed by the Operations Contractor unless Placer County chooses to perform the obligation itself.

3.2 Receipt and Acceptance of Nevada County Materials

Placer County acknowledges that Nevada County may decide to revise collection operations and that any Source Separated Materials delivered to the ERMRF will be kept separate for purposes of Processing and reporting. As such, Placer County shall ensure that Mixed Materials, Source Separated Mixed Recyclables, Source Separated Cardboard, Green Waste, Food Scraps, and Construction and Demolition Debris delivered to the ERMRF or other Processing Facility are weighed and recorded as separate materials streams upon delivery, and all weight and related delivery information (including date, time, material type, route, and truck number) is recorded.

To the extent that such Discarded Materials have been co-collected with Discarded Materials originating from another jurisdiction, Nevada County shall cause the Collections Contractor to track the allocation based on the customer service levels collected in Nevada County relative to other jurisdictions and report those allocations to the Operations Contractor. Placer County shall cause the Operations Contractor to weigh each self-haul load delivering materials with a reported origin of Nevada County and correctly classify the type of materials associated therewith. Self-haul loads that are five (5) cubic yards or less may be estimated by the Operations Contractor based on yardage. Placer County will work with the Operations Contractor to develop facility wide yardage-to-tonnage conversion factors for various materials, including, but not limited to, Green Waste, Wood Waste, Source Separated Inert Materials, and Mixed Materials by spot weighing and performing volume measurement on various load types. All resulting conversion factors will be provided to Nevada County as part of the reports required under Section 9.

Placer County or Placer County's Operations Contractor shall inspect delivered Discarded Materials loads for Unacceptable Materials.

Placer County may deny service to Nevada County's Collection Contractor if the ERMRF is partially or completely closed due to Uncontrollable Circumstances.

3.3 Mixed Materials Processing

Placer County shall Process all Mixed Materials accepted at the ERMRF to Recover Recyclable Materials and Organic Materials. Placer County shall remove accepted, unbroken Blue Bags from Mixed Materials and shall not commingle materials contained in such Blue Bags with Mixed Materials during Processing. Placer County shall remove accepted Blue Bags from Mixed Materials and shall safely break accepted bags in order to access and appropriately Process the materials contained therein in accordance with this MOU.

3.4 Source Separated Mixed Recyclable Materials Processing

Placer County shall Process any Source Separated Mixed Recyclable Materials in accordance with its permits and Applicable Law. Placer County shall Process Source Separated Mixed Recyclable Materials separately from other Discarded Materials and shall not commingle Source Separated Mixed Recyclable Materials with Mixed Materials, Organic Materials, or Construction and Demolition Debris during Processing.

3.5 Organic Materials Transfer and Processing

- A. **Green Waste.** Placer County shall transfer and subsequently transport accepted Source Separated Green Waste and Recovered Green Waste to a Processing Facility for Processing. Placer County shall Process all Green Waste separately from other Discarded Materials, and not commingle Source Separated or Recovered Green Waste with Mixed Materials, Source Separated Mixed Recyclable Materials, or Construction and Demolition Debris during Processing. Placer County shall secure sufficient capacity to Process Green Waste delivered to the ERMRF under this MOU and shall cause Processing Facility(ies) to Process such materials in a manner which receives Diversion credit under Applicable Law (including, but not limited to, AB 939, AB 1594, and SB 1383).
- B. **Food Scraps.** At this time, source separated food scraps will not be accepted from Nevada County at the ERMRF except for staging of food waste for transport to an offsite Organic Processing Facility. Food scraps will not be removed from the Mixed Materials. Placer County and Nevada County acknowledge that both Parties' individual Food Scrap collection programs may be evolving

over the Term of this MOU in order to comply with Applicable Law including AB 939, AB 1594, AB 1826, and pending AB 1383. As such, changes in Applicable Law and enforcement guidelines for compliance may require Placer County and Nevada County to revisit this Section and revise as needed by future amendment.

3.6 Construction and Demolition Debris Processing

Placer County shall Process Construction and Demolition Debris at the ERMRF in accordance with its permits and Applicable Law (including, but not limited to, the California Green Building Standards code, also known as CalGreen). Placer County shall use reasonable business efforts to Process and Recover Construction and Demolition Debris in accordance with best industry practices for the C&D Recycling industry in a manner that provides for “highest and best use” of Recovered Materials. Placer County shall Process C&D separately from other Discarded Materials, and shall not commingle C&D with Mixed Materials, Source Separated Mixed Recyclable Materials, or Organic Materials during Processing, with the exception that Mixed Materials accepted at the ERMRF directly from the public (“self-haul”) may be commingled with C&D during Processing.

3.7 Other Materials Handling

Placer County shall ensure that the Operations Contractor receives and accepts Bulky Items delivered by the Collection Contractor in such a way as to preserve the items for reuse, or Recycling to the extent practicable, provided the Collection Contractor handles and delivers Bulky items to preserve their condition. Placer County shall ensure that the Operations Contractor properly Recycles or Disposes of all Bulky Items, and other items collected through Nevada County’s Bulky Item collection program (including E-Waste and U-Waste), which are not suitable for reuse in compliance with all permits and Applicable Law.

