

FRANCHISE AGREEMENT
BETWEEN
CITY OF CARLSBAD
AND
ALLIED WASTE SYSTEMS, INC.
FOR
RECYCLING, ORGANICS, AND SOLID WASTE COLLECTION
AND
RECYCLING, ORGANICS, AND C&D PROCESSING SERVICES

APRIL 20, 2021

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39 other services related to meeting the City's economic and environmental goals; and,

40 **WHEREAS**, the City further declares its intent to approve and maintain reasonable Rates for the Collection,
41 Recycling, Processing, Composting, and/or Disposal of Recyclable Materials, Organic Materials, and Solid
42 Waste; and,

43 **WHEREAS**, the City desires, having determined that Contractor, by demonstrated experience, reputation
44 and capacity is qualified to provide for both the Collection of Recyclables Materials, Organic Materials,
45 and Solid Waste within the corporate limits of the City and the Transportation of such material to
46 appropriate places of Processing, Recycling, Composting, and/or Disposal, that Contractor be engaged to
47 perform such services on the basis set forth in this Agreement; and,

48 **WHEREAS**, the City and Contractor have attempted to address conditions affecting their performance of
49 services under this Agreement but recognize that reasonably unanticipated conditions may occur during
50 the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to such
51 changed conditions; and,

52 **WHEREAS**, under Municipal Code Section 6.08.180, the City may enter into a contract for the Collection,
53 removal and Disposal of all refuse in and from the City and the collection of Rates therefor, and the City
54 Council is authorized to enter into such contract with any terms it deems necessary to protect the best
55 interests of the City.

56 **NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions contained in this
57 Agreement and for other good and valuable consideration, the Parties agree as follows:

58 **ARTICLE 1.**
59 **GRANT AND ACCEPTANCE OF FRANCHISE**

60 **1.1 GRANT AND ACCEPTANCE OF FRANCHISE**

61 By the signing of this Agreement, the City grants to Contractor and Contractor accepts an exclusive
62 franchise within the corporate limits of the City. The franchise granted to Contractor shall be for the scope
63 of services described in this Agreement, subject to the limitations described in Section 1.2 and except
64 where otherwise precluded by Federal, State, and local laws and regulations.

65 **1.2 LIMITATIONS TO THE FRANCHISE**

66 The award of this Agreement shall not preclude the categories of Recyclable Materials, Organic Materials,
67 Solid Waste, or other materials listed below from being delivered to and Collected and Transported by
68 others, provided that nothing in this Agreement is intended to or shall be construed to excuse any Person
69 from obtaining any authorization from the City which is otherwise required by law:

70 A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to: (1) accept Source
71 Separated Recyclable Materials and Source Separated Organic Materials donated from the service
72 recipient, or (2) to pay the service recipient for Source Separated Recyclable Materials and Source
73 Separated Organic Materials provided that there is no net payment made by the service recipient
74 to such other Person.

- 75 B. **Self-Hauled Materials.** A Commercial business Owner or Resident may Dispose of Recyclable
76 Materials, and Organic Materials, generated in or on their own Premises with their own vehicle.
- 77 C. **Construction and Demolition Debris (C&D).** Other Persons shall have the right to Collect C&D,
78 provided that such Persons maintain a City-issued permit granting such right, and the C&D was
79 generated from a construction, demolition, alteration, or remodel project pursuant to a permit
80 issued by the City.
- 81 D. **Donated or Sold Materials.** Any items which are Source Separated at any Premises by the
82 Generator and (a) sold or (b) that are donated to youth, civic, or charitable organizations.
83 Materials will not be deemed donated if they are Collected by a non-franchised waste hauler that
84 is not a 501(c)(3) organization.
- 85 E. **Edible Food.** Edible Food which is Collected from a Generator by other Person(s), such as a Person
86 from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery;
87 or which is Self-Hauled by the Generator to another Person(s), such as a Person from a Food
88 Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator
89 donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food.
- 90 F. **Food Scraps.** Food Scraps that are separated by the Generator and used by the Generator or
91 distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section
92 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled
93 by another party.
- 94 G. **Materials That Contractor Does Not Divert.** Discarded Materials which the Contractor is not
95 required to Process and Divert under this Agreement as of the Effective Date of this Agreement
96 which subsequently, in the City's reasonable judgment, become economically feasible to Divert.
97 In such event, Contractor shall have the exclusive right to Collect and Process such materials if
98 Contractor agrees to do so without any change in Rates. If Contractor is unwilling to Process and
99 Divert such new materials at existing Rates, the City may provide for Collection, Processing, and
100 Diversion of such materials in any manner it deems appropriate. Such materials may include, but
101 not be limited to, Organic Materials which Contractor would otherwise Dispose. Contractor may
102 not enforce its exclusive franchise rights in a manner that would prevent the Diversion of material
103 that Contractor is unable or unwilling to Divert.
- 104 H. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container
105 Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.
- 106 I. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Recyclable
107 Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a
108 contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential
109 clean-out service) as an incidental part of the service being performed, rather than as a separately
110 contracted or subcontracted hauling service; or if such contractor is providing a service which is
111 not included in the scope of this Agreement.
- 112 J. **On-site or Community Composting.** Organic Materials Composted or otherwise legally managed
113 at the site where it is generated (e.g., backyard Composting, or on-site anaerobic digestion) or at
114 a Community Composting site.

- 115 K. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or
116 butcher shops, grease, or used cooking oil.
- 117 L. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash,
118 grit, and screenings.
- 119 M. **Excluded Waste.** Excluded Waste regardless of its source.
- 120 N. **Materials Generated by State and County Facilities.** Materials generated by State and County
121 facilities located in the City, including but not limited to the Carlsbad Unified School District,
122 provided that the Generator has arranged services with other Persons or has arranged services
123 with the Contractor through a separate agreement.

124 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to
125 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above, without
126 seeking or obtaining approval of Contractor. If Contractor can produce evidence that other Persons are
127 servicing Collection Containers or are Collecting and Transporting Recyclable Materials, Organic Materials,
128 and/or Solid Waste in a manner that is not consistent with this Agreement or the City's Code, it shall
129 report the location, the name and phone number of the Person or company to the City's Contract Manager
130 along with Contractor's evidence. In such case, City may notify the Generator and Person providing service
131 of Contractor's rights under this Agreement.

132 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now
133 and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
134 regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of
135 services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees
136 that the scope of the Agreement will be limited to those services and materials which may be lawfully
137 included herein and that the City shall not be responsible for any lost profits or losses claimed by
138 Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such
139 an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial
140 interpretations or new laws and the Contractor may meet and confer with City and may petition for a Rate
141 adjustment pursuant to Section 8.3.

142 **1.3 OBLIGATIONS OF PARTIES**

143 In addition to the specific performance required under the Agreement, City and Contractor shall:

- 144 1. Use their reasonable commercial efforts to enforce the exclusive nature of the franchise by the
145 Contractor's identification and documentation of violations of the franchise Agreement and the
146 City's notification of Generators and collection companies reasonably believed to be violating the
147 franchise regarding the terms of this Agreement.
- 148 2. Provide timely notice to one another of a perceived failure to perform any obligations under this
149 Agreement and access to information demonstrating the Party's failure to perform.
- 150 3. Provide timely access to the City Contract Manager and the Contractor's designated
151 representative and complete and timely responses to requests of the other Party.
- 152 4. Provide timely notice of matters which may affect either Party's ability to perform under the

153 Agreement.

154

155

ARTICLE 2. TERM OF AGREEMENT

156 2.1 TERM AND OPTION TO EXTEND

157 The Term of this Agreement shall commence July 1, 2022 (Commencement Date) and continue in full force
158 for a period of approximately ten (10) years, through and including June 30, 2032, unless the Agreement
159 is extended in accordance with this Section or terminated pursuant to Section 10.2.

160 At City's sole discretion, this Agreement may be extended one or more times without amendment for a
161 period of no more than five (5) additional years for a total Term that does not extend beyond June 30,
162 2037. If City desires to extend the Agreement, City shall provide the Contractor with written notice of its
163 decision to extend the Agreement at least one (1) year before the expiration of the initial Term and at
164 least six (6) months before the expiration of any extended term. Such notice by City shall specify the
165 duration of the extension.

166 In accordance with Section 5.12, this Agreement may also be extended automatically without amendment
167 if: (a) Contractor achieves a sixty five percent (65%) annual Diversion rate for all materials Collected during
168 any complete calendar year under the terms of this Agreement, Contractor shall have the option to extend
169 the Agreement for a period of no more than a three (3) additional years, expiring no later than June 30,
170 2035; or, (b) Contractor achieves a seventy five percent (75%) annual Diversion rate for all materials
171 Collected during any complete calendar year under the terms of this Agreement, Contractor wish all have
172 the option to extend the Franchise Agreement for no more than a five (5) additional years, expiring no
173 later than June 30, 2037 period. If Contractor elects to exercise either option, it shall give written notice
174 to City of not less than one (1) year prior to the initial termination date of this Agreement. These Diversion-
175 related extension options shall not be available to Contractor if City has found Contractor to be in breach
176 of the Agreement or has assessed Liquidated Damages at any time during the Term of the Agreement.

177 Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to
178 prepare itself to start providing services required by this Agreement on the Commencement Date.

179 2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

180 The obligation of City to permit this Agreement to become effective and to perform its undertakings
181 provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may
182 be waived, in written form only, in whole or in part by City.

183 **A. Accuracy of Representations.** The Contractor's representations and warranties made in
184 Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the
185 Effective Date.

186 **B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the
187 insurance and performance bond required by Article 9 that is satisfactory to the City.

188 **C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation,
189 there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or

190 governmental authority, commission, board, agency or instrumentality decided, pending or
191 threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single
192 case or in the aggregate, would:

- 193 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
- 194 2. Adversely affect the validity or enforceability of this Agreement; or,
- 195 3. Have a material adverse effect on the financial condition of Contractor, or any surety or
196 entity guaranteeing Contractor's performance under this Agreement.

197 **D. Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation
198 of all Approved Facilities owned or operated by Contractor or any Subcontractor for use under
199 the terms of this Agreement.

200 **E. Legal Challenge.** Contractor understands and acknowledges that the award of this Agreement and
201 related decisions may be subject to review and repeal by the City's citizens through a referendum
202 or similar petition, and to various types of legal and environmental challenges (such referenda,
203 similar petition and legal and environmental challenges being referred to collectively as "Legal
204 Challenges"). Accordingly, this Agreement shall not become effective until the City reasonably
205 determines that (1) any Legal Challenges that had been initiated as of the time of such
206 determination have been resolved in favor of the City's award of this Agreement to Contractor;
207 and (2) the deadline to initiate any additional Legal Challenges has expired; provided, however,
208 that Contractor shall be entitled to rescind this Agreement upon thirty (30) days' prior written
209 notice to the City if such determination is not made by June 30, 2021.

210 **ARTICLE 3.** 211 **SCOPE OF AGREEMENT**

212 **3.1 SUMMARY SCOPE OF SERVICES**

213 The Contractor or its Subcontractor(s) shall be responsible for the following:

- 214 A. Providing a three-Container Collection program for the separate Collection of Recyclable
215 Materials, Organic Materials, and Solid Waste generated by and placed for Collection by
216 Customers pursuant to the requirements of Article 4 and Exhibit B.
- 217 B. Transporting Collected materials to the appropriate Approved Facilities pursuant to requirements
218 of Article 4 and Exhibit B;
- 219 C. Processing Collected Recyclable Materials and Organic Materials at the appropriate Approved
220 Facilities pursuant to the requirements of Article 4 and Exhibit B;
- 221 D. Performing all other services required by this Agreement including, but not limited to, Customer
222 billing, public education, Customer service, contamination monitoring, record keeping, and
223 reporting pursuant to Articles 4 and 6 and Exhibits C (Public Education & Outreach) and D
224 (Reporting);
- 225 E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and

- 226 all other items and services necessary to perform its obligations under this Agreement;
- 227 F. Paying all expenses related to provision of services required by this Agreement including, but not
228 limited to, taxes, regulatory fees (including City Fees and Reimbursements), and utilities;
- 229 G. Performing or providing all services necessary to fulfill its obligations in full accordance with this
230 Agreement at all times using best industry practice for comparable operations; and,
- 231 H. Complying with all Applicable Laws.

232 The enumeration and specification of particular aspects of service, labor, or equipment requirements shall
233 not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its obligations
234 under this Agreement, regardless of whether such requirements are enumerated elsewhere in the
235 Agreement, unless excused in accordance with Section 10.7.

236 **3.2 USE OF APPROVED FACILITIES**

237 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
238 agrees to use the Approved Facilities for the purposes of Processing and/or Disposing of all Recyclable
239 Materials, Organic Materials, Solid Waste, and other materials Collected in the City. Use of a facility must
240 be approved, in writing, by the City prior to use consistent with the requirements of Article 4. Such
241 decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law
242 regarding Flow Control limitations or any definition thereof.

243 **3.3 SUBCONTRACTING**

244 Contractor shall not engage any Subcontractors for Collection, Transportation, or Processing of Recyclable
245 Materials, Organic Materials, or Solid Waste services without the prior written consent of City Contract
246 Manager. As of the Effective Date of this Agreement, City has approved Contractor's use of those
247 Subcontractors identified in Contractor's Proposal, included herein as Exhibit G5. If the Contractor plans
248 to engage other affiliated or related party entities in the provision of services, Contractor shall provide
249 City Contract Manager with thirty (30) days written notification of its plans and provide an explanation of
250 any potential impacts related to the quality, timeliness, or cost of providing services under this
251 Agreement. All insurance documents must be reviewed and approved by the City's Risk Manager prior to
252 City acceptance. Contractor shall require that all Subcontractors file insurance certificates with the City,
253 name City as an additional insured, and comply with all material terms of this Agreement.

254 **3.4 RESPONSIBILITY FOR MATERIALS**

255 Once Recyclable Materials, Organic Materials, and/or Solid Waste are placed in the Contractor's
256 Containers and at the Collection location, the responsibility for their proper handling shall Transfer directly
257 from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can identify the
258 Generator pursuant to Section 5.8.B. Once Recyclable Materials, Organic Materials, and/or Solid Waste
259 are deposited by Contractor at the appropriate Approved Facility, such materials shall become the
260 responsibility of the Owner or operator of the Approved Facility except for Excluded Waste pursuant to
261 Section 5.8.C.

262 Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain
263 with the Contractor if it cannot identify the Generator, and Contractor shall assume all responsibility for

264 its proper Disposal.

265 **3.5 CITY-DIRECTED CHANGES TO SCOPE**

266 City may require a proposal from Contractor to establish the scope of any modification to existing services
267 (which may include use of Approved Facilities) to be provided under this Agreement. In such case,
268 Contractor shall present, within thirty (30) calendar days of City's request, unless an alternate schedule is
269 mutually agreed-upon, a written proposal to provide such modified or additional services. City shall review
270 the Contractor's Proposal for the change in scope of services. City and Contractor may meet and confer
271 to negotiate Contractor's proposed revisions and costs and shall amend this Agreement, as appropriate,
272 to reflect the mutually agreed-upon changes in scope. If the City and Contractor are unable to agree on
273 terms and conditions, including compensation adjustments, of such services within ninety (90) calendar
274 days from City receipt of Contractor's Proposal for such services, the City may permit other Persons to
275 provide such services. Nothing herein shall prevent the City from soliciting cost and operating information
276 from other Persons in order to inform the City's evaluation of Contractor's Proposal.

277 At any time during the Term of this Agreement, the City may solicit proposals from other Persons for
278 services not contemplated under this Agreement. In the event that contracting with other Persons for
279 such services will reduce Contractor's Compensation under this Agreement, as described in Article 8, the
280 Contractor shall be offered the opportunity to match any other Person's proposed pricing and retain the
281 added scope of services. However, nothing in this Agreement shall prevent the City from contracting with
282 other Persons in the event that Contractor is unable or unwilling to provide such services at or below the
283 cost proposed by the other Person.

