Twenty Comments on CAA California's Draft Funding and Services Agreement and Project Schedules

Submitted to Circular Action Alliance California, September 7, 2026, during the public comment period ending October 24, 2026.

Why this matters if you haul or process recyclables in California

Circular Action Alliance, the producer responsibility organization administering SB 54, has published consultation drafts of the contracts that every California recycling service provider will sign to be reimbursed under the program: the Funding and Services Agreement and three Project Schedules covering capital investment, cost reimbursement, and services. These documents decide how and when you get paid, what you give up to get paid, and what happens when the two of you disagree.

Read from the seat of a hauler or MRF operator in the $5 million to $50 million range, the drafts do not read like a reimbursement program. They read like a secured credit facility. Signing the Capital Investment Schedule grants CAA a first-priority lien on funded equipment, with the right to file UCC financing statements and to repossess without a court order. Funding is reduced by "cost savings, or other economic benefit of any kind," so the better a project's return, the less of it is funded. Approved funding can be nullified later with no time limit. Anything you report carries no expectation of confidentiality and can be published. And CAA is excused from performing if its own producer members do not pay their fees.

Some of these provisions conflict with the regulation that governs the program, 14 CCR Section 18980.8, or with the statute, or with CAA's own Program Plan. Where a contract is narrower than the regulation, the regulation controls, and each Schedule says so. Those provisions are the strongest targets for comment because CAA gains nothing by keeping them.

The twenty comments below were submitted through CAA's public comment form. They follow the form's structure: a section reference, a statement of what the draft gets right, the concern, and a proposed resolution. They are written for operators and the lenders who finance them, not for lawyers, and every claim is cited to the draft, the regulation, the statute, or the Program Plan.

How to use these

If you operate in California, read the drafts before you sign them. The lien and loss-payee provisions (Comments 1 and 6) belong in front of your lender and your counsel now, not at closing. The retroactivity comment (Comment 3) matters if you committed capital at any point since January 1, 2023.

If you want to comment yourself, you are welcome to adapt any of these. One comment per submission through the form at circularactionalliance.org/ca/funding-services-agreement-project-schedules. Comments that cite the regulation or the statute carry more weight than comments that describe hardship, because Applicable Law controls over the contract.

A note on section numbers. CAA replaced the Funding and Services Agreement PDF on August 27, 2026 with a renumbered version (the file name ends in "updated"). Section references below follow the updated version. If your copy has Dispute Resolution at Section 17 rather than Section 14, you have the superseded draft.

Sources. The four CAA California consultation drafts posted August 2026 (the "Agreement," "Capital Investment Schedule," "Cost Reimbursement Schedule," and "Services Schedule"); California Code of Regulations, Title 14, Section 18980.8, final text approved May 5, 2026 (the "Regulation"); the CAA California Program Plan revised June 18, 2026 (the "Program Plan"); California Public Resources Code Sections 42051.1

and 42060 as currently codified (the "Act"); and Oregon Revised Statutes 459A.923 for the one cross-state comparison.

The twenty comments at a glance

1. First-priority lien and security interest on funded equipment (Capital Investment Schedule Sections 6-8, 12)
2. Netting of cost savings and all economic benefit from funding (Capital Investment Schedule Section 1(b))
3. Eligibility of capital committed since January 1, 2023 (Capital Investment Schedule Section 15; Agreement Section 4(a))
4. Mixed-use asset allocation and retroactive interest (Capital Investment Schedule Section 3)
5. Full repayment for moving or selling a funded asset (Capital Investment Schedule Sections 4-5; Agreement Section 5(d))
6. CAA as loss payee and the Collateral indemnity (Capital Investment Schedule Sections 13, 14(f))
7. Optional and fractional inflation adjustment (Cost Reimbursement Schedule Section 3)
8. Daily scale-ticket reporting burden and whether it is reimbursable (Cost Reimbursement Schedule Exhibit C)
9. Unpublished standard rates and the one-way election (Cost Reimbursement Schedule Section 2)
10. Payment at 60 days from invoice versus Oregon's 45 days from request (Services Schedule SOW Section 5; Agreement Section 4(b))
11. Performance bond sized to total funding (Services Schedule Sections 5, 8(d); Agreement Section 9)
12. Nullification of approved funding with no time limit (Agreement Section 4(d))
13. Audit cost-shifting with no materiality threshold (Agreement Section 8)
14. Force majeure for producer nonpayment; no guarantee of work (Agreement Section 1; Section 3(f))
15. Dispute resolution that departs from the regulation (Agreement Section 14)
16. No confidentiality and a license to publish reported data (Agreement Section 7)
17. Indemnification breadth and the five-year post-term covenant (Agreement Section 13)
18. One-sided termination and unilateral amendment (Agreement Sections 3(a), 11)
19. Version control: two Agreement drafts with different numbering (all documents)
20. Bracketed terms: the prices are not filled in (all documents)

Part 1: Project Schedule, Capital Investment

Comment 1: First-priority lien and security interest on funded equipment (Capital Investment Schedule Sections 6-8, 12)

Reference: Capital Investment Schedule, Sections 6, 7, 8, and 12 **Type:** Technical

Supportive: We recognize that CAA California has a legitimate interest in protecting producer funds against misuse and in securing remittance obligations tied to funded assets.