In the event Nevada County designates an area within Nevada County limits for reusable materials to be safely stored and made available for Nevada County residents to view and remove, the resulting reduction in the amount of Discarded Materials delivered to the ERMRF shall not cause Nevada County any liability and shall not constitute a breach of this MOU.

To the extent feasible, Placer County shall ensure that the Operations Contractor receives and accepts Household Hazardous Wastes delivered by the Collection Contractor or self-haulers in such a way as to preserve the items for reuse. Placer County shall designate an area at the ERMRF for such reusable Household Hazardous Wastes to be safely stored and made available for Nevada County residents to view and remove from the ERMRF during specified ERMRF open hours.

3.8 Residue Disposal

Placer County shall secure sufficient capacity to Dispose of Processing Residue and any other Discarded Materials which are not suitable for Diversion under this MOU. Placer County shall confirm that the owner or operator of the Disposal Facility keep all existing permits and approvals necessary for use of the Disposal Facility in full regulatory compliance.

3.9 Permits

Placer County shall obtain and maintain all permits required under Applicable Law to perform the services described in this MOU and shall provide services in compliance with such permits.

Placer County is responsible for paying any fines or penalties imposed for noncompliance with, or violation of, Applicable Law, permits, or for failure to obtain permits. Placer County shall notify Nevada County of any notices of violation, cease and desist orders, or any other regulatory action related to the permits or operation of the ERMRF. Such notification shall occur within five (5) business days if related to a circumstance which will materially impact operations under this MOU and shall otherwise be included in Placer County's report required under Section 9.2. Upon Nevada County's request, Placer County and the Operations Contractor shall meet with Nevada County to discuss the intended corrective actions to ensure that the facility remains operational and is compliant with all permits and Applicable Law.

3.10 Modifications to Services or Facilities

In accordance with Section 9.2, Placer County shall report to Nevada County the names of Processing Facilities used to Process Discarded Materials generated in Nevada County. If Nevada County does not approve of any such Processing Facility, Nevada County shall have the right, in its sole discretion and at its sole expense, to redirect the impacted material stream to an alternate facility without causing breach of this MOU.

In the event of an Uncontrollable Circumstance which results in the inability to use the ERMRF and/or Disposal Facility, the parties shall meet and confer regarding appropriate alternatives as promptly as possible. Within one (1) business day of either Party becoming aware of the circumstance, it shall notify the other Party of the nature of the issue, the likely duration, and any planned actions to resolve the inability to use the ERMRF or Disposal Facility. During the pendency of such Uncontrollable Circumstance and, at least, until a suitable alternative can be agreed upon by the parties, Nevada County shall be excused from its obligation to deliver all Discarded Materials to Placer County and Placer County shall be excused from its obligation to receive all Discarded Materials from Nevada County.

Nevada County may request, and Placer County may perform, additional services (including performance of additional material Recovery activities or specific methods of material Recovery) for which it is qualified and permitted. Disposal, Processing, and/or transport Rates may be adjusted (either reduced or increased) to give effect to these adjustments. If Placer County and Nevada County cannot agree on approach, costs, terms, and/or conditions of services related to the change, Nevada County may permit persons other than Placer County to provide those services at a location selected by Nevada County. Such delivery of Discarded Materials to an alternative service provider shall be subject to the provisions of Section 5.3 and shall not be considered a breach of Nevada County's obligations under this MOU.

Placer County shall use its best efforts to resume normal operation of the ERMRF and to find an alternate facility for the Processing and/or Disposal of Discarded Materials as soon as possible.

3.11 Facility Operating Hours

At a minimum, Placer County shall keep the ERMRF open for receiving Discarded Materials delivered by Nevada County's Collection Contractor during the hours of 7:00 a.m. to 5:00 p.m. Monday through Saturday, and shall keep the ERMRF open for receiving Discarded Materials from individuals self-hauling materials during the hours of 8:00 a.m. to 4:00 p.m. Monday through Saturday.

Hours for the receipt of Discarded Materials on holidays shall be from 8 a.m. to 12 p.m., except for New Year's Day, Thanksgiving Day, and Christmas Day, upon which days it will be closed. Holidays are defined in this Section as New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Good Friday, Memorial Day, July 4th (Independence Day), Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

3.12 Ownership of Materials

Once Nevada County's Discarded Materials are received by Placer County, ownership and the right to possession of Nevada County's Discarded Materials shall transfer to Placer County or Placer County's Operations Contractor. Placer County may retain, recycle, process, dispose of, and otherwise use Nevada County's Discarded Materials for any lawful purpose, pursuant to the provisions of this MOU.