284
285

ARTICLE 4. SCOPE OF SERVICES

286 Contractor shall perform the Recyclable Materials, Organic Materials, Solid Waste, and Bulky Item services
287 described in this Article 4, for any Customer in the City that subscribes to Contractor's Collection services.
288 Contractor's Collection services shall be offered to any Customer that places Containers in a public right-
289 of-way or that provides a waiver for Contractor to access the Private Road(s) where Customer places its
290 Containers.

291 This Article 4 describes the general requirements for the services to be provided. More specific
292 requirements for how each service shall be provided to each Customer Type are described in Exhibit B.
293 Failure to specifically require an act necessary to perform the service does not relieve Contractor of its
294 obligation to perform such act.

295 **4.1 RECYCLABLE MATERIALS**

296 **A. Collection.** Contractor shall provide Recyclable Materials Collection services as described in
297 Exhibit B.

298 **B. Transfer.** Contractor plans to Transport Recyclable Materials to the Approved Transfer Facility
299 where the materials will be unloaded from Collection vehicles and loaded into large-capacity
300 vehicles and Transported to the Approved Recyclable Materials Processing Facility. Contractor
301 shall keep all existing permits and approvals necessary for use of the Approved Transfer Facility
302 in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits

303 and/or notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to City
304 Contract Manager. If the Contractor is unable to use the Approved Transfer Facility, then the
305 Contractor shall be responsible for making other Transportation arrangements. In such event,
306 Contractor shall not be compensated for any additional costs. If the Contractor plans to change
307 its Transfer method, Contractor shall obtain written approval from the City prior to making the
308 change.

309 **C. Processing.** Contractor shall Transport and deliver all Source Separated Recyclable Materials
310 placed in Recyclable Material Containers in the City to the Approved Recyclable Materials
311 Processing Facility. All tipping fees and other costs associated with Transporting to and Processing
312 of such Recyclable Materials at the Approved Recyclable Materials Processing Facility and
313 Disposing of the Residue as required in Section 4.1.E below shall be paid by Contractor.

314 Contractor guarantees sufficient capacity at the Approved Recyclable Materials Processing Facility
315 to Process all Source Separated Recyclable Materials Collected by Contractor under this
316 Agreement throughout the Term of the Agreement.

317 Contractor shall keep all existing permits and approvals necessary for use of the Approved
318 Recyclable Materials Processing Facility in full regulatory compliance. Upon request, Contractor
319 shall provide copies of facility permits and/or notices of violations (obtained from its Processing
320 Facility Subcontractor if necessary) to City Contract Manager.

321 If Contractor is unable to use the Approved Recyclable Materials Processing Facility due to an
322 event that meets the requirements for excusing Contractor from performance of this specific
323 obligation as described in Section 10.7, Contractor shall use an alternative Processing Facility
324 provided that the Contractor provides written notice to City Contract Manager. Within forty-eight
325 (48) hours of such emergency or sudden and unforeseen closure, the Contractor shall provide a
326 written description of the reasons the use of the Approved Recyclable Materials Processing
327 Facility is not feasible, and the period of time Contractor proposes to use the alternative
328 Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such
329 time as the City Contract Manager is able to consider and respond to the use of the proposed
330 alternative Processing Facility. If the use of the proposed alternative Processing Facility is
331 anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month period,
332 the use of such Processing Facility shall be subject to approval by the City Contract Manager. The
333 City Contract Manager may, in their sole discretion, approve, conditionally approve, temporarily
334 approve, or disapprove of the use of the proposed alternative Processing Facility. If the City
335 disapproves the use of the proposed alternative Processing Facility, the Parties shall meet and
336 confer to determine an acceptable Processing Facility.

337 If the use of an alternative Processing Facility is for reasons within Contractor's, or its Processing
338 Facility Subcontractor's control, Contractor's Compensation shall not be adjusted for any change
339 in Transportation and Processing costs associated with use of the alternative Processing Facility.
340 However, if the use of an alternative Processing Facility is due to reasons beyond Contractor's or
341 its Subcontractor's control, then City shall adjust, either up or down, Contractor's Compensation
342 for changes in Transportation and Processing costs associated with the use of the alternative
343 Processing Facility. The performance of Recyclable Materials commodity markets shall not be
344 considered an acceptable basis for use an alternative Processing Facility nor shall it serve as the
345 basis for any adjustment in Contractor's Compensation under this Agreement, other than as

346 specifically contemplated in Exhibit E to this Agreement. If the change in the Processing Facility
347 results in increased costs, City may identify and direct Contractor to an alternative Processing
348 Facility, without additional compensation to Contractor, which results in less cost than the
349 Contractor-identified alternative.

350 Except for the emergency conditions described in this section, Contractor shall not change its
351 selection of the Approved Recyclable Materials Processing Facility without City's written approval,
352 which may be withheld in the City's sole discretion. If Contractor elects to use a Recyclable
353 Materials Processing Facility that is different than the initial Approved Recyclable Materials
354 Processing Facility, it shall request written approval from the City Contract Manager sixty (60)
355 calendar days prior to use of the site and obtain City's written approval no later than ten (10)
356 calendar days prior to use of the site. Failure to meet the requirements of this Section shall result
357 in Liquidated Damage as identified in Exhibit F.

358 Contractor shall observe and comply with all regulations in effect at the Approved Recyclable
359 Materials Processing Facility and cooperate with and take direction from the operator thereof
360 with respect to delivery of Recyclable Materials. Contractor shall actively work with the Approved
361 Recyclable Materials Processing Facility operator throughout the Term of this Agreement to
362 ensure that contamination of the Recyclable Materials Collected under this Agreement and
363 delivered to the Processing Facility remains below the limits established by Applicable Law
364 including, without limitation, SB 1383.

365 **D. Marketing.** The Contractor shall be responsible for marketing Recyclable Materials Collected in
366 City that are delivered for Processing at Contractor's Approved Recyclable Materials Processing
367 Facility. Contractor's marketing strategy shall promote the highest and best use of materials
368 presented in the waste management hierarchy established by AB 939. Where practical, the
369 marketing strategy should include use of local, regional, and domestic markets for Recyclable
370 Materials.

371 **E. Residue Disposal.** Residue from the Processing of Source Separated Recyclable Materials
372 Collected under this Agreement at Contractor's Approved Recyclable Materials Processing
373 Facility, which cannot be marketed, shall be Disposed of by Contractor, or the Processing Facility
374 Subcontractor. Residue delivered for Disposal shall not include any Excluded Waste.

375 **4.2 ORGANIC MATERIALS**

376 **A. Collection.** Contractor shall provide Organic Materials Collection services as described in Exhibit
377 B.

378 **B. Transfer.** Contractor plans to Transport Organic Materials to the Designated Transfer Facility
379 where the materials will be unloaded from Collection vehicles and loaded into large-capacity
380 vehicles and Transported to the Approved Organic Materials Processing Facility. Contractor shall
381 keep all existing permits and approvals necessary for use of the Designated Transfer Facility in full
382 regulatory compliance.

383 **C. Processing.** Contractor's Proposal includes the development and construction of new Organic
384 Materials Processing infrastructure that is required for the performance of Contractor's
385 obligations under this Section 4.2. Contractor recognizes the critical nature of these services to
386 the City and ratepayers and shall take extraordinary efforts to secure all necessary permits and

387 approvals and to promptly commence the construction and commissioning of the Organic
388 Materials Processing Facility. Contractor shall provide monthly progress reports to the City
389 Contract Manager each month from the execution of this Agreement until the operational date
390 of the Organic Materials Processing Facility. In the event that Contractor is unable to operate the
391 Processing Facility at the level required to fulfill its obligations under this Agreement by the
392 Commencement Date of this Agreement, Contractor shall be responsible for securing an alternate
393 Organic Materials Processing Facility for the Organic Materials Collected in the City until such time
394 as Contractor's proposed Processing Facility is operational. Contractor shall present such
395 alternative Organic Materials Processing Facility to the City Contract Manager for approval, which
396 may be withheld if such facility has a materially concerning permitting status or regulatory history,
397 will not adequately Recover the Organic Materials delivered for Processing, or does not accept
398 the Organic Materials as defined in this Agreement. Any cost associated with delivery to such an
399 alternate Organic Materials Processing Facility shall be borne solely by the Contractor. In the
400 event that Contractor fails to secure an alternate Organic Materials Processing Facility for the
401 Organic Materials Collected in the City and those materials are Disposed, Contractor shall be
402 assessed the Liquidated Damages described in Exhibit F for Disposing of Organic Materials.

403

404 1. **General.** Contractor shall Transport and deliver all Source Separated Organic Materials
405 placed in Organic Material Containers in the City to the Approved Organic Materials
406 Processing Facility. All tipping fees and other costs associated with Transporting such
407 Organic Materials to the Approved Organic Materials Processing Facility and Disposing of
408 the Residue as required in Section 4.2.E below shall be paid by Contractor.

409 i. **Capacity Guarantee.** Contractor guarantees sufficient capacity at the
410 Approved Organic Materials Processing Facility to Process all Source
411 Separated Organic Materials Collected by Contractor under this
412 Agreement throughout the Term of the Agreement.

413 ii. **Compliance with Regulatory Requirements and Applicable Law.**
414 Contractor shall keep all existing permits and approvals necessary for use
415 of the Approved Organic Materials Processing Facility in full regulatory
416 compliance. Upon request, Contractor shall provide copies of facility
417 permits and/or notices of violations (obtained from its Processing Facility
418 Subcontractor if necessary) to City Contract Manager.

419 iii. **Notification of Emergency Conditions.** Each Approved Facility shall notify
420 the City of any unforeseen operational restrictions that have been
421 imposed upon the Facility by a regulatory agency or any unforeseen
422 equipment or operational failure that will temporarily prevent the Facility
423 from Processing the Discarded Materials Collected under this Agreement.

424 iv. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If
425 Contractor is unable to use the Approved Organic Materials Processing
426 Facility due to an event that meets the requirements for excusing
427 Contractor from performance of this specific obligation as described in
428 Section 10.7, Contractor shall use an alternative Processing Facility

429 provided that the Contractor provides written notice to City Contract
430 Manager. Within forty-eight (48) hours of emergency or sudden and
431 unforeseen closure, the Contractor shall provide a written description of
432 the reasons the use of the Approved Organic Materials Processing Facility
433 is not feasible, and the period of time Contractor proposes to use the
434 alternative Processing Facility. Such a change in Processing Facility shall
435 be temporarily permitted until such time as the City Contract Manager is
436 able to consider and respond to the use of the proposed alternative
437 Processing Facility. If the use of the proposed alternative Processing
438 Facility is anticipated to or actually does exceed thirty (30) days in a
439 consecutive twelve (12) month period, the use of such Processing Facility
440 shall be subject to approval by the City Contract Manager. The City
441 Contract Manager may, in their sole discretion, approve, conditionally
442 approve, temporarily approve, or disapprove of the use of the proposed
443 alternative Processing Facility. If the City disapproves the use of the
444 proposed alternative Processing Facility, the Parties shall meet and
445 confer to determine an acceptable Processing Facility.

446 If the use of an alternative Processing Facility is for reasons within
447 Contractor's, or its Processing Facility Subcontractor's control,
448 Contractor's Compensation shall not be adjusted for any change in
449 Transportation and Processing costs associated with use of the
450 alternative Processing Facility. However, if the use of an alternative
451 Processing Facility is due to reasons beyond Contractor's or its
452 Subcontractor's control, then City shall adjust, either up or down,
453 Contractor's Compensation for changes in Transportation and Processing
454 costs associated with the use of the alternative Processing Facility. In the
455 event that the change in the Processing Facility results in increased costs,
456 City may identify and direct Contractor to an alternative Processing
457 Facility, at the Contractor's expense, which results in less cost than the
458 Contractor-identified alternative.

459 Except for the emergency conditions described in this section, Contractor shall not change
460 its selection of the Approved Organic Materials Processing Facility without City's written
461 approval, which may be withheld in the City's sole discretion. If Contractor elects to use
462 an Organic Materials Processing Facility that is different than the initial Approved Organic
463 Materials Processing Facility, it shall request written approval from the City Contract
464 Manager sixty (60) calendar days prior to use of the site and obtain City's written approval
465 no later than ten (10) calendar days prior to use of the site. Failure to meet the
466 requirements of this Section shall result in Liquidated Damage as identified in Exhibit F.

467 Contractor shall observe and comply with all regulations in effect at the Approved Organic
468 Materials Processing Facility and cooperate with and take direction from the operator
469 thereof with respect to delivery of Organic Materials. Contractor shall actively work with
470 the Approved Organic Materials Processing Facility operator throughout the Term of this
471 Agreement to ensure that contamination of the Organic Materials Collected under this
472 Agreement and delivered to the Processing Facility remains below the limits established
473 by Applicable Law including, without limitation, SB 1383.

474 2. Compostable Plastics. Customers may place Compostable Plastics in the Organic
475 Materials Container for Collection, including Compostable Plastic bags used by Customers
476 to contain Food Waste prior to placement in the Organic Materials Container for
477 Collection. Contractor may prohibit use of Compostable Plastics to contain Yard
478 Trimmings. Contractor shall Collect and Transport such materials for Processing at the
479 Approved Organic Waste Processing Facility. At least six (6) months prior to the
480 commencement of the Agreement, and annually thereafter, Contractor shall provide a
481 written notification to the City authorizing that the Facility has and will continue to have
482 the capability to Process and recover the Compostable Plastics throughout the Term of
483 the Agreement; and the Contractor shall not revoke this authorization at any time during
484 the Term of the Agreement. If the Contractor does not submit such notification, or if at
485 any time during the Term of the Agreement the Approved Organic Waste Processing
486 Facility can no longer accept and/or Process Compostable Plastics, the City may assess
487 Liquidated Damages or deem such failure an event of default of the Contractor under
488 Article 10. Contractor shall notify the City within seven (7) days of the Facility's inability
489 to accept the Compostable Plastics. The notification shall, at a minimum, include: the date
490 and a description of the reasons that the Facility is not able to Process and recover the
491 Compostable Plastics; the period of time the Facility will not Process and recover these
492 materials; and the Contractor's proposed plan to find an alternative Facility or
493 arrangement to Process the Compostable Plastics, subject to City approval. City may
494 prohibit or restrict the use of Compostable Plastics, with a six (6) month notice to
495 Contractor, and this shall not constitute a City-Directed Change in Scope or Change in Law
496 under this Agreement.

497 **D. Marketing.** The Contractor shall be responsible for marketing Organic Materials Collected in the
498 City that are delivered for Processing at the Approved Organic Materials Processing Facility.
499 Contractor's marketing strategy shall promote the highest and best use of materials presented in
500 the waste management hierarchy established by AB 939. Where practical, the marketing strategy
501 should include use of local markets for Organic Materials.

502 **E. Residue Disposal.** Residue from the Processing of Organic Materials Collected under this
503 Agreement at the Approved Organic Materials Processing Facility, which cannot be marketed,
504 shall be Disposed of by Contractor, or the Processing Facility Subcontractor. Residue delivered for
505 Disposal shall not include any Excluded Waste.

506 **4.3 SOLID WASTE**

507 Contractor shall offer and provide Solid Waste Collection services as described in Exhibit B.

508 Contractor acknowledges that City is committed to Diverting materials from Disposal through the
509 implementation of source reduction, reuse, Recycling, Composting, and other programs, and that City
510 may implement new programs, with or without the involvement of the Contractor, that may impact the
511 overall quantity or composition of Solid Waste to be Collected by Contractor. Contractor shall not be
512 entitled to any compensation or other relief resulting from a decline in Solid Waste volumes or Tonnage
513 or from a change in the composition of Solid Waste.