Concern: Section 6(a) grants CAA California a continuing first priority lien and security interest in all funded assets, together with all proceeds (including accounts, chattel paper, deposit accounts, and payment intangibles), all replacements and accessions, and all insurance proceeds, with irrevocable authorization under Section 7(a) to file financing statements in any jurisdiction. Section 12 adds self-help repossession without court process, exercisable without notice.

The Regulation defines covered costs as costs that the PRO is "obligated to pay" (Section 18980.8(g)), and the Act requires the PRO's budget to be "designed to fully fund the costs necessary to implement this chapter," expressly including "improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates" (PRC Section 42051.1(j)(1) and (j)(1)(B)). Capital infrastructure is a budgeted payment obligation in the statute itself, not an extension of credit. Nothing in the Act, the Regulation, or the Program Plan contemplates the PRO taking a security interest in a recipient's assets as a condition of paying costs it is obligated to pay. As drafted, the Schedule recharacterizes a statutory payment obligation as secured lending.

The practical consequence is severe. Nearly every recycling service provider in the lower middle market operates under an asset-based revolving credit facility or equipment financing secured by a blanket first lien with a negative pledge covenant. Executing this Schedule places the recipient in immediate default under its existing credit agreements, and a CAA first lien removes the funded asset from the borrower's collateral base. No leveraged operator can accept capital funding without its senior lender's consent, and no framework for obtaining that consent is provided. The reach into accounts and payment intangibles compounds this, because receivables are the core of an asset-based borrowing base. Section 12's remedies, exercisable without notice, are also inconsistent with the 30-day cure right in Section 11(d) of the Agreement.

Proposed Resolution: Limit any security interest to a purchase-money-style interest in the specific funded asset and its identifiable proceeds, excluding accounts, payment intangibles, and after-acquired property. Publish a form subordination or intercreditor agreement under which CAA California subordinates to a recipient's existing senior secured lender, and a form lender consent, so financing conflicts are resolved before execution. Provide that financing statements are limited to the funded collateral and terminate automatically at the end of the Target Lifespan or upon full remittance, with releases filed within 30 days. Condition Section 12 remedies on the notice and cure period in Section 11(d) of the Agreement.

Comment 2: Netting of cost savings and all economic benefit from funding (Capital Investment Schedule Section 1(b))

Reference: Capital Investment Schedule, Section 1(b) **Type:** Technical

Supportive: The Regulation limits covered costs to the incremental amount caused by the Act (Section 18980.8(g)(2)(A)), and the Program Plan's non-duplication principle (Section 2.3.1.1) and net-cost rule (Section 2.6.1.1) properly exclude costs funded through other programs. We support preventing double recovery of the same cost from two funding sources.

Concern: Section 1(b) goes well beyond both the Regulation and the Program Plan. It permits CAA California to fund the "net present value of the cash flows from the Eligible Project," deducting "all credits, rebates, discounts, incentives, grants, tax credits or other tax benefits, insurance proceeds, trade-in or salvage value, revenue, cost savings, or other economic benefit of any kind received or receivable by Recipient (or any of its affiliates)... from any source... whether received before, contemporaneously with, or after" disbursement, within an evaluation that "may include, but is not limited to" that methodology. Four problems follow.

First, the Regulation defines covered costs by causation and incrementality, not by a global offset of economic benefit, and the Act directs the PRO to "fully fund" costs that expressly include infrastructure improvements (PRC Section 42051.1(j)(1)(B)). The Program Plan's net-cost rule deducts amounts "received, awarded, or reasonably expected to be received from any other funding source for the same activity" (Section 2.6.1.1). Operating cost savings, federal tax credits, and trade-in value are not funding sources for the activity; they are the recipient's own economics. Deducting them converts an incrementality test into a windfall-capture test that neither the Act nor the Regulation authorizes.

Second, the treatment of cost savings must follow the reimbursement structure, and the draft ignores the distinction. Where CAA California reimburses operating costs on an actual-cost basis, any equipment-driven savings flow to CAA California automatically through lower reimbursements; the recipient never retains them. Netting the same savings out of capital funding counts them twice, and the recipient finances an asset whose entire return accrues to CAA California. Where operating reimbursement is on a fixed or standard rate, the recipient does retain savings between rate resets, and the concern has partial validity there, but full net-present-value netting over-corrects because rate recalibration recaptures the savings, and retention between resets is the intended investment incentive of rate-based payment. The Program Plan itself contemplates the measured version: "recurring efficiencies may be evaluated over an appropriate amortization period" and CAA California "will account for reasonable financial return on investment when reimbursing non-governmental entities" (Section 2.3, cost offsets). Section 1(b) contains neither the amortization limit nor the return allowance.

Third, the Program Plan treats commodity revenue as a project-specific offset that may be waived or shared where retention is necessary to enable processing of specific covered material categories (Section 2.3, Treatment of Commodity Revenues). Section 1(b) nets "revenue" categorically. The contract should not foreclose a discretion the Program Plan reserves.

Fourth, the after-disbursement reach, the "or receivable" language, and the affiliate reach mean the funded amount is never final. Any future efficiency, commodity movement, or later grant can be netted or clawed back years after the project closes. No operator can model that in a capital decision and no lender can underwrite it.