Both benefits and liabilities resulting from ownership and possession of Nevada County's Discarded Materials shall accrue to Placer County with the exception that all payments of California curbside redemption credits made by the California Department of Conservation shall accrue to Nevada County (i.e. those applicable to the curbside number (CS#) assigned by the California Department of Recycling and Resource Recovery for Nevada County). Said credits shall include annual City/County payments and curbside supplemental payments but not include the "processor payment" benefits of Curbside Redemption Values (i.e. CRV) which shall accrue to the benefit of Placer County.

3.13 Maintenance of Landfill

To the extent feasible, Placer County shall safely operate, maintain, and manage (including fulfillment of State funding requirements) the ERL in compliance with Applicable Law not only during the Term but also thereafter until and during the post-closure period(s). Placer County is solely responsible, operationally and financially, for: (i) the appropriate closure and post-closure activities of the ERL; (ii) the establishment and funding of any reserve funds required by Applicable Law for the purposes of providing funds for the payment of post-closure activities relating to the ERL; and, (iii) any corrective actions related to management of the ERL.

Nevada County acknowledges that Placer County is incurring a long-term liability by monitoring and maintaining the Eastern Regional Landfill which will extend at least thirty (30) years after the landfill ceased accepting waste. Both Nevada County and Placer County acknowledge and agree that once solid waste is landfilled, it is considered commingled and it becomes impossible to segregate liability except on a proportional tonnage basis. Nevada County acknowledges that residents and businesses of Eastern Nevada County, outside of the incorporated limits of the Town of Truckee who used the Eastern Regional Landfill during the operational period of the landfill (1972 to 1995), should pay their fair share of the cost of monitoring and maintaining the closed landfill and related facilities, and other reasonable costs for the remediation of damages and any liability associated with the closed landfill. The oldest data available in Placer County's files related to the proportional share of incoming waste is from the second quarter of 2007. Based on this information, Nevada County's portion of the waste delivered to the ERMRF from residents outside the limits of the Town of Truckee was 1% of the total, while Placer County's portions, including Franchises Areas 2 and 3, was 46.6% of the total.

Placer County shall contract for or provide any required engineering services for landfill gas collection and control system monitoring, surface water, and ground water quality monitoring at the former ERL, at no additional cost to Nevada County beyond the compensation provided under this MOU.

3.14 Equipment

Placer County or the Operations Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, and other consumables as appropriate and necessary to operate the ERMRF and provide the services required by this MOU. Placer County and/or the Operations Contractor shall repair and maintain all equipment at no cost to Nevada County beyond the compensation provided under this MOU.

3.15 Nevada County Right to Enter and Observe

Upon approval of Placer County, Nevada County and its designated representative(s) may enter and observe the ERMRF during ERMRF operating hours, conduct studies or surveys of the ERMRF, and meet with the ERMRF manager(s), Operations Contractor, or their representatives, provided that Nevada County and its representatives comply with Placer County's reasonable safety and security rules and do not interfere with the work of Placer County or the Operations Contractor. Placer County shall ensure that its employees and/or the Operations Contractor cooperate with Nevada County and respond to Nevada County's reasonable inquiries.

3.16 Emergency Services

Subject to permit restrictions, Placer County shall provide emergency services at the ERMRF, at Nevada County's request, in the event of major accidents, disruptions, or natural calamities, to the extent that Placer County is not prevented from doing so as a result of the same emergency condition. Placer County and Nevada County shall work together to develop and maintain an emergency action plan for disaster preparedness. Placer County shall be paid its direct costs of providing emergency services no later than thirty (30) days following submission of an invoice therefore in form and content sufficient to determine and corroborate those direct costs.

3.17 Minimum Diversion Requirements

Placer County shall, to the best of its ability, work with the Operations Contractor to develop facilities and programs which will help Nevada County achieve Diversion goals established by Nevada County and Applicable Law.

Placer County shall use its best efforts to achieve the minimum annual facility wide Diversion rates included in Placer County's agreement with Placer County's Operations Contractor as shown in the table below:

Material Type	Guaranteed Minimum Diversion Level
Mixed Materials and Construction and Demolition Debris (Including ACD)	30%
Mixed Materials (Non ACD)	20%

The Guaranteed Minimum Diversion Level (GMRL) is calculated in the following manner:

$$\text{GMRL} = 1 - A/B$$

Where:

A = tons of Residual Waste Disposed of at the Disposal Facility, and
B = tons of Discarded Materials received at the ERMRF, excluding Source Separated Green Waste

The GMRL may be subject to change based on future negotiations of Placer County's agreement with Placer County's Operations Contractor.

In the event that the ERMRF has failed to achieve these targets for any given Fiscal Year, or if Nevada County is otherwise unsatisfied, Nevada County reserves the right to redirect one or more material stream(s) to another facility, provided that such facility has met or exceeded the Diversion levels demonstrated at the ERMRF over the same period, subject to the provisions of Section 5.3.