514 Contractor plans to Transport Solid Waste to the Designated Transfer Facility where the materials will be
515 unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the

516 Designated Disposal Facility. Contractor shall keep all existing permits and approvals necessary for use of
517 the Approved Transfer Facility in full regulatory compliance. Upon request, Contractor shall provide copies
518 of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if
519 necessary) to City Contract Manager. If the Contractor is unable to use the Designated Transfer Facility,
520 then the Contractor shall be responsible for making other Transportation arrangements. In such event,
521 Contractor shall not be compensated for any additional costs. If the Contractor plans to change its Transfer
522 method, Contractor shall obtain written approval from the City prior to making the change.

523 Contractor shall Transport all Solid Waste Collected in City to the Designated Disposal Facility. Contractor
524 shall pay all costs associated with Transportation and Disposal of Solid Waste including payment of any
525 gate fees charged at the Designated Disposal Facility. Contractor shall observe and comply with all
526 regulations and posted rules in effect at the Designated Disposal Facility and cooperate with and take
527 direction from the operator thereof with respect to delivery of Solid Waste.

528 **4.4 BULKY ITEMS AND REUSABLE MATERIALS**

529 Contractor shall offer Bulky Item and Reusable Materials Collection services as described in Exhibit B.
530 Bulky Item and Reusable Materials Collection services shall be provided three (3) times per year, for up to
531 five (5) items, as approved by the City Contract Manager, pursuant to Exhibit B. On-call Bulky Item and
532 Reusable Materials Collection services shall be offered to Customers within one (1) Working Day of
533 Contractor's receipt of such a Customer request for service, pursuant to Exhibit B. Contractor shall make
534 reasonable efforts to schedule on-call Bulky Item and Reusable Materials Collections on a day that is
535 convenient to the Customer. Contractor shall Transport all Bulky Items or Reusable Materials Collected
536 under this Agreement to the Approved Reusable Materials Processing Facility. Contractor shall pay all
537 costs associated with Transporting and Processing Bulky Items and Reusable Materials. Contractor shall
538 observe and comply with all regulations in effect at the Approved Reusable Materials Processing Facility
539 and cooperate with and take direction from the operator thereof with respect to delivery of Bulky Items
540 and/or Reusable Materials.

541 **4.5 SPECIAL EVENTS**

542 Contractor shall provide Recyclable Materials, Organic Materials, and Solid Waste services to up to five
543 (5) special events per Rate Period, at no cost to the event or City. Contractor shall provide the special
544 event services to other events that are sponsored by City upon thirty (30) calendar days advance request
545 by the City Contract Manager. Special event services include all of the following unless specifically waived
546 in writing by City Contract Manager.

547 **A. Event Collection Stations.** Contractor shall provide and set-up event Collection stations for
548 Collection of Recyclable Materials, Organic Materials, and Solid Waste at City-sponsored special
549 events. Each event Collection station shall include a separate Cart for each of Recyclable
550 Materials, Organic Materials, and Solid Waste, as appropriate. Contractor shall provide a sufficient
551 number of event Collection stations of sufficient capacity to meet the needs of the event as
552 determined by Contractor in cooperation with the event organizer. Collection stations shall utilize
553 the same Carts used to provide services to Residential Customers, unless alternative Containers
554 are approved by the City. Contractor shall provide liners/bags for the Carts at the Collection
555 stations and shall line the Carts as a part of the station set-up. Collection stations shall include
556 adequate signs and labeling.

557 **B. Collection Station Monitors.** Upon request, Contractor shall provide up to six (6) Collection
558 station monitors who shall be present for the duration of each special event. Contractor shall
559 require Collection station monitors to monitor event Collection stations and educate event
560 attendees and vendors about what materials are acceptable in each Collection station Cart. The
561 City shall be responsible for Transporting materials contained in event Collection stations to Drop
562 Boxes, which will subsequently be Collected by the Contractor. Station monitors will also sort
563 materials both at the Collection stations and at the Drop Boxes to ensure that they are properly
564 separated.

565 **C. Drop Boxes.** Upon request, Contractor shall provide Containers for the aggregation of material
566 removed from event Collection stations during the course of the event. Contractor shall provide
567 Containers in sufficient number of appropriate type(s) for the needs of the event as determined
568 by Contractor in cooperation with the event organizer. Contractor shall service Containers, as
569 agreed-upon with the event organizer, and deliver Collected materials to the appropriate
570 Approved Facility for Processing and/or Disposal.

571 **D. Public Education Booth.** Upon request of either the City Contract Manager or the event organizer,
572 Contractor shall staff a booth or exhibit at the event for the purpose of educating the public about
573 the services and programs provided by Contractor under this Agreement and the benefits of
574 source reduction, reuse, Recycling, and Composting.

575 **E. Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a
576 report to the City Contract Manager and event organizer. The report should include, at a
577 minimum: the number of event Collection stations deployed at the event, the number of
578 Collection station monitors, the Tonnage of each material type (i.e., Recyclable Materials, Organic
579 Materials, and Solid Waste) Collected, and a description of the public education provided at the
580 event.

581 Contractor may, at its sole discretion and expense, coordinate with local youth, community, or charitable
582 organizations to provide some or all of the required services. Regardless of Contractor's use of such an
583 organization, Contractor shall be responsible for ensuring that service is provided to the Customer in a
584 professional and timely manner.

585 For special events which are not identified in Exhibit B5 or otherwise hosted or sponsored by the City,
586 Contractor shall provide the above-described special event services at the request of the event organizer
587 and may negotiate the charges for such services with the event organizer based on the specific needs of
588 the event.

589 **4.6 PUBLIC EDUCATION AND OUTREACH**

590 The public education and outreach activities included in the scope of services provided by Contractor
591 under this Agreement are described in Exhibit C. Contractor shall produce and distribute public education
592 and outreach materials upon City request and contribute any remaining funds in Contractor's annual
593 public education budget to the City to support the City's public education and outreach efforts.

594 **A. Program Objectives.** The City shall be responsible for designing and conducting a public education
595 and outreach program, and the Contractor shall be responsible for the production and distribution
596 of all materials under this program in accordance with this Agreement. The City's public education
597 and outreach strategy shall focus on improving Generator understanding of the benefits of and

598 opportunities for source reduction, reuse, and landfill Disposal reduction and supporting
599 compliance with Applicable Laws and regulations, including, but not limited to AB 341, AB 1826,
600 and SB 1383. Examples of goals of the City-provided public education and outreach program
601 include, but are not limited to: (i) informing Generators about the services that are provided under
602 this Agreement with specific focus on describing the methods and benefits of source reduction,
603 reuse, Recycling, and Composting; (ii) instructing Generators on the proper method for placing
604 materials in Containers for Collection and setting Containers out for Collection, with specific focus
605 on minimizing contamination of Recyclable Materials and Organic Materials; (iii) clearly defining
606 Excluded Waste and educating Generators about the hazards of such materials and their
607 opportunities for proper handling; (iv) discouraging Generators from buying products if the
608 product and its packaging are not readily reusable, Recyclable, or Compostable; (v) informing
609 Generators subject to Food Recovery requirements under SB 1383 of their obligation to recover
610 Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encouraging the
611 use of Compost and recovered Organic Waste products; and, (vii) encouraging Generators to
612 purchase products/packaging made with Recycled content materials. The cumulative intended
613 effect of these efforts is to reduce generation of Solid Waste and, ultimately, Disposal of Solid
614 Waste by each Generator in the City, and Contractor agrees to support and not undermine or
615 interfere with such efforts.

616 **B. Contractor Public Education Requirements.** Contractor agrees to print, produce, and distribute
617 education materials and conduct outreach, as required by the City, based on the City's adopted
618 program, the extent of these requirements may be similar to the example public education and
619 outreach requirements detailed in Exhibit C.

620 Contractor acknowledges that they are part of a multi-Party effort to operate and educate the
621 public about the regional integrated waste management system. Contractor shall cooperate and
622 coordinate with the City Contract Manager on public education activities to minimize duplicative,
623 inconsistent, or inappropriately timed education campaigns.

624 Contractor shall obtain approval from the City Contract Manager on all Contractor-provided
625 advertising, promotional, or service-related materials used within the City before publication,
626 distribution, and/or release. The City Contract Manager, in their sole discretion, shall have the
627 right to deny the use of any materials or content or may request that Contractor include City
628 identification and contact information on materials and Contractor's approval of such requests
629 shall not be unreasonably withheld.

630 **4.7 BILLING**

631 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in
632 accordance with Article 8. Billing shall be performed on the basis of services rendered and this Agreement
633 shall create no obligation on the part of any Person on the sole basis of the ownership of property.
634 Individual contracts between Contractor and a Customer for services provided under this Agreement shall
635 be prohibited.

636 Contractor shall bill all Single-Family Residential Customers bimonthly in advance of services provided.
637 Contractor shall bill all Commercial and Multi-Family Customers for scheduled and regularly recurring
638 services on a monthly basis in advance of services provided. Contractor shall bill Customers for any on-
639 call and/or non-recurring services no more frequently than bimonthly and may only bill for services

640 provided during the previous two (2) months. Contractor shall remit invoices to Customers no earlier than
641 the twentieth (20th) day of the month preceding the period for which service is being billed.

642 Contractor shall develop, maintain, and regularly update a Customer Account Information Database,
643 which shall include but is not limited to:

- 644 i. Customer name;
- 645 ii. Phone number;
- 646 iii. Service address;
- 647 iv. Email address; and,
- 648 v. Customer Service Levels, including:
 - 649 a. Customer Service Levels exceptions, and,
 - 650 b. Customer service waivers.

651 Contractor shall make such database available, upon no more than five (5) Working Days request from
652 the City Contract Manager, in accordance with this Section and Section 6.1. Contractor shall additionally,
653 on an annual basis, reconcile all Customer accounts with City's GIS information. Failure to maintain
654 database in accordance with this Section shall result in Liquidated Damages as identified in Exhibit F.

655 Contractor shall bill Customers electronically using paperless invoices, however Contractor shall bill
656 Customers who decline or are otherwise unable to provide email contact information by standard mail,
657 using standard (paper) invoices. Contractor shall permit Customers the ability to pay their bills through an
658 electronic check or credit card and include the ability for Customer billings to be automatically charged
659 on a recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use
660 such internet-based billing system. Contractor shall make arrangements to allow such Customers to pay
661 bills by cash, check, electronic check, money order, and credit card.

662 Up to once per billing cycle, City may direct Contractor to attach inserts to Customer invoices. Contractor
663 shall provide electronic bill inserts to Customers who are billed electronically, and paper bill inserts to
664 Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the
665 Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City
666 request for such attachments, Contractor shall comply with such request during its next billing cycle for
667 the targeted Customer group. Contractor shall perform this service with no additional requirement for
668 compensation.

669 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of
670 this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but
671 in no case more than thirty (30) calendar days after receiving a request to do so.

672 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad
673 debt") in accordance with this Section 4.7. Contractor shall make reasonable efforts to obtain payment
674 from delinquent accounts through issuance of late payment notices, telephone requests for payments,
675 and assistance from collection agencies.

676 Monthly Customer invoices shall be due thirty (30) calendar days from the first day of the billing period.
677 In the event that any account becomes more than thirty (30) calendar days past due, Contractor shall
678 notify such Customer of the delinquency via written correspondence, instructing the Customer that
679 unpaid bills which become more than forty-five (45) calendar days delinquent may be assessed a one and
680 one half percent (1.5%) late fee per month. Contractor shall provide a second written notice of
681 delinquency to any account which becomes more than sixty (60) calendar days past due, and a third
682 written notice of delinquency to any account which becomes more than ninety (90) calendar days past
683 due. Should any account become more than one hundred and twenty (120) calendar days past due,
684 Contractor may discontinue providing service to the Customer. No less than seven (7) calendar days prior
685 to discontinuing service to a Customer, Contractor shall notify the City Contract Manager of the address,
686 Service Level, service frequency, and delinquent billing amount. Contractor may withhold service from a
687 delinquent account until past delinquencies are paid in full. Upon restoring service to a previously
688 delinquent account, Contractor may require a deposit from the Customer not to exceed one (1) month's
689 billings at the Customer's Service Level.

690 If Contractor fails to invoice a Customer, or otherwise under-charges a Customer for services provided for
691 more than six (6) months, Contractor may not subsequently attempt to collect the under-charged amount
692 for more than six months of service. If Contractor over-charges a Customer for a period of more than six
693 (6) months, Contractor shall reimburse or credit the Customer for at least six months of the over-charged
694 service, but is not required by this Agreement to reimburse or credit the Customer for more than six (6)
695 months of overcharges. This Agreement also does not prohibit Contractor from reimbursing or crediting
696 a Customer for more than six (6) months of over-charges.

697 If a Customer reduces or cancels service during a billing cycle, the Customer shall be entitled to a proration
698 of the billing from the date that the service change was requested, in the case of cancellations or
699 reductions in the Customer's bill, or the date the service change was fulfilled, in the case of increases in
700 the Customer's bill.

701 **4.8 CUSTOMER SERVICE PROGRAM**

702 **4.8.1 Program Requirements**

703 **A. Availability of Representatives.** A representative of the Contractor who is knowledgeable of the
704 service area, services, and Rates shall be available from 8 a.m. to 5 p.m. Monday through Friday
705 to communicate with the public by telephone. Contractor shall maintain a local or toll-free
706 telephone number which it shall publicize. Contractor shall also maintain an after-hours
707 telephone number allowing twenty-four (24) hour per day access to Contractor management by
708 City Contract Manager in the event of an emergency involving Contractor's equipment or services
709 including, but not necessarily limited to, fires, blocked access, or property damage.

710 **B. Telephone.** City shall secure, and Contractor shall use, pay all costs incurred by, and maintain
711 during the Term of this Agreement, a toll-free phone number which shall serve as the primary
712 point of contact between Contractor and the public during normal business hours. Upon
713 expiration or early termination of this Agreement, the City shall retain the control of the toll-free
714 phone number. The Contractor shall provide the City with a separate emergency telephone
715 number for use by the City Contract Manager outside normal business hours. The Contractor shall
716 have contact such representative, available at the emergency telephone number during all hours
717 other than normal office hours.

718 Contractor shall maintain a telephone system in operation from 9 a.m. to 7 p.m. and shall have
719 sufficient equipment in place and staff a representative, or an answering service to available to
720 handle the volume of calls experienced on the busiest days and such telephone equipment shall
721 be capable of recording the responsiveness to calls. Contractor's telephone system shall offer
722 Customers who have been placed on-hold to opt to leave a voice message or email, rather than
723 remain on-hold. If Contractor's telephone Customer service performance falls below the
724 performance standards established in Exhibit F, the City shall have the right to require Contractor
725 to increase its staffing levels and/or call handling capacity without requirement for any additional
726 compensation to the Contractor. Recording of Contractor's responsiveness to calls shall include,
727 at a minimum, all items included in the "Service Quality and Reliability" and "Customer Service"
728 performance standards listed in Exhibit F. An answering machine or voicemail service shall record
729 Customer calls and voice messages between 7:00 p.m. and 9:00 a.m. Contractor shall provide a
730 live, not automated, call back on the same day to all Customers who leave voice messages by 5:00
731 p.m. on a Working Day and shall provide a live call back by noon of the following Working Day for
732 any voice messages left after 5:00 p.m.

733 **C. Web Site and Email Access.** Contractor shall develop and maintain a web site that is accessible by
734 the public and solely dedicated to the operations under this Agreement in the City. Contractor's
735 web site shall include all Rates allowed to be charged under the Agreement, all public education
736 and outreach materials produced and distributed under this Agreement, and provide the public
737 the ability to e-mail Contractor questions, service requests, or Complaints. Contractor shall
738 respond the same day to all Customers who leave e-mail messages by 5:00 p.m. on a Working Day
739 and shall respond by noon of the following Working Day for any e-mail messages left after 5:00
740 p.m. Contractor may respond to Customer e-mails either via e-mail or phone.