Proposed Resolution: Replace the open-ended list with a closed list of offsets consistent with Program Plan Section 2.6.1.1: duplicative government grants or subsidies for the same project scope, insurance proceeds for the same loss, and trade-in value applied to the same purchase. Delete "cost savings, or other economic benefit of any kind," "or receivable," and the affiliate reach. Exclude federal and state tax credits and other tax attributes of the recipient. Where cost savings are considered, scope them to the reimbursement structure: exclude savings in cost categories reimbursed on an actual-cost basis, because those savings already accrue to CAA California through lower payments, and for rate-based reimbursement limit any offset to savings retained within the current rate period, evaluated over an amortization period and net of the reasonable return the Program Plan commits to allow. Fix netting as of a stated determination date at funding approval, with no netting of benefits received after disbursement absent recipient misrepresentation. Preserve the Program Plan's project-specific commodity revenue treatment by reference rather than netting revenue categorically. Replace "may include, but is not limited to" with a published, closed evaluation methodology.

Comment 3: Eligibility of capital committed since January 1, 2023 (Capital Investment Schedule Section 15; Agreement Section 4(a))

Reference: Capital Investment Schedule, Section 15; Agreement, Section 4(a); Capital Investment Schedule, Exhibit A **Type:** Technical

Supportive: Exhibit A's "Estimated or Actual Cost" field appropriately contemplates that already-incurred costs can populate a Project Schedule, and the Program Plan correctly states that reimbursements are limited to "new and additional costs incurred after Jan. 1, 2023" (Section 2.6.1).

Concern: The contract documents do not carry the retroactive window into operative language. The Regulation contains exactly one temporal limit on covered costs: "Costs incurred before January 1, 2023, are not covered costs" (Section 18980.8(g)(1)). Costs incurred after that date are covered costs if they meet the causation and incrementality tests in Section 18980.8(g)(2). The Regulation contemplates advance determinations as an option available to the entity (Section 18980.8(g)(5)) and denies payment only for costs that were submitted in advance and determined not to be covered (Section 18980.8(g)(7)). Nothing in the Regulation bars costs incurred before an agreement is executed, and a contract that did so would be narrower than the Regulation that governs it.

Capital Investment Schedule Section 15 addresses costs incurred after termination but is silent on costs incurred before execution. Providers that committed capital between Jan. 1, 2023 and the availability of these agreements, in reliance on SB 54, cannot determine from the documents whether that capital is fundable, what timing convention governs when an expense is incurred, or what documentation will be required to demonstrate the investment was made to meet SB 54 requirements. The timing convention matters: we understand the contract execution date is the operative trigger, so equipment ordered in 2022 but delivered in 2024 would be ineligible while a 2023 order would qualify, and providers need that rule stated in the Schedule to evaluate their existing contract files. The causation standard matters even more: final implementing regulations were not approved until May 5, 2026, well past the statutory deadline, so providers who invested during 2023 through 2025 did so amid regulatory uncertainty, and an undefined evidentiary standard applied years after the fact invites disputes the dispute resolution process will then have to absorb.

Proposed Resolution: Add express provisions to the Capital Investment Schedule stating: (a) otherwise eligible Covered Costs incurred on or after Jan. 1, 2023 remain eligible for funding notwithstanding that the Agreement and Project Schedule are executed later, consistent with Section 18980.8(g)(1); (b) the timing convention under which a cost is incurred as of the date the underlying contract is executed; and (c) a defined, proportionate documentation standard for demonstrating that a pre-agreement investment satisfies Section 18980.8(g)(2), such as capital approval memoranda, supplier contracts, or records showing new materials, tonnage, or service areas, recognizing the regulatory timeline during which those investments were made.

Comment 4: Mixed-use asset allocation and retroactive interest (Capital Investment Schedule Section 3)

Reference: Capital Investment Schedule, Section 3; Agreement, Section 5(b) and 5(c) **Type:** Technical

Supportive: Proportional funding for mixed-use assets is a sound principle, and the Program Plan correctly frames the review as "ensuring cost allocations between covered and non-covered materials are justified" (Section 2.4.4.3).

Concern: Section 3(a)(ii) mandates allocation "based on tons, space, or time in use, in that order." A fixed waterfall is not the same as a justified allocation. A collection operator moving heavy non-covered tonnage but dedicating most route time to covered material collection is penalized by a tons-first rule even where time in use is the more accurate measure of the asset's covered-material service. Section 3(c) then charges interest at the Reimbursement Rate from the date funds were received, not from the date of any re-determination, and the re-determination itself is in CAA California's "sole discretion." A re-allocation determined in year four of a five-year asset therefore carries four years of accrued interest on a determination the recipient could not have anticipated, at a rate that is currently a bracketed blank.

Proposed Resolution: Permit the recipient to elect and justify the allocation basis (tons, space, or time in use) that best reflects the asset's actual covered-material service, subject to certification and documentation, consistent with Program Plan Section 2.4.4.3. Provide that re-allocations apply prospectively absent recipient misstatement, and that interest accrues only from the date of a final determination. Replace "sole discretion" with a reasonableness standard and provide the recipient the underlying calculation.

Comment 5: Full repayment for moving or selling a funded asset (Capital Investment Schedule Sections 4-5; Agreement Section 5(d))

Reference: Capital Investment Schedule, Sections 4 and 5; Agreement, Section 5(d) **Type:** Technical

Supportive: Keeping funded assets in covered-material service in the funded jurisdiction during their useful life is a reasonable program-integrity objective, and the maintenance remedy in Section 5 correctly uses a pro rata formula.