Recyclable Materials, Organic Materials, and Construction and Demolition Debris (with the exception of Processing Residue) delivered to the ERMRF by or on behalf of Nevada County under this MOU shall not be Disposed of in lieu of Recycling, Composting, or other method of Processing for Diversion (including reuse) without the expressed written approval of Nevada County. If, for reasons beyond its reasonable control, Placer County (or other Processing Facility operator) believes that it cannot Divert the Recyclable Materials, Organic Materials, or C&D from Disposal, the provisions of Section 5.3 shall apply.

3.18 Contamination Procedures

- A. **Nevada County Obligation.** Nevada County, through its Discarded Materials Collection Franchise Agreement, shall ensure that the Collection Contractor is contractually obligated to comply with procedures to identify and remove or otherwise mitigate circumstances associated with Hazardous Waste, Medical Waste, Household Hazardous Waste, or other contaminants encountered through collection of Discarded Materials generated in Nevada County. Upon request, Nevada County shall provide Placer County with documentation of such procedures.

SECTION 4. JOINT DUTIES AND RESPONSIBILITIES

4.1 Quarterly Meeting

Placer County and Nevada County shall meet on a quarterly basis to discuss significant Discarded Materials collection, Processing, and Disposal issues, particularly those which affect either party's use of the ERMRF or other Facilities.

4.2 Hazardous Waste

Placer County and Nevada County shall cooperate to the fullest extent possible to keep Hazardous Waste from entering the waste stream by educating the public, offering appropriate disposal options, and instituting load-checking programs. The scope and content of the load-checking programs shall be mutually agreed upon by Nevada County and Placer County and shall be paid for out of the Rates charged by Placer County pursuant to Section 5.

SECTION 5. PLACER COUNTY COMPENSATION

5.1 Rates

Placer County may charge and collect Rates from Nevada County's Collection Contractor for each Ton of Nevada County's Discarded Materials that are delivered to the ERMRF for transfer and/or Processing.

Placer County's compensation for performance of all its obligations under this MOU shall be Rates. The Rates charged to Nevada County for handling Discarded Materials shall not be higher than Rates offered by Placer County or Placer County's Operations Contractor to other Persons for similar services. Placer County acknowledges that the obligation to pay Rates for acceptance of Nevada County's Discarded Materials at the ERMRF rests with Nevada County's Collection Contractor and with individuals self-hauling waste to ERMRF. Nevada County shall not be financially responsible for any delay or failure by the Collection Contractor or any Person to timely make payment for Discarded Materials accepted at ERMRF. The initial Rates as of the Effective Date of this MOU are as follows:

Material Type	FY 2019-20 Rate	FY 2020-21 Rate
Mixed Materials	\$81.00/Ton	\$81.00/Ton
Source Separated Recyclable Materials	\$81.00/Ton	\$81.00/Ton
Source Separated Cardboard	\$00.00/Ton	\$00.00/Ton
Source Separated Green Waste, Wood Waste, and Source Separated Inert Materials	\$8.00/Cubic Yard	\$8.00/Cubic Yard
Construction and Demolition Debris	\$81.00/ Ton	\$81.00/ Ton

5.2 Adjustment of Rates

Placer County may adjust the Rates for the acceptance of Discarded Materials once annually, with the new Rates taking effect on July 1 of each year. In order to ensure that the compensation under this MOU is considered in the establishment of Nevada County's collection Rates, Placer County shall endeavor to notify Nevada County of any anticipated or proposed changes in the Rates under this MOU by February 1.

5.3 Material Change in Markets or ERMRF Economics

In accordance with Section 2.2, Nevada County and Placer County agree that there is no minimum volume of material required to be delivered by Nevada County under this MOU, and that nothing in this MOU is intended to impair Nevada County's ability to meet any existing or future waste reduction and/or Diversion goals. Notwithstanding the provisions of Section 2.2, in the event that Nevada County implements new, or modifies existing, source reduction, Source Separation, Recycling, Composting, or other material recovery activities which result in the contents of the Discarded Materials delivered to the ERMRF from Nevada County materially changing such that the economic model of the ERMRF operations change, upon Placer County's request, Nevada County and Placer County shall meet and confer to discuss an adjustment to the Rates or services provided. Placer County reserves the right to establish variable tipping fees by jurisdiction based on changes in incoming waste streams.

In accordance with Section 3.17, Nevada County and Placer County agree that Placer County shall use its best efforts to achieve minimum annual Diversion rates. Placer County acknowledges that Nevada County prioritizes Diversion of Discarded Materials from Disposal, and places great importance on Placer County's ability to Recover materials through the programs and services performed under this MOU. Nevada County acknowledges that doing so requires Placer County to engage in marketing such Recovered Materials on the open market, which involves complex global commodities that Placer County has little influence over. Nevada County also acknowledges that the ERMRF permit limits the amount of materials

which may be safely stored at the facility. Under most market conditions, Placer County shall market such resources to ensure that they are recycled into the productive economy. Notwithstanding the provisions of Section 3.17, in the event that Placer County, for reasons beyond its reasonable control, cannot Divert and market Recovered Materials specified for Diversion under this MOU, Placer County may Dispose of such materials, provided that Placer County provide notice to Nevada County within forty-eight (48) hours of such Disposal. Upon request from either Party, Nevada County and Placer County shall meet and confer to discuss the conditions preventing Recovery of such materials, as well as potential strategies for achieving Recovery of such materials.