741 **4.8.2 Service Requests, Compliments, Complaints**

742 Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable
743 resolution of, all Customer service requests and Complaints. Contractor shall record, in its computer
744 system or a separate log, approved as to form by City Contract Manager, all Complaints, noting the name
745 and address of Complainant, date and time of Complaint, nature of Complaint, and nature and date of
746 resolution. The Contractor shall retain this Complaint log for the Term. Contractor shall record and
747 respond to all Complaints as communicated by the Customer, utilizing a "Customer is always right"
748 approach, shall not challenge or dispute the Customer's assertions or Complaints, and shall always
749 prioritize Customer satisfaction. Upon request by the City Contract Manager, Contractor shall compile and
750 submit a summary statistical table of the Complaint log.

751 Contractor shall respond to all Complaints received in accordance with the requirements of Section
752 4.8.1.B, and 4.8.1.C. Complaints related to missed Collections shall be addressed in accordance with
753 Section 4.8.3. Complaints related to repair or replacement of Carts or Bins, shall be addressed in
754 accordance with Section 5.6.

755 **4.8.3 Missed Collections**

756 **A. Missed Collection Complaints.** When handling Customer Complaints related to missed or
757 incomplete Collections, Contractor shall not question or contest the Customer's claim that the
758 Collection was missed or incomplete, even in cases where the route driver recorded the
759 Container(s) in question as already "Collected" or "not out." If Contractor believes a Customer has
760 pattern of inaccurately reporting missed Collections, Contractor may submit a request to the City

761 Contract Manager that the Customer be disqualified from receiving future Missed Collection
762 Rebates for a period to be determined by the City Contract Manager. Such application shall include,
763 but not be limited to: a statement explaining why Contractor believes the missed Collections were
764 inaccurately reported; documentation of the Customer's prior Complaints and resolution thereof;
765 and, call center notes taken during the Complaint calls.

766 **B. Schedule for Resolution.** Contractor shall resolve every Customer Complaint of a missed or
767 incomplete Collection by returning to the Customer address and completing the Collection. For all
768 Complaints related to missed Collections that are received by 3:00 p.m. on a Working Day, the
769 Contractor shall return to the Customer address and Collect the missed materials on the same
770 Working Day on which the missed Collection was reported. For those Complaints related to missed
771 Collections that are received after 3:00 p.m. on a Working Day, the Contractor shall have until the
772 end of the following Working Day to resolve the Complaint. Contractor shall pay Customer rebates
773 for late Collections in accordance with Section 5.13. Contractor's failure to comply with this Section
774 4.8.3 may result in Liquidated Damages, in accordance with Exhibit F.

775 Contractor shall not be required to return and complete a Collection in response to a Complaint if
776 the Contractor's driver has left a Non-Collection Notice in accordance with Section 4.11.

777 **C. Courtesy Collections for Admitted Late Set-Outs.** In the event that a Customer: (i) reports that their
778 Container(s) were placed for Collection after Contractor's Collection vehicle had already passed the
779 Premises for regularly scheduled Collection; (ii) does not claim that Contractor missed the
780 Collection; and, (iii) requests that the Contractor return and Collect their Containers, Contractor
781 shall return to the Customer Premises and provide a courtesy Collection at no charge to the
782 Customer. Contractor is not required to provide more than three (3) courtesy Collections for
783 admitted late set-outs per Customer per calendar year. For Residential Customers, one (1) courtesy
784 Collection represents Collection of up to three (3) Carts (Recyclable Materials, Organic Materials,
785 Solid Waste) per incident. Contractor shall complete the courtesy Collection by the end of the
786 following Working Day. Contractor shall not be required to pay Missed Collection Rebates for
787 courtesy Collections not completed on the scheduled Collection day. The provisions of this Section
788 shall only apply if the Customer acknowledges, and Contractor documents in writing, that the event
789 did not constitute a missed or incomplete Collection event by the Contractor.

790 **4.8.4 SB 1383 Non-Compliance Complaints**

791 For Complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements,
792 Contractor shall document the information listed in Exhibit D. Contractor shall provide this information in
793 a brief Complaint report to the City for each SB 1383-noncompliance Complaint within seven (7) days of
794 receipt of such Complaint, and a monthly summary report of SB 1383-non-compliance Complaints in
795 accordance with Exhibit D.

796 Upon City request, Contractor shall conduct follow-up inspections and/or outreach to the violating entity,
797 and shall document the information in the reports provided pursuant to Exhibit D.

798 **4.9 ACCESS TO CUSTOMER SERVICE AND BILLING SYSTEMS**

799 Contractor shall provide access and any necessary training to one (1) or more City employee(s) (as
800 designated by the City) regarding the use of Contractor information systems as described in this Section.
801 Contractor shall designate one (1) member of Contractor staff to work directly with such City employee.

802 Contractor shall provide such City employee with access to Customer service, call center, and operations
803 information systems in order to validate Contractor performance standards, verify that Customer rebates
804 have been issued in accordance with Section 5.13, and recommend changes to Customer Service Levels
805 to resolve service issues or otherwise address Customer needs. If recommended Service Level changes
806 are made, the designated City staff will work with Contractor's route manager to make such changes,
807 which shall not be denied by Contractor except for reasons related to Customer, route driver, and/or
808 equipment safety. Contractor shall also provide access to Customer contact information (including email
809 addresses) for purposes of City-provided public education and outreach activities. In addition, Contractor
810 shall ensure that the City Contract Manager and any other City staff, as requested by the City, have read-
811 only access to all service order, billing, and Customer service records in Contractor's internal information
812 systems. Such read-only access is intended to provide the City the ability to review notes related to
813 Customer service and/or billing issues.

814 **4.10 SERVICE EXEMPTIONS**

815 **4.10.1 General Exemptions**

816 Upon Customer request, and with written approval from the City Contract Manager, Contractor shall
817 cease providing, and collecting payment for, Collection services to a Premises which is anticipated to be
818 vacant for no less than thirty (30) days. In addition, upon written direction from the City Contract
819 Manager, Contractor shall modify or otherwise cease providing Collection services to Customers
820 requesting other service exemptions, provided that such Customers consistently demonstrate the ability
821 to responsibly manage Discarded Materials generated at the Premises in question, in a manner consistent
822 with Applicable Law.

823 **4.10.2 Commercial and Multi-Family Customer Waivers**

824 **A. General.** The City may grant waivers described in this Section to Commercial or Multi-Family
825 Generators that impact the scope of Contractor's provision of service for those Customers;
826 provided, the Generator shall continue to subscribe with Contractor for franchised Collection
827 services to the extent such services are not waived by the City. Waivers issued shall be subject to
828 compliance with SB 1383 requirements, pursuant to 14 CCR Section 18984.11, or other
829 requirements specified by the City.

830 **B. Types of Generator Waivers**

831 **1. De Minimis Waivers.** The City may waive a Commercial business' or Multi-Family property's
832 obligation to comply with some or all of the Recyclable Materials and Organic Materials
833 requirements set forth in this Agreement, SB 1383, and of the Municipal Code if the Generator
834 provides documentation or the City has evidence demonstrating one of the following de
835 minimis conditions:

836 a. The Commercial or Multi-Family Generator's total Discarded Materials Collection
837 service is two (2) cubic yards or more per week, and Organic Waste subject to Collection
838 in a Recyclable Materials Container or Organic Materials Container comprises less than
839 twenty (20) gallons per week, per applicable Container, of the Commercial business'
840 total waste; or,

841 b. The Commercial or Multi-Family Generator's total Discarded Materials Collection
842 service is less than two (2) cubic yards per week, and Organic Waste subject to

843 Collection in a Recyclable Materials Container or Organic Materials Container comprises
844 less than ten (10) gallons per week, per applicable Container, of the Commercial
845 business' total waste.

846 **2. Physical Space Waivers.** The City may waive a Commercial or Multi-Family Generator's
847 obligation to comply with some or all of the Recyclable Materials and Organic Materials
848 requirements set forth in this Agreement, SB 1383, and the Municipal Code if the Commercial
849 or Multi-Family Generator provides documentation, or the City has evidence from its staff,
850 the Contractor, licensed architect, engineer, or similarly qualified source demonstrating that
851 the Premises lacks adequate space for Recyclable Materials Containers and/or Organic
852 Materials Containers.

853 **C. Contractor Review of Waiver Requests.** Generators may submit requests for de minimis waivers
854 and physical space waivers to the City. The City shall notify Contractor of the request, and
855 Contractor shall within seven (7) days of receipt of the City's request, inspect the Generator's
856 Premises to verify the accuracy of the application. Contractor shall provide documentation of the
857 inspection, including the date of the inspection, Customer name and address, a description of the
858 Premises, evaluation of each criterion of the relevant waiver type, and photographic evidence. The
859 Contractor shall send this information and documentation to the City in a timely manner, not to
860 exceed three (3) days after the date of inspection. The City ultimately retains the right to approve
861 or deny any application, regardless of the information provided by the Contractor. Contractor shall
862 report information regarding waivers reviewed within the month, if any, in accordance with this
863 Section and Exhibit D.

864 **D. Service Level Updates.** When the City grants a waiver to a Customer, or the Customer's waiver
865 status changes after a re-verification determination, the City shall notify the Contractor within seven
866 (7) days of the waiver approval or status change with information on the Customer and any changes
867 to Service Level or Collection service requirements for the Customer. Contractor shall have seven
868 (7) days to modify the Customer's Service Level, Customer account data, and billing statement, as
869 needed.

870 **E. Waiver Re-verification.** The City shall be responsible for re-verification of waivers. Upon request of
871 the City, the Contractor shall support the City in this re-verification Process by providing requested
872 Customer information as per Customer database requirements in Section 4.7 In the event that a
873 waiver status changes, Contractor shall update the Customer's information and Service Level in
874 accordance with subsection 4.10.2.D above.

875 **4.10.3 Contractor Service Exemptions**

876 **A. Disaster Waivers.** In the event of a disaster, the City may grant Contractor a waiver of some or all
877 Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7, Chapter
878 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver
879 has been approved by CalRecycle. Any resulting changes in Collection requirements shall be
880 addressed as a change in scope in accordance with Section 3.5.

881 **B. Removal of Material from Homeless Encampments and Illegal Disposal Sites.** The Contractor may,
882 but is not required to, separate or recover Organic Waste that City removes from homeless
883 encampments and illegal disposal sites as part of an abatement activity to protect public health and

884 safety. Contractor shall report the amount of Discarded Materials removed for Disposal from
885 homeless encampments and illegal disposal sites, in accordance with Exhibit D.

886 **C. Quarantined Waste.** If approved by the City, the Contractor may Dispose of, rather than Process,
887 specific types of Organic Materials and/or Recyclable Materials that are subject to quarantine and
888 meet the requirements described in 14 CCR Section 18984.13(d) for a period of time specified by
889 the City or until the City provides notice that the quarantine has been removed and directs
890 Contractor to Transport the materials to the Approved Facilities for such material.

891 In accordance with Exhibit D, the Contractor shall maintain records and submit reports regarding
892 compliance agreements for quarantined Organic Materials and Recyclable Materials that are
893 Disposed of pursuant to this subsection.

894 **4.11 CONTAMINATION MONITORING**

895 **4.11.1 Annual Route Reviews**

896 **A. Methodology.** The Contractor shall, at its sole expense, conduct route reviews of Containers for
897 Prohibited Container Contaminants in a manner that meets the requirements of this Section; is
898 approved by the City; and results in all routes being reviewed at least annually.

899 The Contractor's route review shall include all Container types in service (Recyclable Materials,
900 Organic Materials, and Solid Waste Containers) for all Customer Types. The Containers shall be
901 randomly selected prior to beginning the route review through use of a random number
902 generator; and the minimum number of Containers to be sampled shall be based on weekly route
903 size, as follows:

904 1 For weekly routes with less than one thousand five hundred (1,500) Generators, the
905 Contractor shall sample a minimum of twenty-five (25) Containers;

906 2. For weekly routes with one thousand five hundred to three thousand nine hundred
907 ninety-nine (1,500-3,999) Generators, the Contractor shall sample a minimum of thirty
908 (30) Containers;

909 3. For weekly routes with four thousand to six thousand nine hundred ninety-nine (4,000-
910 6,999) Generators, the Contractor shall sample a minimum of thirty-five (35)
911 Containers; and,

912 4. For weekly routes with more than seven thousand (7,000) Generators, the Contractor
913 shall sample a minimum of forty (40) Containers.

914 Contractor shall develop a specific route review methodology to accomplish the above Container
915 inspection requirements and such methodology shall comply with the requirements of 14 CCR
916 Section 18984.5(b). Contractor shall submit its proposed route review methodology for the
917 coming year to the City no later than January 15 of each year describing its proposed methodology
918 for the calendar year and schedule for performance of each route's annual review. Contractor's
919 proposed route review methodology shall include not only its plan for Container inspections, but
920 shall also include its plan for prioritizing the inspection of Customers that are more likely to be
921 out of compliance. The City and/or CalRecycle will review and approve the proposed

922 methodology. Contractor may commence with the proposed methodology upon approval.

923 If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate to meet
924 the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the
925 methodology and, after obtaining City or CalRecycle approval, conduct additional route reviews,
926 increased Container inspections, or implement other changes using the revised procedure. If the
927 Contractor's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but
928 has been deemed inadequate by the City, the Contractor shall, at the expense of the City, revise
929 the methodology and implement the necessary changes using the revised procedure.

930 The City's Contract Manager may request, and Contractor shall accept, modifications to the
931 schedule to permit observation of the route reviews by the City. In addition, Contractor shall
932 provide an email notice to the City's Contract Manager no less than ten (10) Working Days prior
933 to each scheduled Route review that includes the specific time(s), which shall be within the City's
934 normal business hours, and location(s).

935 **B. Contamination Notification.** Upon identification of Prohibited Container Contaminants in a
936 Customer's Container, Contractor shall provide the Customer with a notice of contamination in
937 the form of either a Courtesy Pick-Up Notice or a Non-Collection Notice as determined by the
938 route auditor.

939 **C. Courtesy Pick-Up Notice.** Upon identification of Prohibited Container Contaminants in a
940 Customer's Container, Contractor shall provide the Customer a Courtesy Pick-Up Notice at the
941 Customer's door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, or
942 text message. Contractor shall also attach or adhere Courtesy Pick-Up Notice to Generators
943 contaminated Containers.

944 The courtesy pick-up notification shall, at a minimum:

- 945 1. Inform the Customer of the observed presence of Prohibited Container Contaminants;
- 946 2. Include the date and time the Prohibited Container Contaminants were observed;
- 947 3. Include information on the Customer's requirement to properly separate materials
948 into the appropriate Containers, and the accepted and prohibited materials for
949 Collection in each Container;
- 950 4. Inform the Customer of the courtesy pick-up of the contaminated materials on this
951 occasion with information that the Contractor may assess contamination Processing
952 fees and/or issue a Non-Collection Notice in the future; and,
- 953 5. Include photographic evidence.

954 The format of the Courtesy Pick-Up Notice shall be approved by the City Contract Manager and
955 must be a distinct color from the Non-Collection Notices.

956 Contractor shall Collect the contaminated Recyclable Materials and/or Organic Materials
957 Containers and either Transport the material to the appropriate Approved Facility for Processing;
958 or, Contractor may Collect the contaminated materials with the Solid Waste and Transport the

959 contaminated materials to the Approved Disposal Facility. A Courtesy Collection of contaminated
960 Recyclable Materials or Organic Materials where the materials are sent to the Approved Disposal
961 Facility may be made with a Solid Waste Collection vehicle, provided that the contaminants may
962 safely and lawfully be Collected as Solid Waste.