Concern: The transfer and relocation remedies do not. An asset sold, transferred, or moved out of the Jurisdiction without approval triggers reimbursement of 100% of the funded amount, with no credit for years of eligible service already delivered. An asset moved in year four of a five-year Target Lifespan repays the same amount as an asset moved in month one. The 60-day advance written approval requirement in Section 5(d) of the Agreement is also operationally unworkable for fleet assets, which are routinely redeployed across yards and routes. Together these provisions depress the residual and collateral value of funded equipment, which feeds directly back into the financing problem described in our comment on Sections 6 through 8. The two overlapping movement provisions (Agreement Section 5(d) and Schedule Section 4) also have different triggers and should be reconciled into one rule.

Proposed Resolution: Convert the transfer and relocation remedies to a pro rata earn-down over the Target Lifespan, consistent with the maintenance formula in Section 5. Replace the 60-day advance approval with prior written notice for intra-recipient redeployments, reserving approval for sales or transfers to third parties. Consolidate Agreement Section 5(d) and Schedule Section 4 into a single movement provision.

Comment 6: CAA as loss payee and the Collateral indemnity (Capital Investment Schedule Sections 13, 14(f))

Reference: Capital Investment Schedule, Sections 13 and 14(f) **Type:** Technical

Supportive: Requiring insurance on funded assets at full replacement value is standard and appropriate.

Concern: Section 14(f) names CAA California as loss payee and additional insured on all applicable policies. A recipient's senior secured lender already holds the loss payee position on financed equipment, and two parties cannot both hold first loss payee status on the same asset. Section 13 separately requires the recipient to indemnify CAA California against any claim "asserting CAA California's alleged ownership or interest in the Collateral." Read together with Sections 6 through 8, this obligates the recipient to fund CAA California's side of a priority dispute against the recipient's own lender, a dispute created by the Schedule's lien structure rather than by any act of the recipient.

Proposed Resolution: Provide that CAA California is loss payee only to the extent of its unreimbursed funded amount and subordinate to the recipient's senior secured lender, with proceeds allocation addressed in the form intercreditor agreement proposed in our comment on Sections 6 through 8. Delete Section 13, or limit it to claims arising from the recipient's misrepresentation of existing liens.

Part 2: Project Schedule, Cost Reimbursement

Comment 7: Optional and fractional inflation adjustment (Cost Reimbursement Schedule Section 3)

Reference: Cost Reimbursement Schedule, Section 3 **Type:** Technical

Supportive: The selection of indices is well targeted for California operators. PADD 5 is the correct diesel benchmark for the West Coast, and a monthly diesel adjustment mechanism reflects how fuel cost actually moves.

Concern: All four adjustment mechanisms are effective "only if box is checked," and two are drafted as "[#]% of" the referenced index. As structured, escalation is optional at contract formation and may be set at a fraction of the index. An unchecked box leaves a provider bearing full real cost inflation across a multi-year term at a fixed rate. Labor, insurance, and fuel are the dominant cost lines in collection and processing, and none of them holds flat over a multi-year schedule. A rate that cannot adjust is a rate that erodes, and providers cannot bank or staff against it. This matters more because the Regulation makes the rate-based election one-way: an entity that opts for performance-based determination "shall not also request" actual-cost determination for the same activities (Section 18980.8(g)(6)). A provider locked into a rate for the term, with no actual-cost fallback and no assured escalation, carries all inflation risk with no exit. We raised the multi-year rate lock in our comments on Chapter 2 of the Program Plan; this Schedule now operationalizes it.

Proposed Resolution: Make an inflation adjustment a standard, non-elective term of any Reimbursement Schedule exceeding 12 months. Set escalators at 100% of the referenced index. State the measurement convention (reference month, lag, and application frequency) in the Schedule. Include the diesel adjustment by default for transportation-weighted rate structures.

Comment 8: Daily scale-ticket reporting burden and whether it is reimbursable (Cost Reimbursement Schedule Exhibit C)

Reference: Cost Reimbursement Schedule, Exhibit C **Type:** Technical

Supportive: Scale-ticket-level substantiation and responsible end market verification are legitimate program-integrity controls, and providers already generate most of this data in their scale systems.

Concern: Exhibit C requires daily reports for transportation (27 fields per transaction) and processing (26 fields), monthly REM receipt verification including full broker-chain shipment documentation, and load rejection reporting with photos and a remedial action plan. For an independent operator this is a material, recurring back-office cost: system integration, dedicated staff time, and per-incident documentation. The Program Plan recognizes administrative costs, payable on an hourly or percentage basis, as an eligible cost category (Section 2.6.3.4.4), and the Regulation requires the process to "avoid unnecessary burden on local jurisdictions and recycling service providers" (Section 18980.8(h)(3)). The Schedule imposes the burden but never states that the cost of carrying it is claimable. Separately, tip fee and revenue per ton are marked optional in some report types and required in others, without explanation of how those fields will be used.

Proposed Resolution: State expressly in the Schedule that reporting, monitoring, and REM chain-of-custody documentation costs required by Exhibit C are reimbursable Covered Costs under Program Plan Section 2.6.3.4.4. Reduce daily transportation and processing reporting to monthly, with underlying transaction detail retained and available on request, unless daily granularity is required to calculate payment. Make tip fee and revenue fields uniformly optional, and state that voluntarily reported commercial fields will not be used to reduce reimbursement.

Comment 9: Unpublished standard rates and the one-way election (Cost Reimbursement Schedule Section 2)

Reference: Cost Reimbursement Schedule, Section 2 and Exhibit B **Type:** Technical

Supportive: Offering lump sum, periodic amount, and periodic rate structures gives providers useful flexibility across engagement types, consistent with the Regulation's authorization of a performance-based approach (Section 18980.8(g)(6)).