In either such event, Placer County shall share information determined necessary by Nevada County to understand the change in economics, along with an explanation of any proposed changes in Rates and/or scope.

SECTION 6. BREACH, ENFORCEMENT AND TERMINATION

6.1 Default

- A. **General.** In the event that either party hereto breaches any obligation under this MOU, the other party shall have the right to take any action at law or in equity (including without limitation actions for injunctive relief, mandamus, and specific performance) it may have to enforce the performance of any obligations to be performed hereunder. The rights and obligations of the parties hereto pursuant to this Section 6 shall survive the termination or expiration of this MOU.
- B. **Excuse from Performance.** In the event that either Nevada County or Placer County is prevented from performing its obligations under this MOU by an Uncontrollable Circumstance, it shall not constitute an event of default of this MOU, so long as the non-performing party in good faith has used its best efforts to perform its respective obligations.

The party claiming excuse from performance shall, within five (5) business days (or within one (1) business day if the provisions of Section 3.10 apply) after such party has notice of the effect of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section. Specifically, such information shall include the following:

1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder will be delayed;
3. Its estimated impact on the other obligations of such party under this MOU; and,
4. Potential solutions or mitigating actions which might be taken by Placer County or Nevada County and any areas where costs might be reduced and the approximate amount of such cost reductions.

While the delay continues, Placer County or Nevada County shall give daily notice to the other party (unless otherwise requested in writing by the other party) updating the information previously submitted. In the event of circumstances which the parties agree will result in ongoing non-performance, Nevada County and Placer County shall meet and confer in order to

collaboratively arrive at a solution for such non-performance. If either party validly exercises its rights under this Section, the parties hereby waive any claim against each other for any damages sustained thereby.

6.2 Termination

Either Nevada County or Placer County may terminate this MOU in the event of a material breach by the other party, provided that: (i) the nonbreaching party has provided the breaching party notice stating the nature of the breach and providing not less than thirty (30) days for the breach to be cured; and, (ii) the breach remains uncured following the expiration of the cure period. In the event that such a breach involves or results in the inability of Nevada County to deliver or the inability of Placer County to accept Discarded Materials, the delivery of Discarded Materials to alternative locations during the pendency of the breach shall not be considered a separate breach.

6.3 Waiver of Defenses

No action of Nevada County or Placer County pursuant to this MOU, 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 MOU. No course of dealing or delay by either party in exercising any right, power, or remedy under this MOU shall operate as a waiver thereof or otherwise prejudice such party's rights, powers, or remedies.

SECTION 7. INDEMNIFICATION

Each Party shall defend, indemnify and hold harmless the other Party, including its affiliates, officers, directors, employees, agents, successors and assigns from and against all Claims of third parties to the extent arising out of (a) Party's gross negligence or willful misconduct in performing any of its obligations under this MOU, or (b) a material breach by a Party of any of its representations, warranties, covenants, or agreements under this MOU. The indemnities in this Section shall survive termination of this MOU.

SECTION 8. INSURANCE

The Parties agree and acknowledge that each Party is a self-insured public entity which is acceptable to each Party and satisfies insurance requirements under this MOU. Upon request, a Party will provide as evidence a copy of the self-insured coverage within ten (10) days of said request.

SECTION 9. RECORD KEEPING AND REPORTING

9.1 Records

Not later than thirty (30) days from the Effective Date, Placer County shall establish, or cause the Operations Contractor to establish, accounting systems to accurately record and report the weight (or cubic yards converted to weight for loads less than five (5) cubic yards) and jurisdictional origin of Discarded Materials received ("inbound" tonnages) at the ERMRF for each of the following material types, at a minimum: Mixed Materials, Source Separated Mixed Recyclable Materials, Source Separated Cardboard, Source Separated Green Waste, Source Separated Food Scraps, Bulky Items, and Construction and Demolition Debris, provided material types are delivered to the ERMRF in separate identifiable loads. Placer County shall record the recovery of materials and destination of materials transported to each Facility ("outbound" tonnages) using allocation factors, which may be developed from analysis of inbound tonnages.

Placer County shall maintain books and records reflecting the date and amount of each type of Discarded Material delivered to the ERMRF by the Collection Contractor, and Placer County's cost of Processing and/or Disposing of such Discarded Materials at each Facility. Each party to this MOU may review the other party's books and records with respect to matters relevant to the performance by either party under this MOU or otherwise related to the operation of the ERMRF to the extent allowed under the California Public Records Act, treating both parties hereto as natural Persons for purposes of the Public Records Act.