963 **D. Non-Collection Notices**

964 1. Non-Collection Notice. Upon identification of Prohibited Container Contaminants in a
965 Container in excess of standards agreed upon by the Parties or Excluded Waste, Contractor
966 shall provide a Non-Collection Notice to the Generator.

967 The Non-Collection Notice shall, at a minimum:

- 968 a. Inform the Customer of the reason(s) for non-Collection;
- 969 b. Include the date and time the notice was left or issued;
- 970 c. Describe the premium charge to Customer for Contractor to return and
971 Collect the Container after Customer removes the Contamination;
- 972 d. Provide a warning statement that a contamination Processing fee may be
973 assessed; and,
- 974 e. Include photographic evidence of the violation(s).

975 2. Communications with Customer. Whenever a Container at the Premises of a Commercial or
976 a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the
977 scheduled Collection day or within two (2) hours of the scheduled Collection day by
978 telephone, email, text message, or other verbal or electronic message to explain why the
979 Container was not Collected. Whenever a Container is not Collected because of Prohibited
980 Container Contaminants, a Customer service representative shall contact the Customer to
981 discuss, and encourage the Customer to adopt proper Discarded Materials preparation and
982 separation procedures.

983 3. Contractor Return for Collection. Upon request from Customer, Contractor shall Collect
984 Containers that received Non-Collection Notices within one (1) Working Day of Customer's
985 request if the request is made at least two (2) Working Days prior to the regularly scheduled
986 Collection Day. Contractor shall bill Customer for the extra Collection service event ("extra
987 pick-up") at the applicable City-approved Rates only if Contractor notifies Customer of the
988 premium Rate for this service at the time the request is made by Customer.

989 **E. Assessment of Contamination Processing Fees.** If the Contractor observes twenty percent (20%)
990 or more Prohibited Container Contaminants and has issued a Courtesy Pick-Up Notice or Non-
991 Collection notice, as appropriate, the Contractor may impose a contamination Rate approved by
992 the City for that Customer's Service Level. The intent of Contamination Fees is to provide a
993 behavioral tool to educate and prevent Customers from placing Source Separated Discarded
994 Material into the improper designated Container(s). To ensure that assessment of fees are to be
995 used for the intended purposes and not as a form of revenue generation, Contractor agrees that
996 Contamination fees shall not exceed one percent (1%) of Contractor's Gross Receipts in any

997 calendar quarter. In the event that Contamination fees exceed one percent (1%) of Contractor's
998 Gross Receipts in any calendar quarter, the assessment of Contamination fees shall be suspended
999 immediately and indefinitely pending a program assessment by the City and Contractor. Upon
1000 program suspension or at the request of the City at any time during the Term of the Agreement,
1001 City and Contractor shall meet and confer regarding the application and effectiveness of
1002 Contamination fees in accomplishing the behavior change. If the program is suspended due to
1003 excessive revenue generation, the City may require Contractor to either: i) modify the program
1004 parameters; ii) modify the amount of the Contamination fee; or, iii) return to the City any funds
1005 generated by the Contamination fee which exceed one percent (1%) of Contractor's Gross
1006 Receipts for a given period of time.

1007 Failure to comply with the requirements of this section shall equate to Ligated Damages in
1008 accordance in Exhibit F.

1009 Contractor shall leave a contamination Processing fee notice attached to the Generators'
1010 contaminated Container(s). Contractor must also deliver notice by mail to the bill-payer's address
1011 within twenty-four (24) hours of assessing the contamination fee.

1012 1. Contamination Processing Fee Notice. Contamination Processing Fee Notices shall be in a
1013 format approved by the City Contract Manager. Contractor shall notify the City in its
1014 monthly report of Customers for which contamination Processing fees were assessed per
1015 Section 4.11.1(F).

1016 Each Contamination Processing Fee Notice shall, at a minimum:

- 1017 i. Describe the specific material(s) of issue;
- 1018 ii. Explain how to correct future set outs; and,
- 1019 iii. Indicate that the Customer will be charged a contamination
1020 Processing fee on their next bill.

1021 **F. Reporting Requirements.**

1022 1. **Container Contaminant Log:** The driver or other Contractor representative shall record
1023 each event of identification of Prohibited Container Contaminants in a written log or in the
1024 on-board computer system including, but not limited to: date, time, Customer's address,
1025 type of Container, and maintain photographic evidence.

1026 2. **Contaminant Fees Assessment Report:** Additionally, on no less than a weekly basis,
1027 Contractor's Contract Administrator shall update the Customer's account records to note
1028 the contaminant event(s) as identified by driver(s). Contractor shall maintain records and
1029 report to the City monthly on contamination monitoring activities and actions taken,
1030 consistent with the submittal timing and content requirements of Exhibit D. Failure to meet
1031 the requirements of this Section 4.11.1(F)(2), shall equate to Ligated Damages as
1032 identified in Exhibit F.

1033 3. **Monthly Report:** The monthly report shall include, but is not limited to: list of Customers
1034 that were assessed charges; photographic evidence of each contamination event(s) where

1035 a fee(s) was assessed; verification processes to assure accurate fee assessment; date of
1036 notification, form(s) of notification given to Customer; list of efforts made in educating the
1037 Customer that was assessed a fee; list of Customer Complaints in response to fee
1038 assessment; Contractor's response and actions taken in response to Customer Complaints;
1039 and, the dollar amount of Contamination Fees assessed during the reporting period. Failure
1040 to meet the requirements of this Section 4.11.1(F)(3), shall equate to Liquidated Damages
1041 as identified in Exhibit F.

1042 **4.11.2 Waste Characterization Studies**

1043 **A. Recyclable Materials.** Contractor shall, at its sole expense, design and perform a Residue
1044 characterization of the Recyclable Materials Processed at the Approved Recyclable Materials
1045 Processing Facility a minimum of one (1) time per calendar per year. Contractor shall propose a
1046 study methodology that must include separately Processing at least thirty (30) Tons of Recyclable
1047 Materials, stratified across no fewer than three (3) distinct days of service, from the City at the
1048 Approved Recyclable Materials Processing Facility under normal operating conditions for the
1049 facility (i.e. staffing levels, belt speed, burden depth, etc.). The methodology must be approved
1050 by the City Contract Manager in writing prior to Contractor conducting such a study. The results
1051 of that study shall be used to determine the allowable level of Residue Disposal Costs for the
1052 upcoming Rate Period.

1053 **B. Organic Materials.** Contractor shall, at its sole expense, design and perform waste
1054 characterization studies for Prohibited Container Contaminants for Organic Materials Collected in
1055 the City. The Contractor shall conduct waste composition studies at least two (2) times per year
1056 and the studies shall occur in two (2) distinct seasons of the year. The Contractor shall submit a
1057 proposed methodology to the City for review and approval, and the methodology must include
1058 the requirements presented below.

1059 The study shall include samples of Organic Materials and Solid Waste taken from Containers
1060 located in different areas of the City that are representative of the City's waste stream. The
1061 minimum number of Containers to be sampled shall be based on weekly route size, as follows:

- 1062 1. For weekly routes with less than one thousand five hundred (1,500) Generators, the
1063 Contractor shall sample a minimum of twenty five (25) Containers;
- 1064 2. For weekly routes with one thousand five hundred to three thousand nine hundred ninety
1065 nine (1,500-3,999) Generators, the Contractor shall sample a minimum of thirty (30)
1066 Containers;
- 1067 3. For weekly routes with four thousand to six thousand nine hundred ninety nine (4,000-
1068 6,999) Generators, the Contractor shall sample a minimum of thirty five (35) Containers;
1069 and,
- 1070 4. For weekly routes with more than seven thousand (7,000) Generators, the Contractor shall
1071 sample a minimum of forty (40) Containers.

1072 The Contractor shall Transport all of the material Collected for sampling to a sorting area at an
1073 Approved Facility, where the presence of Prohibited Container Contaminants for each Container
1074 type shall be measured to determine the ratio of Prohibited Container Contaminants present in

- 1075 each material stream by weight. To determine the ratio of Prohibited Container Contaminants,
1076 the Contractor shall use the following protocol:
- 1077 1. The Contractor shall take one sample of at least a two hundred (200) pounds from the
1078 material Collected from each material stream for sampling. For example, Contractor shall
1079 take a two hundred (200) pound sample taken from the combined contents of the Organic
1080 Materials Container samples.
 - 1081 2. The two hundred (200) pound sample shall be randomly selected from different areas of
1082 the pile of Collected material for that material stream.
 - 1083 3. For each two hundred (200) pound sample, the Contractor shall remove any Prohibited
1084 Container Contaminants and determine the weight of Prohibited Container Contaminants.
 - 1085 4. The Contractor shall determine the ratio of Prohibited Container Contaminants in the
1086 sample by dividing the total weight of Prohibited Container Contaminants by the total
1087 weight of the sample.
 - 1088 5. All weights shall be recorded in pounds.
- 1089 **C. Scheduling and Observation of Studies.** Contractor shall, no later than January 15 of each
1090 calendar year, provide the City with a proposed methodology for each type of study and a
1091 schedule of studies for the calendar year for review and approval by the City. The City shall be
1092 notified at least thirty (30) days in advance of each study and the City, or the City's designated
1093 third party, maintains the right to observe all aspects of the study. The studies shall be scheduled
1094 within the City's normal business hours, and the City Contract Manager may request, and
1095 Contractor shall accept, modifications to the schedule to permit observation by the City.
- 1096 **D. Recordkeeping and Reporting.** Contractor shall maintain records of each study conducted and
1097 report results directly to the City within fourteen (14) days of completing the study as well as
1098 include the results in the Contractor's annual report, in accordance with Exhibit D.
- 1099 **E. General.** Pursuant to the requirements of SB 1383, 14 CCR, Division 7, Chapter 12, Article 10, the
1100 City is responsible for developing and implementing a Food Recovery program in the City. The
1101 Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere
1102 with the implementation, expansion, or operation of Food Recovery program efforts in the City.
- 1103 **F. Identification of Commercial Edible Food Generators.** Contractor shall assist the City with
1104 identifying Tier One and Tier Two Commercial Edible Food Generators for the purpose of the Food
1105 Recovery program. No later than six (6) months after the Effective Date of the Agreement, and
1106 annually thereafter, the Contractor shall identify and provide a list to the City of Commercial
1107 Customers that qualify, or appear to qualify, as Tier One or Tier Two Commercial Edible Food
1108 Generators, as defined by this Agreement. The list shall include, at a minimum: the Customer
1109 name; service address; contact information; Tier One or Tier Two classification; and, type of
1110 business as it relates to the categories of entities specified under the definitions of Tier One and
1111 Tier Two Commercial Edible Food Generators. The Contractor shall update this information
1112 annually; maintain an up-to-date database; and include this information in the Contractor's
1113 annual report, in accordance with Exhibit D.

**ARTICLE 5.
STANDARD OF PERFORMANCE**

1114
1115

1116 **5.1 GENERAL**

1117 Contractor shall at all times comply with Applicable Law and provide services in a manner that is safe to
1118 the public and the Contractor's employees. Except to the extent that a higher performance standard is
1119 specified in this Agreement, Contractor shall perform services in accordance with Recyclable Materials,
1120 Organic Materials, and Solid Waste management practices common to the San Diego area.

1121 **5.2 OPERATING HOURS AND SCHEDULES**

1122 **A. Hours of Collection.** Unless otherwise authorized by the City Contract Manager, Contractor's days
1123 and hours for Collection operations shall be as follows:

1124 **1. Residential Premises.** Collection from Residential Premises shall only occur between the
1125 hours of 6:00 a.m. and 7:00 p.m., Monday through Friday.

1126 **2. Commercial Premises.** Collection from Commercial Premises that are two hundred (200)
1127 feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and
1128 7:00 p.m., Monday through Saturday. Collection from Commercial Premises more than
1129 two hundred (200) feet from Residential Premises shall only occur between the hours of
1130 5:00 a.m. and 8:00 p.m., Monday through Saturday.

1131 **3. City Facilities.** The Collection schedule for City facilities shall be the same as Commercial
1132 Premises specified in subsection 5.2.A.2 above.

1133 **B. Changes in Collection Routes.** Prior to Commencement of this Agreement, Contractor shall
1134 provide the City with route maps identifying at a minimum: the type of route (e.g. Single-Family,
1135 Multi-Family, Commercial, etc.) and the service day. City shall either approve or deny proposed
1136 standard Collection routes. If City denies any standard Collection routes, Contractor may request
1137 a meet and confer with the City Contract Manager to discuss potential options. The City Contract
1138 Managers decision shall be final with respect to any routing changes that may impact the day of
1139 service of any Customer. Contractor may, at any time during the Term of this Agreement, propose
1140 changes or additional routes, subject to City approval. If a standard Collection route change is
1141 approved, Contractor must notify all affected Customers fourteen (14) days prior to Contractor
1142 implementing the new route. Failure to obtain City approval on route changes resulting in service
1143 day changes for Customers shall be subject to Liquidated damages as identified in Exhibit F.

1144 **C. Holiday Collection.** Contractor, at its sole discretion, may choose not to provide Collection
1145 services on a Holiday. In such event, Contractor shall provide Single-Family Collection services on
1146 the day following the Holiday thereby adjusting subsequent work that week with normally
1147 scheduled Friday Collection Services being performed on Saturday; however, Customer service
1148 days shall be returned to the normal schedule within one (1) week of the Holiday. Multi-Family,
1149 Commercial, and City Collection Services shall be adjusted as agreed between the Contractor and
1150 the Customer but must meet the minimum frequency requirement of one (1) time per week. The
1151 Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at
1152 least two (2) weeks prior to the change.

1153 **5.3 COLLECTION STANDARDS**

1154 **A. Servicing Containers.** Contractor shall Collect and return each Container to the location where
1155 the Occupant placed the Container for Collection. Contractor shall place the Containers upright
1156 with lids properly secured. For Customers other than Single-Family Residential Customers,
1157 Contractor shall, without additional charge to the Customer, pull or push Containers up to twenty-
1158 five (25) feet from the location where the Occupant placed the Container for Collection to the
1159 Collection vehicle for service.

1160 Contractor, at the request of Customers, may provide special services including: (i) unlocking
1161 Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or pushing Containers
1162 distances greater than twenty-five (25) feet. Contractor may charge Customers for such extra
1163 services at the Rates approved by City for such services.

1164 Contractor shall establish a hard-to-service route for each material type, using smaller Collection
1165 vehicles for the purposes of servicing Single-Family Customers in areas of the City that are difficult
1166 to access, do not have space to make turn-arounds, or where Contractor is otherwise unable to
1167 provide service meeting the highest safety standards. The City Contract Manager may, within
1168 reason and based on the specific circumstances of the Customer, require the Contractor to
1169 provide service to specific Single-Family Customers on this hard-to-service route, and Contractor
1170 shall ensure that it maintains a sufficient number of smaller Collection vehicles to accommodate
1171 such requests.

1172 Contractor may require Customers on private roads to sign road damage liability waivers prior to
1173 operating on such private streets. If Customers on private roads fail to sign such waivers,
1174 Contractor may, upon approval, which may or may not be conditional, from the City Contract
1175 Manager require them to receive service at the nearest public right of way.

1176 **B. Non-Collection, Courtesy Noticing.** Prior to the Commencement Date, Contractor shall develop,
1177 and submit to the City Contract Manager for review and approval, and as per the requirements of
1178 Section 4.11.1(D)

1179 1. A template Non-Collection Notice, for use in instances of acceptable non-Collection of
1180 Discarded Materials; and,

1181 2. A template Courtesy Pick-Up Notice, for use in instances of improper set-out of Discarded
1182 Materials, which the Contractor, at its sole option, elects to Collect as a courtesy to the
1183 Customer.