Concern: The Periodic Rate Reimbursement structure is drafted as "$[#] per [UNIT]" with total available funding blank. Under Section 18980.8(g)(6), a provider who elects the rate-based approach for an activity forfeits the right to an actual-cost determination for that activity. Providers are therefore being asked to make an irrevocable election without seeing the rates. We raised publication of the standard rate schedule in our Chapter 2 comments; it remains unpublished. A provider cannot evaluate whether a periodic rate structure is viable, or whether to elect actual-cost documentation instead, without the rates in hand.

Proposed Resolution: Publish the standard rate schedule, by service type and region, before execution versions of these agreements are released, and reference the published schedule in Section 2 so signed rates are traceable to a public source. State in the Schedule that the election between rate-based and actual-cost reimbursement is made at execution with the published rates in hand.

Part 3: Project Schedule, Services

Comment 10: Payment at 60 days from invoice versus Oregon's 45 days from request (Services Schedule SOW Section 5; Agreement Section 4(b))

Reference: Services Schedule, Exhibit A (Statement of Work), Section 5; Agreement, Section 4(b) **Type:** Technical

Supportive: Committing to a defined payment period is a genuine improvement over unspecified "timely" payment, and we credit CAA California for supplying a number.

Concern: The Regulation requires the process to "establish reasonable periods for making determinations... and issuing payments" (Section 18980.8(g)(4)), and it makes a PRO's failure to pay "within the period established" under that paragraph a trigger for dispute resolution (Section 18980.8(h)(1)). The Program Plan carries this forward: the process may be initiated when CAA California "fails to issue payment within the terms negotiated" (Section 2.7.5). Those protections only function if a period is actually established. The Services Schedule supplies one, 60 days from invoice, but the Agreement's general standard in Section 4(b) is only that requests be processed per "procedures and timelines set forth on CAA California's website," and the Cost Reimbursement Schedule states no period at all. A payment period that lives on a website rather than in the contract can be changed unilaterally and cannot anchor the Section 18980.8(h)(1) trigger.

The number itself is also a problem. Payment at 60 days from invoice, with invoicing on the last day of the month for the preceding month, produces effective days sales outstanding of 75 to 90 days on mid-month service. For comparison, Oregon's program statute, ORS 459A.923, requires payment within 45 days of the provider's request for payment, and CAA operates under that standard in Oregon today. California providers financing receivables on a revolving line will carry 30 to 45 additional days of working capital on every dollar of services revenue relative to the Oregon standard, at their own cost, for no stated program reason. There is also no late payment interest provision, even though the drafts define a Reimbursement Rate for interest owed by recipients to CAA California. Payment obligations should be symmetric.

Proposed Resolution: State a fixed payment period in the Agreement itself, applicable to all Project Schedules, so it satisfies Section 18980.8(g)(4) and anchors the Section 18980.8(h)(1) trigger. Set that period at 45 days from the provider's submission of a complete invoice or request for payment, consistent with the standard CAA already meets in Oregon, with a deemed-complete mechanism if deficiencies are not identified within a stated period. Add late payment interest at a defined rate on amounts unpaid after the due date.

Comment 11: Performance bond sized to total funding (Services Schedule Sections 5, 8(d); Agreement Section 9)

Reference: Services Schedule, Sections 5 and 8(d); Agreement, Section 9 **Type:** Technical

Supportive: Performance security can be appropriate for large, prepaid, or infrastructure-critical engagements.

Concern: The Services Schedule contemplates a bond up to the total amount of approved Funds, maintained at the recipient's sole cost for the full Term. Surety capacity in the lower middle market is finite, and most independent providers already commit their bonding lines to municipal franchise obligations. A CAA bond sized at total approved funding competes directly with franchise bonding and may force providers to choose between program participation and their core municipal contracts. Section 8(d) also permits demands on the bond guarantor upon any Event of Default, including defaults unrelated to the bonded work. Whether bond premiums are reimbursable is unstated, although the Program Plan recognizes administrative costs of implementation as an eligible category (Section 2.6.3.4.4).

Proposed Resolution: Size any required bond to the unearned or prepaid portion of approved Funds, stepping down as work is completed. Waive the bond for recipients meeting stated financial criteria or with an established performance history. Limit bond demands to defaults under the bonded Project Schedule. State that bond premiums required by the Schedule are reimbursable Covered Costs.

Part 4: Funding and Services Agreement

Comment 12: Nullification of approved funding with no time limit (Agreement Section 4(d))

Reference: Agreement, Section 4(d) **Type:** Technical

Supportive: CAA California should be able to recover funds obtained through fraud or material misrepresentation, and we support that remedy without qualification.

Concern: The Regulation requires the PRO to "determine the extent to which" each identified cost is a covered cost and to "notify the entity of all determinations in writing" (Section 18980.8(g)(3)), and the Program Plan describes the written determination as "the formal record of CAA California's decision" (Section 2.4.4.2) on which every reimbursement must be traceable (Section 2.6.1). Section 4(d) undermines the determination it is supposed to implement. It permits CAA California to nullify any previously approved Funding Request based on subsequently discovered information, with triggers that reach far beyond fraud: a request that is "incomplete" or "inaccurate," or performance not in "full compliance" with any provision of the Agreement. There is no time limit. A determination that can be nullified at any time on those grounds is not a determination; it is a provisional estimate. Providers cannot recognize the revenue with confidence, auditors will treat approved amounts as contingent, and any lender or acquirer evaluating a provider will discount EPR receivables and revenue accordingly.