9.2 Reporting

Placer County shall require the Operations Contractor to prepare a quarterly report within fifteen (15) days after the end of the prior calendar quarter in form and content mutually agreed upon between Placer County and Nevada County. The quarterly report shall include, at a minimum:

- A. Total monthly tonnage of Nevada County's Mixed Materials, Source Separated Mixed Recyclables, Source Separated Cardboard, Source Separated Green Waste, Source Separated Food Scraps, Bulky Items and Construction and Demolition Debris received at the ERMRF;
- B. Tonnage delivered to each Facility by material type, clearly identifying those tons that are Disposed and those that are Recovered;
- C. Recovered Materials tonnage marketed (by commodity and including average commodity value for each);
- D. Units of Bulky Items Diverted;
- E. Allocation methodology and basis values utilized to calculate any values in subsections (A) through (D), if actual values are not reported;
- F. Narrative reconciliation of the values reported in subsections (A) and (B); and,
- G. The names, locations, and contact person for each Facility used during the reporting period.

SECTION 10. GENERAL TERMS AND CONDITIONS

10.1 Entire Agreement

This MOU, including Exhibit A hereto, represents the complete Agreement between Nevada County and Placer County regarding the subject matter hereof, and supersedes all prior written or verbal understandings and agreements. This MOU may be amended or terminated only by a writing signed by authorized representatives of both parties.

10.2 Relationship of the Parties

Neither Nevada County nor Placer County shall have any responsibility with respect to services provided by, or obligations or liabilities assumed by, the other party hereto. Nothing in this MOU shall be deemed to make either party a partner, agent, or legal representative of the other party or to create any fiduciary relationship between the parties.

10.3 Further Assurance

At any and all times Nevada County and Placer County shall, to the extent authorized by law, pass, make, do, execute, acknowledge, and deliver any and every such further resolution, act, deed, instrument, and assurance as may be necessary or reasonably requested by the other party to give full effect to this MOU.

10.4 Binding Effect

This MOU shall bind and inure to the benefit of the parties hereto and any successor in interest.

10.5 Notice

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 parties' respective addresses set forth below. Changes to such addresses may be made from time to time by either party by notice to the other party.

NEVADA COUNTY
950 Maidu Avenue
Nevada City, CA 95959
Attn: Solid Waste Program Manager

COUNTY OF PLACER
3091 County Center Drive, Suite 170
Auburn, CA 95603
Attn: Environmental Engineering Program Manager

10.6 Waiver

The waiver by either Placer County or Nevada County of any breach or violation of any provisions of this MOU shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Placer County or Nevada County of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this MOU. Failure of either Placer County or Nevada County to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to perform, whether determined to be a breach, excused performance, or unexcused defaults by the other party.

10.7 Severability

If any clause, provision, subsection, section, or exhibit of this MOU shall be determined to be invalid by any court of competent jurisdiction, then Placer County and Nevada County shall:

- A. Promptly meet and negotiate a substitute for such clause, provision, section, or exhibit which shall, to the greatest extent legally permissible, effect the intent of Placer County and Nevada County.
- B. If necessary or desirable to accomplish item (A) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this MOU.
- C. Negotiate such changes in, substitutions for, or additions to, the remaining provisions of this MOU as may be necessary in addition to and in conjunction with items (A) and (B) above, to effect the intent of Placer County and Nevada County in the invalid provision. The invalidity of such clause,

provision, subsection, section, or exhibit shall not affect any of the remaining provisions hereof, and this MOU shall be construed and enforced as if such invalid portion did not exist.

10.8 Counterparts

This MOU may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned, and all of which together constitute the same instrument.

COUNTY OF PLACER

COUNTY OF NEVADA

By: _____

By: _____

Chair

Chair

Approved as to form:

Approved as to form:

Placer County Counsel

Nevada County Counsel

EXHIBIT A: DEFINITIONS

For purposes of this Memorandum of Understanding, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this MOU:

“Applicable Law” means any law, rule, regulation, requirement, guideline, permit, action, determination, or order of any governmental body having jurisdiction, applicable from time to time to the receipt, acceptance, transfer, transport, materials storage, Processing and/or Disposal services required by this MOU; the siting, design, acquisition, equipping, financing, ownership, possession, testing, operation, or maintenance of any of the Facilities; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, governmental protection, accommodation of the disabled, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, the payment of per-ton charges on solid waste facilities imposed by a governmental entity other than Nevada County, and further including Placer County Code, Nevada County Code and Nevada County Integrated Waste Management Plan and Nevada County’s SRRE).

“Blue Bag” means a plastic bag for storing Recyclable Materials prior to collection and Delivery.