1184 Per the requirements identified in Section 4.11.1, in the event that Contractor encounters
1185 circumstances at a Customer Premises which prevents the Contractor from Collecting Discarded
1186 Materials which have been placed for Collection, Contractor shall leave a Non-Collection Notice
1187 at the Customer Premises clearly explaining Contractor's reason for refusal to Collect the
1188 Discarded Materials. Contractor shall not be required to Collect Discarded Materials which are
1189 reasonably believed to contain Excluded Waste, pursuant to the requirements of Section 5.8. If
1190 Contractor intentionally refuses to Collect Discarded Materials (including Cardboard overages),
1191 but does not leave a Non-Collection notice, it shall be considered a Missed Collection per Section
1192 4.8.3., and provisions of Section 5.13 shall apply. Contractor may propose an alternative to a paper
1193 Non-Collection Notice left at Customer Premises (e.g. Customer notification via a phone call or e-

1194 mail) subject to City approval. Such an alternative must involve pro-active communication with
1195 Customer, initiated by Contractor.

1196 In the event that Contractor encounters circumstances at a Customer Premises which allow for
1197 safe Collection of Discarded Materials, but do not otherwise reflect proper set-out procedures
1198 (including, but not limited to spills not caused by the Contractor, Carts placed too close together,
1199 Carts placed in front of one another, and/or Carts placed too close to parked cars), Contractor
1200 shall Collect the material and leave a Courtesy Pick-Up Notice at the Customer Premises clearly
1201 explaining how the Customer failed to comply with proper set-out procedures.

1202 Contractor may educate the public on proper set-out procedures designed to maximize the
1203 efficiency of Collection (e.g. Carts spaced three (3) feet apart). However, Contractor acknowledges
1204 that such procedures are not practical in all circumstances and failure of the Customer to follow
1205 such procedures does not constitute a reason for non-Collection if the Discarded Materials may
1206 be safely and reasonably serviced. Contractor's route drivers shall dismount their Collection
1207 vehicles and reposition Containers as necessary to provide Collection service. Contractor may not
1208 require a Customer to set out the Customer's Containers in such a manner that would block
1209 vehicle access to Customer's driveway. Contractor and Customers may mutually agree to
1210 uncommon service locations if necessary for Collection in specific areas (e.g. setting out all of the
1211 Carts in a court in a line down the middle of the court as opposed to Curbside.)

1212 Contractor may refuse to Collect Recyclable Materials or Organic Materials Containers which are
1213 contaminated in accordance with Exhibit B and Section 4.11, and shall leave an approved Non-
1214 Collection notice informing Customer how to properly separate materials.

1215 **C. Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for
1216 Collection, fuel, and other vehicle fluids while providing services under this Agreement. If any
1217 materials are spilled or leaked during Collection and Transportation, the Contractor shall clean up
1218 all spills or leaks before leaving the site of the spill.

1219 Contractor shall not Transfer loads from one vehicle to another on any Public Street, unless it is
1220 necessary to do so because of mechanical failure, combustion of material in the truck, or
1221 accidental damage to a vehicle.

1222 Contractor shall cover all open Drop Boxes at the pickup location before Transporting materials
1223 to the Approved Facility.

1224 Contractor shall conduct public outreach and staff training to Customers on best management
1225 practices for litter abatement at no extra charge. Such best management practices include,
1226 without limitation:

1227 1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers
1228 with Courtesy Pick-Up Notices, which will serve as outreach and education to the Customer.
1229 Photos of the Container will be taken by drivers, attached to the Customer's account, and
1230 will be available to outreach and Customer service staff in order to demonstrate to the
1231 Customer where a problem exists.

1232 2. Outreach to Customer on importance of bagging lightweight materials such as plastic bags,
1233 film plastics, foam peanuts, and other materials that can easily become litter due to their

- 1234 lightweight nature.
- 1235 3. Driver training on litter reduction techniques and litter removal best management
1236 practices.
- 1237 4. Affixing signage to the back of Contractor trucks which provides a phone number for
1238 residents to report material spills.

1239 **D. Development and Review of Collection Specifications.** Contractor shall work with the City to
1240 develop standard specifications for Collection Container enclosures at Commercial and Multi-
1241 Family Premises. These specifications shall be developed to ensure that the Collection Container
1242 enclosures are built to provide adequate space for and suitable configuration to allow the
1243 Contractor to safely and efficiently service Recyclable Materials, Organic Materials, and Solid
1244 Waste Containers. Contractor's Operations Manager or other appropriately qualified staff shall,
1245 upon request by the City Contract Manager, provide a review of plans for new Multi-Family and
1246 Commercial development or project design drawings. Contractor shall provide comments and
1247 recommendations resulting from the review in writing within ten (10) Working Days of receipt of
1248 the documents for review. In each review report, Contractor shall comment on the acceptability
1249 of the proposed enclosure arrangements in terms of: i) the adequacy of space for Recyclable
1250 Materials, Organic Materials, and Solid Waste Containers; ii) the accessibility of the Containers for
1251 Collection including whether additional charges (e.g., push/pull, etc.) would apply; and iii) ease of
1252 use by tenants.

1253 **E. No Commingling of Materials.** Contractor shall Collect materials generated in the City in
1254 Collection vehicles separately from other materials generated outside the City service area, unless
1255 otherwise approved by the City Contract Manager. Contractor shall not commingle materials
1256 which have been Source Separated with other materials types (for example, Source Separated
1257 Recyclable Materials which have been properly placed for Collection shall not be combined with
1258 Solid Waste or Source Separated Organic Materials).

1259 **5.4 TRANSFER AND PROCESSING STANDARDS**

1260 **5.4.1 Equipment and Supplies**

1261 Contractor shall equip and operate the Approved Processing Facilities in a manner to fulfill Contractor's
1262 obligations under this Agreement. Contractor is solely responsible for the adequacy, safety, and suitability
1263 of the Approved Processing Facilities. Contractor shall modify, enhance, and/or improve the Approved
1264 Processing Facilities as needed to fulfill Services under this Agreement.

1265 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts,
1266 maintenance supplies, Transfer, Transport, and Processing equipment, and other consumables as
1267 appropriate and necessary to operate the Approved Processing Facilities and provide all services required
1268 by this Agreement. Contractor shall place the equipment in the charge of competent operators.
1269 Contractor shall repair and maintain all equipment at its own cost and expense.

1270 **5.4.2 Scales and Weighing**

1271 Contractor is solely responsible for ensuring accurate weighing of all materials entering and leaving the
1272 Approved Processing Facilities.

- 1273 A. **Facility Scales.** Contractor shall maintain State-certified motor vehicle scales in accordance with
 1274 Applicable Law. All scales shall be linked to a centralized computer recording system at the
 1275 Approved Processing Facilities to record weights for all incoming and outgoing materials. Contractor
 1276 shall provide back-up generator(s) capable of supplying power to the scales in the event of a power
 1277 outage. Contractor shall promptly arrange for use of substitute portable scales should its usual
 1278 scales not be available for whatever reason. Pending substitution of portable scales, Contractor shall
 1279 as necessary estimate the Tonnes of materials delivered to and Transported from the Approved
 1280 Processing Facilities, on the basis of delivery vehicle and Transfer trailer volumes, tare weights,
 1281 and/or other available facility weight records. These estimates shall take the place of actual weights
 1282 while scales are inoperable, and shall be identified as estimates in electronic records and reporting.
- 1283 B. **Tare Weights.** No less than thirty (30) calendar days prior to the Commencement Date, Contractor
 1284 shall ensure that all vehicles used by Contractor to deliver Recyclable Materials, Organic Materials,
 1285 and Solid Waste to the Approved Processing Facilities are weighed to determine unloaded (“tare”)
 1286 weights. Contractor shall electronically record the tare weight, identify vehicle as Contractor owned,
 1287 and provide a distinct vehicle identification number for each vehicle. Contractor shall provide City
 1288 with a report listing the vehicle tare weight information upon request. Contractor shall promptly
 1289 weigh additional or replacement vehicles prior to placing them into service. Contractor shall check
 1290 tare weights at least annually, or within fourteen (14) calendar days of a City request, and shall re-
 1291 tare vehicles immediately after any major maintenance or service event.
- 1292 C. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least
 1293 one (1) test and recalibration per scale every twelve (12) months or upon City request.
- 1294 D. **Records.** Contractor shall maintain computerized scale records and reports that provide
 1295 information including date of receipt, inbound time, inbound and outbound weights of vehicles, and
 1296 vehicle identification number. Contractor shall also maintain computerized scale records and
 1297 reports providing historical vehicle tare weights for each vehicle and the date and location for each
 1298 tare weight recorded.
- 1299 E. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
 1300 cameras at the Approved Processing Facilities, Contractor shall make those videos available for City
 1301 review during the Approved Processing Facility’s operating hours, upon request of the City, and shall
 1302 provide the name of the driver of any particular load if available.

1303 **5.5 COLLECTION VEHICLE REQUIREMENTS**

- 1304 A. **Vehicle Requirements.** Contractor shall provide a fleet of Collection vehicles sufficient in number
 1305 and capacity to efficiently perform the work required by the Agreement in strict accordance with
 1306 its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection
 1307 vehicle used to respond to scheduled and unscheduled maintenance, service requests, Complaints,
 1308 and emergencies.
- 1309 1. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or
 1310 overflow. All such vehicles shall meet On-Road Heavy Duty Vehicle emissions requirements
 1311 for model year 2020, regardless of the actual model year of Contractor’s vehicles, and
 1312 generally comply with all Federal, State, and local laws and regulations. Contractor’s vehicles
 1313 shall utilize Recycled motor oil to the extent practicable.

- 1314 2. Contractor's Proposal does not include the immediate use of RNG due to a lack of availability,
 1315 however Contractor acknowledges the importance of this to the City's compliance with SB
 1316 1383 Organic Waste product procurement requirements and will continue to review the
 1317 potential for this fueling option throughout the Term of the Agreement. Contractor will
 1318 annually investigate the ability to procure qualified RNG with their fueling provider and will
 1319 implement the use of such fuel to the maximum available extent provided that the premium
 1320 cost of qualified RNG does not cause Contractor's total fuel expense to increase by more than
 1321 10%. Contractor shall make best efforts to seek and utilize RNG that is purchased through a
 1322 wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase
 1323 of gas derived from Organic Waste that has been Diverted from a landfill and Processed at an
 1324 in-vessel digestion Facility that is permitted or otherwise authorized by 14 CCR to Recycle
 1325 Organic Waste and meets SB 1383 requirements. Contractor shall maintain records of the
 1326 amount of RNG purchased and shall report this information in accordance with Exhibit D.
 1327 Contractor shall agree to the City the right to report this RNG usage toward the City's
 1328 fulfillment of its annual recovered Organic Waste product procurement target in accordance
 1329 with 14 CCR Section 18993.1.
- 1330 3. Collection vehicles shall have the capacity to Collect and Transport loose Cardboard overages,
 1331 to ensure that Contractor is capable of complying with Exhibit B.
- 1332 4. Collection vehicles shall present a clean appearance while providing service under this
 1333 Agreement.
- 1334 **B. Vehicle Display.** Contractor's name and local telephone number shall be displayed on all vehicles in
 1335 at least four (4) inch characters. Vehicles shall be equipped with sign board holders or other
 1336 hardware to allow public education signage of no less than thirty-six (36) by forty-eight (48) inches
 1337 to be displayed on both sides of the vehicle.
- 1338 **C. Vehicle Inspection.** Contractor shall inspect each vehicle daily to ensure that all equipment is
 1339 operating properly. Vehicles that are not operating properly shall be taken out of service until they
 1340 are repaired and operate properly. Contractor shall repair, or arrange for the repair of all its vehicles
 1341 and equipment for which repairs are needed because of accident, breakdown or any other cause so
 1342 as to maintain all equipment in a safe and operable condition. City Contract Manager may inspect
 1343 vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine
 1344 compliance with sanitation requirements.
- 1345 **D. Vehicle Operations.** All Collection operations shall be conducted as quietly as possible and shall
 1346 conform to applicable Federal, State, County, and City noise level regulations, including the
 1347 requirement that the noise level during the stationary compaction process not exceed sixty (60)
 1348 decibels with the exception of sixty-five (65) decibels for one (1) minute duration. All decibel
 1349 readings shall be based on a distance of ten (10) feet from any part of the Vehicle. The City may
 1350 request Contractor to check any piece of equipment for conformance with the noise limits in
 1351 response to Complaints and/or when the City Contract Manager believes it is reasonable to do so.

1352 **5.6 CONTAINER REQUIREMENTS**

- 1353 **A. Containers Provided to Customers.** On or before the Commencement Date, Contractor shall
 1354 provide Customers (including Single-Family, Multi-Family, Commercial, and City facility Customers)

1355 with new Collection Containers as requested by the Customer to meet its desired Service Level.
1356 Contractor shall provide Containers to new Customers requesting service initiation within three (3)
1357 Working Days of Contractor's first receipt of the Customer request. Contractor-provided Containers
1358 shall be new, and shall comply with the Container standards set forth in the Section. All Containers
1359 shall display the City's name, logo, telephone number described in Section 4.8.1, website, capacity
1360 (yards or gallons) and some identifying inventory or serial number. Contractor shall cooperate with
1361 the previous City Collection contractor to ensure that all existing Containers are replaced with
1362 Contractor-provided Containers within thirty (30) calendar days following the Commencement
1363 Date.

1364 **B. Container Standards**

- 1365 1. All Carts shall be manufactured by injection or rotational molding methods. The Cart handles
1366 and handle mounts may be an integrally molded part of the Cart body or molded as part of
1367 the lid. The Cart handles shall provide comfortable gripping area for pulling or pushing the
1368 Cart or lifting the lid. Pinch points are unacceptable Carts provided to Customer shall have a
1369 useful life of ten (10) or more years or more as evidenced by a manufacturer's warranty or
1370 other documentation acceptable to the City.
- 1371 2. Carts shall remain durable, and at a minimum, shall meet the following durability
1372 requirements to satisfy its intended use and performance, for the Term of this Agreement:
1373 maintain its original shape and appearance; be resistant to kicks and blows; require no routine
1374 maintenance and essentially be maintenance free; not warp, crack, rust, discolor, or
1375 otherwise deteriorate over time in a manner that shall interfere with its intended use; resist
1376 degradation from ultraviolet radiation; be incapable of penetration by biting or clawing of
1377 household pets (i.e., dogs and cats); the bottoms of Cart bodies must remain impervious to
1378 any damage, that would interfere with the Cart's intended use after repeated contact with
1379 gravel, concrete, asphalt, or any other rough and abrasive surface; all wheel and axle
1380 assemblies are to provide continuous maneuverability and mobility as originally designed and
1381 intended.
- 1382 3. Carts shall be resistant to common household or Residential products and chemicals; human
1383 and animal urine and feces; and, airborne gases or particulate matter currently present in the
1384 ambient air of the Service Area.
- 1385 4. All Containers with a capacity of one (1) cubic yard or more shall meet applicable Federal
1386 regulations for Bin safety and be covered with attached lids.
- 1387 5. Contractor shall obtain the City's written approval of Container material, design, colors,
1388 labeling, and other specifications before acquisition, painting, labeling, or distribution occurs.
- 1389 6. When purchasing plastic Collection Containers, Contractor shall purchase Containers that
1390 contain a minimum of thirty percent (30%) post-consumer recycled plastic content, unless
1391 such requirement is waived by the City Contract Manager.
- 1392 7. Container lids shall be designed such that the follow requirements are met:
1393 a. Prevents the intrusion of rainwater and vectors;

- 1394 b. Prevents the emissions on odors;
- 1395 c. Enables the free and complete flow of material from the Container during the dump
1396 cycle without interference with the material already deposited in the truck body or the
1397 truck body itself and its lifting mechanism;
- 1398 d. Permits users of the Cart to conveniently and easily open and shut the lid throughout
1399 the serviceable life of the Cart;
- 1400 e. Hinges to the Cart body in such a manner to enable the lid to be fully opened, free of
1401 tension, to a position whereby it may rest against the backside of the Cart body;
- 1402 f. Prevents damage to the Container body, the lid itself, or any component parts through
1403 repeated opening and closing of the lid by Generators or in the dumping process as
1404 intended;
- 1405 g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All lid
1406 hinges must remain fully functional and continually hold the lid in the original designed
1407 and intended positions when either opened or closed or any position between the two
1408 (2) extremes; and,
- 1409 h. Designed and constructed such that it prevents physical injury to the user while opening
1410 and closing the Cart.
- 1411 8. Containers shall be stable and self-balancing in the upright position, when either empty or
1412 loaded to its maximum design capacity with an evenly distributed load, and with the lid in
1413 either a closed or an open position. Containers shall be capable of maintaining upright
1414 position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from
1415 any direction.
- 1416 9. Containers shall be capable of being easily moved and maneuvered, if applicable, with an
1417 evenly distributed load equal in weight to its maximum design capacity on a level, sloped or
1418 stepped surface.
- 1419 10. All such Containers shall be one hundred percent (100%) recyclable at the end of their useful
1420 life.
- 1421 11. All Containers shall be designed and constructed to be watertight and prevent the leakage of
1422 liquids.
- 1423 C. **Container Colors.** Contractor shall provide all Customers with Collection Containers that comply
1424 with the Container color requirements specified in this Section 5.6, or as otherwise specified in
1425 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Colors
1426 shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation; and
1427 the lids and bodies shall be uniform for each Container type, as follows:
- 1428 1. Recyclable Materials Container bodies and lids shall be blue;
- 1429 2. Organic Materials Container bodies and lids shall be green; and,

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3. Solid Waste Container bodies and lids shall be grey.