Proposed Resolution: Limit nullification of previously approved Funding Requests to fraud or material misrepresentation by the recipient, with a lookback period tied to the record retention requirement in Section 7(a). Provide that corrections arising from CAA California's own model or methodology changes apply prospectively only. Confirm that a written determination under Section 18980.8(g)(3), once issued, is binding on CAA California absent those grounds.

Comment 13: Audit cost-shifting with no materiality threshold (Agreement Section 8)

Reference: Agreement, Section 8 **Type:** Technical

Supportive: Audit rights with reasonable notice during business hours are appropriate and consistent with Program Plan Section 2.6.5, and we support cost recovery where an audit reveals intentional misuse of funds.

Concern: Section 8 shifts CAA California's full audit cost to the recipient whenever the audit reveals funds used for any expense that is not a Covered Cost, with no materiality threshold. A single misclassified invoice on an otherwise clean multi-million dollar claim triggers the entire audit bill. That is disproportionate, it is inconsistent with the Regulation's requirement to avoid unnecessary burden on service providers (Section 18980.8(h)(3)), and it converts the audit right into a cost-shifting mechanism rather than a verification tool. It also creates an incentive structure in which broader, longer audits are costless to the auditing party whenever any error, however small, is found.

Proposed Resolution: Provide that audit costs shift to the recipient only where disallowed costs exceed a stated materiality threshold (for example, 5% of the amount audited) or reflect intentional misrepresentation, and cap the recipient's audit cost exposure at a stated amount or percentage of the disallowance.

Comment 14: Force majeure for producer nonpayment; no guarantee of work (Agreement Section 1; Section 3(f))

Reference: Agreement, Section 1 (definition of Force Majeure Event); Section 3(f) **Type:** Technical

Supportive: A conventional force majeure clause covering events genuinely beyond either party's control is appropriate, and we do not object to the natural disaster, governmental order, and utility provisions.

Concern: The definition includes "lack of funding due to nonpayment of membership fees in the form of producer fees or other fees owed to CAA California." This excuses the paying party's performance based on its own revenue shortfall, and it allocates the credit risk of CAA California's producer members to service providers who cannot evaluate, price, or control that risk. The Act requires regulations "to ensure the PRO fully funds plan implementation, including fully funding the budget," and states that this "shall include the costs incurred by a local jurisdiction or a local jurisdiction's recycling service providers to implement this chapter" (PRC Section 42060(a)(1)). It requires the PRO's budget to be "designed to fully fund the costs necessary to implement this chapter" (PRC Section 42051.1(j)(1)), and it requires the dispute process to be reviewed "to ensure the PRO covers costs related to this chapter" (PRC Section 42051.1(g)(2)). The Regulation defines covered costs as costs "that the PRO and Independent Producers are obligated to pay" (Section 18980.8(g)) and directs arbitrators to determine payable costs in light of PRC Section 42060(a)(1) (Section 18980.8(h)(4)(F)(i)). An obligation to fully fund that is excused whenever the obligor's own members do not pay is not the obligation the Act describes. Producer collection risk is the PRO's to manage through its fee schedule and compliance measures under PRC Section 42051.1(m), not the provider's to absorb. Section 3(f) compounds the exposure by disclaiming any minimum level of services or compensation while reserving CAA California's right to self-perform or contract with others, which makes the revenue non-committed even under an executed Project Schedule.

Proposed Resolution: Delete producer fee nonpayment from the Force Majeure definition. Provide in Section 3(f) that during the term of an executed Project Schedule or Statement of Work, CAA California will not reallocate or self-perform the covered scope without notice and a defined transition period.

Comment 15: Dispute resolution that departs from the regulation (Agreement Section 14)

Reference: Agreement, Section 14; Section 1 (definition of Dispute) **Type:** Technical

Supportive: Naming the arbitration provider, seat, and rules supplies specificity we requested in our Program Plan Chapter 2 comments, and early informal resolution is consistent with the Program Plan's stated preference for resolving disagreements at the lowest level of formality (Section 2.7.6).

Concern: Section 14 conflicts with the Regulation and with CAA California's own Program Plan in five respects.

First, the Regulation gives the recycling service provider "the option" to require mediation and, failing agreement, binding arbitration (Section 18980.8(h)(4)), and states that nothing in the subdivision empowers the PRO "to require local jurisdictions or recycling service providers to submit any matter to mediation or arbitration" (Section 18980.8(h)(6)). The Program Plan reflects this: mediation and arbitration are each "Mandatory Upon Applicant Request," and it is "the applicant [who] may require binding arbitration" (Section 2.7.6). Section 14(b)(i) instead makes mediation available "at either Party's request," and Section 14(c) makes binding arbitration the mandatory consequence for both parties if mediation fails or either party declines to participate. A one-way statutory protection has become a mutual obligation the PRO can invoke, which Section 18980.8(h)(6) forbids.

Second, the Regulation provides that a provider "shall not be required to agree to submit a matter to binding arbitration as a precondition for submitting the matter to mediation" (Section 18980.8(h)(4)(G)). Under Section 14(c), entering mediation commits the provider to arbitration if mediation fails. That is the precondition the Regulation prohibits, arrived at by sequence rather than by express agreement.