“Bulky Items” means large and small household appliances, furniture, tires, carpets, mattresses, and similar large items which cannot be contained within a standard residential collection container.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by Nevada County or Placer County of each party’s obligations under this MOU or on the cost to either party therefor (except for payment obligations):

- A. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or,
- B. The order or judgment of any governmental body, on or after the Effective Date to the extent such order or judgment is not the result of willful or negligent action, error, or omission or lack of reasonable diligence of Nevada County or of Placer County, whichever is asserting the occurrence of a Change in Law provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

“Collection Contractor” means Nevada County’s contracted waste hauler, or other Person or Nevada County department responsible for removing Discarded Materials from premises within Nevada County.

“Commercial” shall mean of, from, or pertaining to non-Residential premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations.

“Composting” or **“Compost”** (or any variation thereof) means a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.

“Construction and Demolition Debris (C&D)” includes loads of discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair, or demolition operations

on any pavements, excavation projects, houses, commercial buildings, or other structures, excluding Unacceptable Materials.

“Dispose” or “Disposal” (or any variation thereof) means the final disposition of Residue or other non-Diverted Discarded Materials at a landfill.

“Disposal Facility” means the Lockwood Landfill, located at 2700 East Mustang Road, Sparks, NV 89434, which was selected by Placer County.

“Discarded Materials” means Mixed Materials, Recyclable Materials, Green Waste, Food Scraps, Bulky Items and C&D, individually or collectively.

“Diversion (or any variation thereof)” means activities which reduce or eliminate the amount of Residual Waste to be Disposed including, but not limited to, Recycling, Composting, anaerobic digestion, reuse, or other means of Processing.

“Eastern Regional Landfill” or “ERL” means the closed disposal facility located at the intersection of California Highway 89 and Cabin Creek Road, Truckee, CA 96161, which is owned by Placer County.

“Eastern Regional Material Recovery Facility” or “ERMRF” means the transfer and Recycling facility located at the intersection of California Highway 89 and Cabin Creek Road, Truckee, CA 96161, which is owned by Placer County.

“Effective Date” means the date upon which both Nevada County and Placer County have signed the MOU.

“Electronic Waste (E-Waste)” means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste and thus require special handling, Processing, or Disposal.

“Facilities” means any combination of the ERMRF, Disposal Facility, and/or Processing Facilities.

“Food Scraps” means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking, or handling of food stuffs; (iii) discarded paper that is contaminated with food waste; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper, and which are separated from Mixed Materials prior to Delivery. Food Scraps are a subset of Organic Materials.

“Green Waste” means grass, lawn clippings, pine needles, shrubs, plants, weeds, small branches, and other forms of organic materials generated from landscapes or gardens. Green Waste is a subset of Organic Materials.

“Hazardous Waste” means any waste which by reason of its quality, concentration, composition, or physical, chemical, or infectious characteristics may do either of the following: cause, or significantly

contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged, or any waste which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law. Hazardous Waste includes radioactive materials which are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

“Household Hazardous Waste” means waste materials determined by CalRecycle, the Department of Toxic Substances Control, the State Water Resources Control Board, or the Air Resources Board to be:

- A. Of a nature that they must be listed as hazardous in State statutes and regulations;
- B. Toxic/ignitable/corrosive/reactive; and/or,
- C. Carcinogenic/mutagenic/teratogenic,

which are discarded from residential premises as opposed to businesses. Household Hazardous Waste shall not include Unacceptable Materials.

“Liquid Waste” means watered or dewatered sewage or sludge.

“Medical Waste” means materials, substances, or items which may be reasonably considered infectious, pathological, or biohazardous, originating from hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, medical offices, mortuaries, veterinary facilities, and other similar facilities.

“Memorandum of Understanding” or “MOU” means this Agreement for the Processing and Disposal of Discarded Materials between Nevada County and Placer County.

“Mixed Materials” means all garbage, refuse, rubbish, and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the generator thereof at the time of such discard or rejection, which are acceptable at Class III landfills under Applicable Law, and which are originally discarded by the first generator thereof and have not been previously Processed. Mixed Materials does not include Source Separated Recyclable Materials, Source Separated Organic Materials, Hazardous Waste, Medical Waste, Liquid Waste, C&D, or self-hauled waste.

“Operations Contractor” means Placer County’s contracted ERMRF operator, or other Person or Placer County department responsible for daily operations at the ERMRF and ERL.

“Organic Materials” means any combination of Food Scraps and Green Waste.

“Person(s)” means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

“Placer County” means the County of Placer, California, a political subdivision of the State, acting through its Board of Supervisors.

“Process” or “Processing” means the removal of Recovered Materials from Discarded Materials at the ERMRF and/or other Processing Facility(ies) for the purpose of making such Recovered Materials available for reuse, Recycling and/or marketing.

“Processing Facility” means any facility, selected by Placer County, which is permitted for receiving and Processing Discarded Materials generated in Nevada County and delivered to such facility by Placer County, or Placer County’s Operations Contractor, operating in accordance with such facility’s permits and Applicable Law.

“Rate” means the dollar amount approved by Nevada County and Placer County that Placer County may charge Nevada County (by way of Nevada County’s Collection Contractor) for providing services under this MOU. A Rate has been established for each individual material stream to be handled under this MOU and the initial Rates are presented in Section 5.