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Hardware such as hinges and wheels on the Containers may be a different color than specified above. All Containers shall comply with these color requirements, including Split-Bins. Each section of the Split-Bin shall be painted in accordance with the color requirements in this Section for the applicable Discarded Material type intended for that segregated section of the Bin (e.g., a Split-Bin for Solid Waste and Recyclable Materials would be half gray and half blue, respectively).

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D. Container Labeling. All markings on the Containers shall be approved by the City in advance of ordering such Containers. On the lid of each Cart, and the body of each Bin and Drop Box, Contractor shall label the ultimate destination of such materials as follows: "LANDFILL" for Solid Waste; "RECYCLE" for Recyclable Materials (including Cardboard, mixed paper, metal, etc.); and, "COMPOST" for Organic Materials (including Food Waste, Yard Trimmings, wood waste, etc.). On the body of each Cart, Bin, and Drop Box, Contractor shall label the Container capacity (in gallons for Carts, and cubic yards for Bins and Drop Boxes). Container body labeling shall be positioned on the side of each Container so it is visible to the Customer at all times.

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Carts shall have positional marking in the form of an arrow (at least three (3) inches by five (5) inches) hot stamped in white color on the Cart lid, indicating the direction of Cart placement; and, in character size of no less than 3/16 inches, the phrase: "PLACE CART WITH ARROW FACING STREET FOR COLLECTION."

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All Carts shall include a high-quality educational information label using in-mold technology, such that all labeling shall be integral to the lid, though the use of injection molding, and shall not be affixed to any part of the Cart or lid using adhesives. Notwithstanding the provisions of this Section, or the requirements of SB 1383, the in-mold lid label shall, at a minimum, include for each Container: primary materials accepted; primary materials prohibited; a clear indication of Prohibited Container Contaminants for that Container type, acceptable materials; prohibited materials; notification forbidding Hazardous Waste and describing proper Disposal thereof; notification forbidding scavenging (through words and international symbols) and describing the penalties therefore under California law or City Resolution; information about the Collection program; and, the City's name and logo. Subject to City approval, Contractor shall display City's name, website, and Contractor's designated telephone number using labels, decals, or other approved method. Upon expiration or early termination of this Agreement, Contractor shall transfer access and rights of such phone number and website to the City. Contractor shall be prohibited from including Contractor's name and/or logo on any Containers utilized in the City.

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E. Repair and Replacement of Containers; Inventory. Contractor shall be responsible for repairing or replacing Containers when Contractor determines the Container is no longer suitable for service; or when the City or Customer requests replacement of a Container that does not properly function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be responsible for acquiring and providing the replacement Containers. Contractor shall repair or replace all damaged or broken Containers within three (3) Working Days of Customer or City request. Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the Contractor personnel. All repairs must restore the Cart to its full functionality to meet the design and performance requirements as set for herein.

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Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer

1472 requests for service, requests for change in Service Levels (size, type, or number of Containers)
1473 from current subscribers, and requests for replacement due to damage.

1474 Contractor shall provide to Single-Family Customers at least one (1) free Cart replacement per any
1475 twelve (12) month period for any reason, upon Customer request. If Customer requests more
1476 than one (1) Cart replacement per any twelve (12) month period, Contractor shall make Carts
1477 available at the City-approved Rate for such services. In addition, Single-Family Customers may
1478 also request one Cart size exchange per Rate Period at no charge. All such Containers shall be
1479 provided within three (3) Working Days of request. Contractor's failure to comply with the
1480 Container requirements may result in assessment of Liquidated Damages pursuant to Section 10.6
1481 and Exhibit F.

1482 **F. Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and
1483 functional condition, and present a clean appearance. Contractor shall repair or replace all
1484 Containers damaged by Collection operations in accordance with standards specified in Section
1485 5.6.D, unless damage is caused by Customer's gross negligence, in which case, the Customer will
1486 be billed for repair or replacement of Container at a City-approved Rate for such service. All
1487 Containers shall be maintained in a functional condition.

1488 Contractor shall steam clean and/or repaint all Containers as needed (other than Carts) to present
1489 a clean appearance. Contractor shall offer steam cleaning service (or clean Container exchange)
1490 to Customers requesting such service and shall charge Customers for such cleaning (or Container
1491 exchange) at the City-approved Rate for such service.

1492 Contractor shall remove graffiti from Containers within forty-eight (48) hours of identification by
1493 Contractor or notice by City or Customer if such graffiti includes any written or pictorial
1494 obscenities and otherwise within a one (1) week period.

1495 Upon request from the City Contract Manager, Contractor shall provide the City with a list of
1496 Containers and the date each Container was painted and maintained.

1497 **G. City Ownership of Containers at End of Term.** Upon expiration or early termination of Agreement,
1498 all Containers purchased and put into service at Customer Premises during the Term of the
1499 Agreement shall become property of the City at no cost to the City if such Containers are fully
1500 depreciated. All Containers, and Compactors purchased and put into service at Customer
1501 Premises during the Term of the Agreement that have not been fully depreciated shall be available
1502 to the City, at the City's option, at a cost reflecting the net book value.

1503 At its sole discretion, the City may elect not to exercise its rights with regards to this Section and,
1504 in such case, the Containers, and Compactors shall remain the property of the Contractor upon
1505 the date of this Agreement's expiration or earlier termination. In such case, Contractor shall be
1506 responsible for outstanding depreciation and for removing all Containers, and Compactors in
1507 service from the Premises within fourteen (14) Working Days of the expiration date or early
1508 termination date of this Agreement or within a different timeframe mutually agreed to by the
1509 Parties. Contractor shall arrange for reuse or Recycling of Containers, and Compactors removed
1510 from the City.

1511 **5.7 PERSONNEL**

1512 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
1513 services required by this Agreement in a safe and efficient manner.

1514 Contractor shall use its best efforts to assure that all employees present a neat appearance and
1515 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,
1516 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from Customers
1517 or members of the public.

1518 **B. Hiring of Displaced Employees.** Contractor is aware of and shall comply with the requirements of
1519 and duties imposed by Sections 1072 and 1075 of the California Labor Code regarding offers of
1520 employment to any displaced employees resulting from a change in service provider, if any,
1521 resulting from this Agreement or upon the expiration of this Agreement.

1522 The minimum staffing positions to be provided by Contractor to perform the services described
1523 herein to the City are identified in Exhibit H. Failure to consistently maintain these staffing levels,
1524 by position, during the Term of the Agreement shall be considered a material breach.

1525 **C. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued
1526 by the California Department of Motor Vehicles. Contractor shall use the Class II California
1527 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

1528 **D. Safety Training.** Contractor shall provide suitable operational and safety training for all employees
1529 who operate Collection vehicles or equipment. Contractor shall train its employees involved in
1530 Collection to identify, and not to Collect, Excluded Waste. Upon the City Contract Manager's
1531 request, Contractor shall provide a copy of its safety policy and safety training program, the name
1532 of its safety officer, and the frequency of its trainings.

1533 **E. Designated Staff.**

1534 1. Contractor's Contract Administrator. Contractor shall designate at least one (1) qualified
1535 employee as City's primary point of contact with Contractor who is principally responsible
1536 for Collection operations and resolution of service requests and Complaints. Such individual
1537 shall be empowered to negotiate on behalf of and bind Contractor with respect to any
1538 changes in scope, dispute resolution, compensation adjustments, and service-related
1539 matters which may arise during the Term of this Agreement. Such individual is defined as
1540 Contractor's General Manager.

1541 2. Field Supervisor. Contractor shall designate one (1) qualified full-time employee as
1542 supervisor of field operations. The designated Field Supervisor will devote at least fifty
1543 percent (50%) of his/her time in the City in the field checking on Collection operations,
1544 including responding to Customer requests, inquiries, and Complaints.

1545 3. Diversion Coordinators. Contractor shall provide two (2) full-time Diversion Coordinators
1546 who are solely dedicated to the City and shall not perform any work related to other
1547 jurisdictions, proposals, or business functions of Contractor. Contractor shall hire the
1548 Diversion Coordinators in advance of the Commencement Date and the Diversion
1549 Coordinators shall assist in contacting all Multi-Family and Commercial Customers prior to

1550 the Commencement Date to determine Service Levels. The duties of the Diversion
1551 Coordinators will be focused on public education, community outreach, Commercial and
1552 Multi-Family site visits, and technical assistance, and will be substantially as proposed by
1553 Contractor in Exhibit G, Contractor's Proposal and in Exhibit C, Public Education and
1554 Outreach Requirements. Diversion Coordinators shall be full-time, regular, professional
1555 positions, compensated in accordance with the wages shown in Contractor's Proposal for
1556 such positions. Contractor acknowledges that the Diversion Coordinator role is not intended
1557 to be an internship, or entry-level role. City shall have the option to participate in the hiring
1558 and training process of Contractor's Diversion Coordinators. City may also employ
1559 corresponding staff members who will work in partnership with Contractor's Diversion
1560 Coordinators and Contractor's Diversion Coordinators shall cooperate and share
1561 information openly with such City employee.

1562 In the event that Contractor fails to provide the required number of full-time equivalent
1563 Diversion Coordinators for more than two (2) months, Contractor shall remit to the City
1564 fourteen thousand dollars (\$14,000) per un-provided employee for every month (in excess
1565 of two months) such employee is not provided. Such amount shall be adjusted annually by
1566 the same percentage used to adjust Rates in accordance with Exhibit E. Contractor shall
1567 remit such payment within fifteen (15) Business Days of a written request by the City. The
1568 intent of this payment is for the City to utilize the funds to separately procure equivalent
1569 public education services and ensure the contractually agreed upon levels of technical
1570 assistance and outreach to Customers.

1571 **F. Key Personnel.** Contractor shall make every reasonable effort to maintain the stability and
1572 continuity of Contractor's staff assigned to perform the services required under this Agreement.
1573 Contractor shall notify the City of any changes in Contractor's key staff to be assigned to perform
1574 the services required under this Agreement and shall obtain the approval of the City Contract
1575 Manager of all proposed key staff members who are to be assigned to perform services under this
1576 Agreement prior to any such performance.

1577 Notwithstanding City's approval of Contractor's personnel, Contractor shall not be relieved from
1578 any liability resulting from the work to be performed under this Agreement, nor shall Contractor
1579 be relieved from its obligation to ensure that its personnel maintain all requisite certifications,
1580 licenses, and the like, and Contractor shall ensure that its personnel at all times fully comply with
1581 Applicable Law.

1582 At any point during the Term of this Agreement, the City may request, in writing, that any of
1583 Contractor's employees be reassigned such that they no longer perform any work relating to this
1584 Agreement, and shall provide a statement describing the reason for such request. Within twenty-
1585 four (24) hours of Contractor's receipt of such request, or such other time agreed to by City in
1586 writing, Contractor shall remove the identified employee(s) from performing any work related to
1587 this Agreement; the vacated position(s) must be filled by Contractor with a suitable replacement
1588 within ten (10) calendar days and Contractor shall immediately fill the vacated position with a
1589 temporary replacement if required to perform, without delay, all services required under this
1590 Agreement.

1591 **5.8 HAZARDOUS WASTE INSPECTION AND HANDLING**

1592 **A. Inspection Program and Training.** Contractor shall develop a load inspection program that
1593 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)
1594 management of wastes; and, (iv) record keeping and emergency procedures.

1595 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in:
1596 (i) the effects of Hazardous Substances on human health and the environment; (ii) identification
1597 of prohibited materials; and, (iii) emergency notification and response procedures. Collection
1598 vehicle drivers shall inspect Containers before Collection when practical.

1599 **B. Response to Excluded Waste Identified During Collection.** If Contractor determines that material
1600 placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's
1601 employees, the Contractor shall have the right to refuse to accept such material. The Generator
1602 shall be contacted by the Contractor and requested to arrange proper Disposal. If the Generator
1603 cannot be reached immediately, the Contractor shall, before leaving the Premises, leave Non-
1604 Collection Notice, which indicates the reason for refusing to Collect the material and lists the
1605 phone number of a facility that accepts the Excluded Waste or a phone number of an entity that
1606 can provide information on proper Disposal of the Excluded Waste. Under no circumstances shall
1607 Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly
1608 containerized Excluded Waste from a Collection Container.

1609 If Excluded Waste is found in a Collection Container or Collection area that could possibly result
1610 in imminent danger to people or property, the Contractor shall immediately notify the Fire
1611 Department.

1612 **C. Response to Excluded Waste Identified At Processing or Disposal Facility.** Materials Collected by
1613 Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal. In
1614 the event that load checkers and/or equipment operators at such facility identify Excluded Waste
1615 in the loads delivered by Contractor, such personnel shall remove these materials for storage in
1616 approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for removal of
1617 the Excluded Wastes at its cost by permitted haulers in accordance with Applicable Laws and
1618 regulatory requirements. The Contractor may at its sole expense attempt to identify and recover
1619 the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost
1620 of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

1621 **5.9 CONTRACT MANAGEMENT**

1622 Consistent with Section 12.10, the City Contract Manager shall monitor and administer of this Agreement.
1623 Contractor shall designate an employee to serve as Contractor's Contract Administrator(s), to be
1624 responsible for working closely with the City Contractor Manager in the monitoring and administration of
1625 this Agreement. The Contractor's Contract Administrator shall not be involved in the management,
1626 operations, administration, marketing, or other activities of Contractor other than under this Agreement
1627 and up to one (1) other community's franchise agreement. Contractor shall be responsible for notifying
1628 the City Contract Manager of such other community and any change in assignments.

1629 The Contractor's Contract Administrator shall meet and confer with the City Contract Administrator to
1630 resolve differences of interpretation and implement and execute the requirements of this Agreement in
1631 an efficient, effective, manner that is consistent with the stated objectives of this Agreement.

1632 The City Contract Manager and the Contractor's Contract Administrator shall hold contract management
1633 meetings monthly or at such other frequency as designated by the City Contract Manager. This meeting
1634 is intended to review the status of Contractor's implementation of programs and services required under
1635 this Agreement, coordinate shared efforts between the parties, and such other agenda items as are
1636 deemed appropriate by the Parties for such meetings.