Third, the Regulation requires the dispute process to be available where the PRO "fails to make a determination or payment within the period established" under Section 18980.8(g)(4) (Section 18980.8(h)(1)), and the Program Plan lists failure to pay as a trigger (Section 2.7.5). The Agreement's definition of Dispute covers conflicts "arising out of or relating to a Funding Request" but does not clearly reach a failure to determine or to pay, and, as noted in our comment on payment timing, the Agreement establishes no fixed payment period against which such a failure could be measured.

Fourth, the Regulation contemplates arbitration under rules the arbitrator deems appropriate, subject to the Code of Civil Procedure (Section 18980.8(h)(4)(B)), and a three-arbitrator panel where the parties cannot agree on a single arbitrator (Section 18980.8(h)(4)(C)). Section 14(c) fixes JAMS rules and a Sacramento seat by default. The Regulation permits the parties to agree otherwise, but a form contract is not a negotiated agreement, and the default should track the Regulation.

Fifth, the mandatory sequence (90 days of informal negotiation, then mediation, then arbitration) means roughly six months minimum before an arbitrator is seated, while Section 14(d) obligates the provider to continue performing, including the disputed services, with payment only of undisputed amounts and no interest. The provider finances the dispute, the disputed receivable, and the ongoing service simultaneously, which is difficult to reconcile with the Regulation's requirement to avoid unnecessary burden on service providers (Section 18980.8(h)(3)).

Proposed Resolution: Conform Section 14 to Section 18980.8(h) and Program Plan Section 2.7.6: elevation to mediation and to arbitration is at the provider's election alone; participation in mediation does not commit the provider to arbitration; the Dispute definition expressly includes CAA California's failure to make a determination or to pay within the period established under Section 18980.8(g)(4); and the default rules, seat, and panel composition track Section 18980.8(h)(4)(B) and (C), with the parties free to agree otherwise in a specific dispute. Provide interest, at the same rate applicable to recipient remittances, on any withheld amounts ultimately determined payable, accruing from the original due date, and state an outer bound on the total duration of the dispute process. Retain the Section 18980.8(h)(4)(E) default on fee allocation, expressly preserving the parties' ability to agree otherwise.

Comment 16: No confidentiality and a license to publish reported data (Agreement Section 7)

Reference: Agreement, Section 7 **Type:** Technical

Supportive: CAA California's regulatory reporting obligations are real, and providers accept that data reported for reimbursement will flow to CalRecycle as required by law.

Concern: Section 7(b) states the recipient has no expectation of confidentiality in any reported information, and Section 7(c) grants CAA California sole ownership of reports containing that information, including derivative works, plus an unrestricted worldwide license to publish the recipient's information at any time, in whole or in part. The data reported under Exhibit C of the Cost Reimbursement Schedule includes tip fees, revenue per ton, customer counts, tonnages by material, routes, and end market relationships. That is the complete competitive profile of a private operator. Publication of provider-level commercial data would hand pricing intelligence to competitors and to franchising jurisdictions at renewal, and it would penalize independent operators disproportionately, since integrated national firms do not expose facility-level economics.

The Act itself recognizes that data generated in this program can be commercially sensitive: "Market-sensitive trade secret data received by the department pursuant to this chapter shall be held confidentially by the department as required by Section 40062" (PRC Section 42060(a)(2)(E)). The Legislature built trade secret protection into the program's own reporting chain. A contract clause that disclaims all confidentiality and grants CAA California an unrestricted publication license goes further than the disclosure regime the Act contemplates, and it may compromise trade secret protection the provider would otherwise hold under state law.

Proposed Resolution: Limit disclosure to what Applicable Law actually requires. Designate tip fees, revenue per ton, customer counts, and end market identities as confidential commercial information, publishable by CAA California only in aggregated or anonymized form. Limit CAA California's ownership to its own reports and analyses, preserving the recipient's ownership of and trade secret rights in its underlying data, and provide a mechanism for the recipient to designate market-sensitive trade secret material consistent with PRC Section 42060(a)(2)(E) and Section 40062.

Comment 17: Indemnification breadth and the five-year post-term covenant (Agreement Section 13)

Reference: Agreement, Section 13; Capital Investment Schedule, Section 13; Services Schedule, Section 10
Type: Technical

Supportive: An indemnity covering third-party claims caused by the recipient's own negligence, breach, or unlawful conduct is standard and acceptable.

Concern: Section 13(a) goes materially further. It requires the recipient to defend and indemnify CAA California for claims relating to "CAA California's denial" of funds, which indemnifies the counterparty for the consequences of its own refusal to pay. The duty to defend arises upon written notice of a claim, before any suit, and expressly applies even where the claimant alleges that the indemnified party's gross negligence or willful misconduct was the sole cause, with relief only where such conduct is finally the sole cause. Coverage for an indemnitee's own negligence at this breadth is difficult or impossible to insure under standard commercial general liability forms, which converts the clause into uninsured balance sheet exposure. The requirement to maintain financial resources sufficient in CAA California's discretion for five years after termination operates as an open-ended covenant that restricts distributions and complicates any sale of the business.

Proposed Resolution: Limit the indemnity to third-party claims to the extent caused by the recipient's negligence, willful misconduct, or breach. Delete "or CAA California's denial thereof." Apply comparative fault rather than a "solely from" carve-out. Provide that defense costs are reimbursable upon determination of an indemnifiable claim rather than on tender. Replace the five-year discretionary financial resources requirement with defined insurance limits, satisfiable by tail coverage.