“Recover” means and refers to the removal of certain materials from Mixed Materials for the purpose of Diversion and/or Processing by means of sorting, picking, pulling, or other automated or manual process.

“Recovered Materials” means the products, excluding Residual Waste, produced and/or Recovered by the Processing of Discarded Materials.

“Recycle,” “Recyclable,” or “Recycling” (or other variations thereof) means and refers to the process of sorting, cleansing, treating, reconstituting, or otherwise Processing materials that are or would otherwise become Residual Waste and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

“Recyclable Materials” means those material types which are collected by Nevada County’s Collection Contractor through its Source Separated Recyclable Materials program and delivered to the ERMRF for Processing. Such materials may include, but not be limited to: newspaper, cardboard, mixed color paper, white paper, junk mail, magazines, telephone books, paper bags, cereal and food boxes, egg cartons, plastic bottles and containers labeled #1-7, plastic milk containers, detergent containers, clear, brown, and green food and beverage container glass, cans of aluminum, steel, tin, food cans, empty aerosol cans, pipe tins, or other materials having economic value.

“Residential” shall mean of, from, or pertaining to a single-family, or multi-family premises, including single-family homes, apartments, condominiums, Nevada County house complexes, mobile home parks, and cooperative apartments.

“Residue” or “Residual Waste” means any material remaining after the Processing, by any means and to any extent, of materials handled under this MOU.

“Source Separated” means the segregation from Mixed Materials, by the generator, of materials designated for separate collection and delivery for some form of materials Recovery or special handling.

“Source Separated Inert Materials” means soil, rock, concrete, asphalt, sand, and similar materials that do not decompose or putresce, which are source separated from other Discarded Materials, and which are not Processed at the ERMRF but instead are sent directly from the scalehouse to the reclamation area

at the facility. Source Separated Inert Materials are charged a separate Rate from Mixed Waste at the scalehouse.

“Source Separated Mixed Recyclables” means Recyclable Materials collected through Nevada County’s containerized Recyclable Materials program, and Recyclable Materials collected through Nevada County’s Blue Bag Recyclable Materials program, collectively or individually.

“Term” means the term of this MOU, including extension periods if granted, as provided for in Section 1.

“Unacceptable Materials” means materials that cannot be reasonably accepted, handled, or Processed at the ERMRF. These include, but are not limited to, Hazardous Waste, Liquid Waste, and Medical Waste.

“Uncontrollable Circumstance” means only one (1) or more of the following specified acts, events, or conditions, whether the Facility(ies), Placer County, the Collection Contractor, the Operations Contractor, or Nevada County, to the extent that it materially and adversely affects the ability of Nevada County or Placer County to perform any obligation under the MOU (except for payment obligations), if such act, event or condition is beyond the reasonable control, and is not also the result of the willful or negligent act, error, or omission or failure to exercise reasonable diligence on the part of Nevada County or Placer County, provided however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of Nevada County or Placer County:

- A. An act of God (but not including reasonably anticipated weather conditions for Nevada County or Placer County), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance.
- B. A Change in Law (as defined herein).
- C. Preemption of materials or services by a governmental body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of Placer County’s operating assets or equipment.
- D. The first seven (7) days of a strike, work stoppage, or other labor dispute or disturbance by employees of Placer County or any of the Facility operators, in connection with the services to be provided under this MOU.
- E. A strike, work stoppage, or other labor dispute or disturbance by employees of third parties other than the Facility operators occurring with respect to any activity performed in connection with the services to be provided under this MOU.

It is specifically understood that only the acts or conditions specified above shall constitute Uncontrollable Circumstances. Without limiting the generality of the foregoing, the Parties acknowledge that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- A. General economic conditions, interest or inflation rates, currency and commodity market fluctuations or changes in the cost or availability of fuel, commodities, supplies, or equipment (excluding economic conditions described in Section 5.3);
- B. Changes in the financial condition of Nevada County, Placer County, or any of the Facility operators, affecting their ability to perform their obligations;
- C. The consequences of errors, neglect, or omission by Placer County, or any of the Facility operators, affecting their ability to perform their obligations;

- D. The failure of Placer County to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;
- E. Union work rules, requirements, or demands which have the effect of increasing the number of employees employed in connection with the services provided under this MOU, or otherwise increase the cost to Placer County of operating and maintaining the ERMRF or ERL;
- F. Any strikes, work stoppages, or other labor disputes or disturbances by employees of Placer County or any of the Facilities in connection with the services required under this MOU, and which last beyond seven (7) days;
- G. Any failure of any Facility operator to furnish labor, materials, service, or equipment for any reason;
- H. Vehicle or equipment failure;
- I. Any impact of prevailing wage law, customs, or practices on Placer County's construction or operating costs; or,
- J. Any act, event, or circumstance occurring outside of the United States.

“Universal Waste (U-Waste)” means all wastes as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Waste.