Comment 18: One-sided termination and unilateral amendment (Agreement Sections 3(a), 11)

Reference: Agreement, Sections 3(a) and 11 **Type:** Technical

Supportive: CAA California reasonably needs the ability to exit if it ceases to be an approved PRO, and recipients accept that the program's existence depends on regulatory approvals.

Concern: The exit rights are one-sided. Section 11(c) permits CAA California to terminate immediately on notice upon plan suspension or a material change in law, while the recipient's only exit is 60 days' notice effective at the end of the then-current Term, whose end date is a blank. On immediate termination, nothing addresses work in process, committed costs, or demobilization, so the provider absorbs stranded costs for a regulatory event entirely outside its control. Section 3(a) separately requires compliance with the Program Plan and Supplier Code of Conduct "as amended from time to time." Program Plan amendments at least pass through advisory board review and CalRecycle approval (Section 18980.6.4); the Supplier Code of Conduct is a unilateral CAA policy document with no external check. Incorporating its future versions into a signed agreement binds the recipient to terms it has not seen, with no adjustment mechanism.

Proposed Resolution: Add a wind-down provision requiring payment for services performed, non-cancelable committed costs, and reasonable demobilization upon any CAA California early termination. Give recipients a matching right to terminate upon a material amendment to the Program Plan or Supplier Code of Conduct that increases their cost of performance, or alternatively an equitable adjustment mechanism for such amendments. Fix the Supplier Code of Conduct as of the Effective Date unless the recipient consents to a later version. Populate the Initial Term definition before execution versions are released.

Comment 19: Version control: two Agreement drafts with different numbering (all documents)

Reference: Agreement, all sections; all three Project Schedules (recitals and internal cross-references to the Agreement); CAA public comment webpage **Type:** General

Supportive: The version of the Agreement currently posted (file name ending "updated") conformed the Agreement's section numbering to its internal cross-references. In the version first circulated on Aug. 26, 2026, the cross-references to indemnification, performance security, notices, assignment, dispute resolution, and audit rights all pointed to the wrong sections, and the survival clause omitted indemnification and dispute resolution. The updated version resolves each of those defects, and we credit CAA California for the correction.

Concern: Two versions of the Agreement with different section numbering have circulated during the comment period, and the posted materials do not indicate that a replacement occurred, when, or what changed. Commenters working from the Aug. 26 version will cite sections that no longer exist under the updated numbering, and CAA California reviewers reading those comments against the updated version will misattribute them. The three Project Schedules were not re-issued; their references to the Agreement (for example, "Section 15(i)" for assignment, "Section 9" for performance security, "Section 8" for audits, "Section 7" for records, "Section 4" for disbursement) happen to align with the updated numbering, but nothing on the face of the Schedules states which Agreement version they are conformed to. Two remaining editorial items in the updated Agreement: the definition of "Renewal Term" opens with a doubled quotation mark, and the Force Majeure definition reads "a delay or suspension the Program Plan" where "of" is missing.

Proposed Resolution: Post a version and date stamp on each document and a short change log on the public comment page identifying the replacement of the Agreement and the nature of the change. Re-issue or footnote the Project Schedules to state the Agreement version to which their cross-references are conformed. Confirm publicly which version comments are being read against. Correct the two editorial items noted.

Comment 20: Bracketed terms: the prices are not filled in (all documents)

Reference: All four documents, bracketed and blank terms **Type:** General

Supportive: We recognize these are consultation drafts and that certain terms are placeholders by design.

Concern: The blanks are not peripheral; they price the agreements. The Reimbursement Rate ("[X]% per annum") prices every remittance and clawback. The remittance day counts ("[NUMBER] days") set the cash flow consequence of every CAA determination. The insurance limits, bond amounts, advance funding clawback periods, escalation percentages, and standard rates are all bracketed. The Regulation requires the process to "establish reasonable periods" for determinations and payments (Section 18980.8(g)(4)); a bracketed period is not an established one. The Act goes further for collection services: a plan includes curbside collection of a covered material category only where, among other conditions, "the provider of the curbside collection and recycling or composting service agrees to the costs arrangement" (PRC Section 42051.1(l)(1)(C)). The Legislature conditioned program design on provider agreement to costs. A cost arrangement whose price terms are bracketed is one the provider cannot evaluate and therefore cannot meaningfully agree to. In addition, the Exhibits contain "[INSERT]" placeholders for benchmarking and reporting content, paired with catch-all provisions allowing CAA California to request additional information and reports. Providers cannot assess the cost of participation, and lenders cannot assess the credit impact, until these values are published. Undefined reporting scope that can expand after execution is itself a term worth commenting on.

Proposed Resolution: Publish a complete execution-form set with all bracketed values populated, and provide a second, shorter comment window on the populated forms before first use. Fix material reporting obligations in the executed Schedule, with post-execution additions limited to what Applicable Law requires of CAA California.

Where this goes from here

CAA's final Program Plan is expected in October, with CalRecycle review to follow. The contract terms above will govern the first funding agreements executed under SB 54. What gets fixed in this comment period stays fixed; what does not will be negotiated one operator at a time, by operators who mostly do not have counsel reading UCC language on their behalf.

netgainCFO works from the service provider's side of the table on exactly these questions: what the reimbursement terms do to a borrowing base, how a project should be scoped and documented to qualify, and what to sign and what to push back on. If any of the above touches a decision you are making now, we are easy to reach.

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