1637 From time to time the City Contract Manager may designate other agents of City to work with Contractor
1638 on specific matters. In such cases, those individuals should be considered designates of the City Contract
1639 Manager for those matters to which they have been engaged. Such designates shall be afforded all of the
1640 rights and access granted thereto. In the event of a dispute between the City Contract Manager's
1641 designate and Contractor, the City Contract Manager's determination shall be conclusive.

1642 In the event of dispute between the City Contract Manager and the Contractor regarding the
1643 interpretation of or the performance of services under this Agreement, the City Contract Manager's
1644 determination shall be conclusive except where such determination results in a material impact to the
1645 Contractor's revenue and/or cost of operations. In the event of a dispute between the City Contract
1646 Manager and the Contractor results in such material impact to the Contractor, the provisions of Section
1647 10.9 shall apply. For the purposes of this Section, "material impact" is an amount equal to or greater than
1648 one percent (1%) of Contractor's annual Gross Receipts under this Agreement.

1649 City Contract Manager or their designate shall have the right to observe and review Contractor operations
1650 and Processing Facilities and enter Premises for the purposes of such observation and review, including
1651 review of Contractor's records, during reasonable hours with reasonable notice. In no event shall
1652 Contractor prevent access to such Premises for a period of more than three (3) calendar days after
1653 receiving such a request. City Contract Manager shall be granted access to Contractor's information
1654 systems and Customer service database in accordance with Section 4.9.

1655 **5.10 ENVIRONMENTALLY-PREFERABLE PURCHASING**

1656 Contractor shall, prior to the Commencement Date, develop and implement an "Environmentally
1657 Preferable Purchasing Policy". The policy shall be subject to review, request for modification, and approval
1658 by the City Contract Manager. The policy shall, at a minimum, include provisions for: (i) purchasing
1659 materials with the highest available Recycled content without materially degrading the performance of
1660 the product; (ii) purchasing materials that utilize non-toxic, non-polluting alternative chemistry; (iii) a
1661 twenty percent (20%) price preference, relative to virgin or toxic content products, for purchasing
1662 environmentally preferable materials and supplies; and, (iv) source reduction and pollution prevention
1663 strategies for Contractor's operations. Contractor shall include a summary of their environmentally-
1664 preferable purchasing activities in their Annual Report to City (e.g., volume of Recycled content paper
1665 purchased, source reduction strategies implemented during the year and the quantified results of that
1666 strategy, etc.).

1667 **5.11 LOCAL PURCHASING PREFERENCE**

1668 Contractor shall, throughout the Term of this Agreement, give preference to purchasing materials and
1669 supplies used in connection with Agreement from local vendors within the County or State; and in that
1670 order of preference. At a minimum, Contractor shall purchase the following items from vendors within
1671 the County: vehicle supplies (e.g., fuel, fluids, tires, parts, etc.); printing and publishing services for any
1672 and all public education and outreach materials; uniforms, safety clothing/equipment, and work boots;

1673 and office supplies. Contractor shall submit an annual report to City identifying their compliance with this
1674 Section and as identified in Section 5.12 Diversion Requirements.

1675 Contractor shall perform services under this Agreement in a manner which supports the City's
1676 environmental goals. This includes, but is not limited to, providing services, education, and outreach to
1677 Customers and in the community which promote source reduction, reuse, Recycling, Composting, and
1678 other methods to reduce landfill Disposal. Contractor is expected, during each and every one of its
1679 interactions with Customers, to suggest opportunities for Customers to reduce their Solid Waste
1680 subscription levels and increase the level of Recyclable Materials and Organic Materials service received.

1681 **5.12 DIVERSION REQUIREMENTS**

1682 Contractor shall maintain at least fifty percent (50%) Diversion of all materials Collected in the City
1683 (including both materials Collected by Contractor under this Agreement, and Commercial Recyclable
1684 Materials, Organic Materials, and C&D Collected by other City-approved service providers in accordance
1685 with Section 1.2). The Diversion percentage shall be calculated as total Tons Diverted divided by total Tons
1686 Collected. Total Tons Diverted does not include Processing Residue that is Disposed. If Contractor achieves
1687 an annual Diversion rate of at least (a) sixty-five percent (65%) or (b) seventy-five percent (75%), this
1688 Agreement shall be automatically extended in accordance with the provision of Section 1.2.

1689 Contractor shall also Divert at least eighty-five percent (85%) of Recyclable Materials Collected in the City
1690 by Contractor and seventy percent (70%) of Commercial/MFD Organic Materials Collected in the City by
1691 Contractor (excluding Source Separated wood and Yard Trimmings Collected in Drop Boxes.) Disposed
1692 Processing Residue must not exceed fifteen percent (15%) for Recyclable Materials or thirty percent (30%)
1693 for Commercial/MFD Organic Materials, calculated on an annual average.

1694 **5.13 CUSTOMER REBATES FOR FAILURE TO PROVIDE SERVICE**

1695 **A. General.** Contractor and City agree that Contractor's failure to provide service in accordance with
1696 Articles 4 and 5 of this Agreement will result in the impacted Customer receiving a lower level of
1697 service than is anticipated by the Customer's subscribed Rate and creates additional burdens on
1698 the impacted Customer. To account for this, Contractor shall issue rebates to Customers for
1699 specific events of non-performance, in accordance with this Section 5.13. Such rebates shall be
1700 assessed for each calendar day the issue remains unresolved. Contractor shall issue such rebates
1701 automatically, regardless of whether the impacted Customer requests a rebate. Rebates as
1702 described in this Section 5.13 shall be in addition to any Liquidated Damages or other remedies
1703 associated with Contractor's failure to perform.

1704 **B. Missed Collection Rebate.** For each failure to resolve a missed or incomplete Collection on the
1705 scheduled Collection day, Contractor shall remit to the Customer a Missed Collection Rebate. The
1706 Missed Collection Rebate amount shall be five dollars (\$5.00) per calendar day in Rate Period Zero
1707 and Rate Period One and shall be adjusted annually thereafter by the same percentage used to
1708 adjust Rates in accordance with Exhibit E. Contractor shall continue to remit the Missed Collection
1709 Rebate each calendar day until the Container(s) in question have been Collected. As an example,
1710 for a Collection scheduled for Friday that Contractor misses and subsequently Collects on the
1711 following Monday, Contractor shall rebate the Customer the current Missed Collection Rebate
1712 rate multiplied by three calendar days. The Missed Collection Rebate applies to missed Collections
1713 of all material types, including but not limited to Bulky Items and Reusable Materials, household

1714 batteries, and Cardboard overages.

1715 **C. Late Container Delivery Rebate.** For each failure to deliver a Container to a new or existing
1716 Customer in accordance with the schedule provided in Section 5.6, Contractor shall remit to the
1717 Customer a Late Container Delivery Rebate. The Late Container Delivery Rebate amount shall be
1718 five dollars (\$5.00) per calendar day per Container in Rate Period Zero and Rate Period One and
1719 shall be adjusted annually thereafter by the same percentage used to adjust Rates in accordance
1720 with Exhibit E. Contractor shall continue to remit the Late Container Delivery Rebate each calendar
1721 day until the Container(s) in question have been delivered. The Late Container Delivery Rebate
1722 applies to all approved Containers in accordance with Exhibit B1.

1723 **D. Reporting Requirements:**

1724 1. **Missed Collection Rebate Report:** Additionally, on no less than a weekly basis, Contractor's
1725 Contract Administrator shall update the Customer's account records to note the Missed
1726 Collection Rebate event(s). Contractor shall maintain records and report to the City monthly
1727 on Missed Collection Rebate monitoring activities and actions taken. The monthly report shall
1728 include but is not limited to: list of Customers that were provided rebates, date of rebate,
1729 amount of rebate, list of Customer Complaints relating to missed Collection, and Contractor's
1730 response and actions taken in response to Customer Complaints.

1731 2. **Late Container Delivery Rebate Report:** Additionally, on no less than a weekly basis,
1732 Contractor's Contract Administrator shall update the Customer's account records to note the
1733 Late Container Delivery event(s). Contractor shall maintain records and report to the City
1734 monthly on Late Container Delivery monitoring activities and actions taken. The monthly
1735 report shall include but is not limited to: list of Customers that were provided rebates, date
1736 of rebate, amount of rebate, list of Customer Complaints relating to Late Container Delivery,
1737 and Contractor's response and actions taken in response to Customer Complaints.

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ARTICLE 6. RECORD KEEPING AND REPORTING

1740 **6.1 RECORD KEEPING**

1741 Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational,
1742 programmatic, and other records, and associated documentation, related to its performance as shall be
1743 necessary to provide detailed and accurate reports under this Agreement, and to demonstrate compliance
1744 with this Agreement and Applicable Law. Unless otherwise required in this Article, Contractor shall retain
1745 all records and data required to be maintained by this Agreement for the Term of this Agreement plus five
1746 (5) years after its expiration or earlier termination. Records and data shall be in chronological and
1747 organized form that is readily and easily interpreted to facilitate the flexible use of data to structure
1748 reports. Contractor's records shall be stored in one central location, physical or electronic, that can be
1749 readily accessed by Contractor. Upon request, any such records shall be retrieved in a timely manner, not
1750 to exceed five (5) Working Days of a request by the City Contract Manager, and made available to the City
1751 Contract Manager; including any record or documentation that City, in their sole discretion, may deem
1752 necessary, for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB
1753 341, AB 1826, AB 876, AB 901, SB 1383, and other current or future Federal, State, or local regulations, as
1754 amended.

1755 Contractor shall maintain adequate record security to preserve records from events that can be
1756 reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and records
1757 shall be protected and backed-up. The City reserves the right to require the Contractor to maintain the
1758 records required herein using a City-selected web-based software platform, at Contractor's expense. To
1759 the extent that Contractor utilizes its computer systems to comply with record keeping and reporting
1760 requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated
1761 reports supporting those record keeping and reporting requirements in a static format in order to provide
1762 an audit trail for all data required by City, as requested, under this Agreement.

1763 At a mutually agreed upon time during normal business hours, but within five (5) Work Days of a written
1764 request, Contractor shall provide to the City the Contractor's data and records with respect to the matters
1765 covered by this Agreement and Applicable Law. Contractor shall permit the City, or its designee, to audit,
1766 examine, and make excerpts or transcripts from such data and records, and make copies of all data
1767 relating to all matters covered by this Agreement and the Applicable Law. Contractor shall maintain such
1768 data and records in an accessible location and condition for a period of not less than five (5) years
1769 following the City's receipt of final payment under this Agreement unless the City agrees in writing to an
1770 earlier disposition. Contractor agrees that all data regarding business operations, Customer lists, routing,
1771 Tonnage, Service Levels, work orders issued from dispatch, Customer service logs and account notes, and
1772 work force and bargaining agreements, do not constitute Proprietary Information or Trade Secrets and
1773 shall be made available to the City Contract Manager or their designee upon request and within the
1774 timelines required by this Section 6.1. City is subject to the California Public Records Act (Government
1775 Code section 6250, *et. seq.*) and nothing in this Agreement is intended to impair City's requirements or
1776 obligations under that Act.

1777 City views its ability to defend itself against Comprehensive Environmental Response, Compensation and
1778 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City regards
1779 its ability to prove where Collected Recyclable Materials, Organic Materials, and Solid Waste are taken for
1780 Transfer, Processing, or Disposal. Contractor shall maintain records which can establish where Recyclable
1781 Materials, Organic Materials, and Solid Waste Collected were Transferred, Processed, or Disposed. This
1782 provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain
1783 these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement.
1784 Contractor shall provide these records to City (upon request or at the end of the record retention period)
1785 in an organized and indexed manner rather than destroying or Disposing of them.

1786 **6.2 REPORT SUBMITTAL REQUIREMENTS**

1787 Contractor shall submit monthly reports within fourteen (14) calendar days after the end of the calendar
1788 month and annual reports no later than forty-five (45) calendar days after the end of each calendar year.
1789 Monthly and annual reports shall include at a minimum, all data and information described in Exhibit D,
1790 unless otherwise specified under this Agreement.

1791 Contractor may propose report formats that are responsive to the objectives and audiences for each
1792 report. The format of each report shall be approved by the City Contract Manager, in their sole discretion.
1793 City Contract Manager may, from time to time during the Term, review, and request changes to
1794 Contractor's report formats and content and Contractor shall not unreasonably deny such requests.

1795 Contractor shall submit all reports to the City Contract Manager electronically via e-mail using software
1796 acceptable to the City. The City reserves the right to require the Contractor to maintain records and submit

1797 the reports required herein through use of a City-selected web-based software platform, at the
1798 Contractor's expense.

1799 City reserves the right to require Contractor to provide additional reports or documents as City Contract
1800 Manager reasonably determines to be required for the administration of this Agreement or compliance
1801 with Applicable Law.

1802 **6.3 PERFORMANCE REVIEW AND AUDIT**

1803 The City may conduct, and Contractor shall cooperate with, two (2) performance reviews and detailed
1804 financial audits, at any point during the Term of this Agreement in the City Contract Manager's sole
1805 discretion, to verify Contractor has fulfilled its financial and operational obligations under this Agreement.
1806 The purpose of such review and audit shall be, without limitation, to review Complaints, billings, and fee
1807 payments to City, and to determine if Contractor has met the performance standards described in this
1808 Agreement (including, without limitation, direct services provided to Customers as described in Exhibit B,
1809 public education and outreach required in Exhibit C, recordkeeping and reporting as required in Exhibit D,
1810 and performance standards established in Exhibit F). City may choose to enlist professional service
1811 providers to perform such review and audit, and Contractor shall be required to pay City's actual costs for
1812 such services up to ninety thousand dollars (\$90,000) per review (such amount shall be adjusted annually
1813 by the annual percentage change in CPI-U, calculated in accordance with Exhibit E). Contractor may not
1814 influence or control the City's selection of professional service providers nor the specific review items
1815 covered by the review. Contractor shall cooperate with the City and its agents during the review and audit
1816 process. If any noncompliance with the Agreement is found, the City may direct the Contractor to correct
1817 the inadequacies in accordance with Article 10 of this Agreement.

1818 At the City's sole option, with at least thirty (30) calendar days written notification to the Contractor, it
1819 may conduct a public hearing at which the Contractor shall be present and shall participate, to review the
1820 Contractor's performance, quality of service, and evaluation of technological and regulatory changes. The
1821 reports required by Exhibit D to this Agreement regarding Customer Complaints may be utilized as a basis
1822 for review as well as any findings from performance review and/or audits. Performance and service quality
1823 review hearings may be scheduled by the City at its discretion throughout the Term of the Agreement.

1824 In addition to the other requirements of this Agreement, the Parties shall be subject to the examination
1825 and audit of the State Auditor for a period of three (3) years after final payment under the Agreement,
1826 per Government Code section 8546.7.

1827 **ARTICLE 7.** 1828 **CITY REIMBURSEMENT**

1829 **7.1 FRANCHISE FEE**

1830 The Contractor shall pay a Franchise Fee to City each quarter in exchange for the exclusive rights granted
1831 under this Agreement. The amount of the Franchise Fee shall be equal to seven and one-half percent
1832 (7.5%) of Gross Receipts, paid out of Contractor's Profit, for all services performed under this Agreement
1833 and shall be paid in equal quarterly installments, paid in arrears.

1834 **7.2 AB 939/SB 1383 REIMBURSEMENT**

1835 The Contractor shall pay an AB 939/SB 1383 Reimbursement to City each month. The amount of the AB
1836 939/SB 1383 Reimbursement shall be eight-hundred thousand dollars (\$800,000) per year in Rate Period
1837 One and shall be paid in equal quarterly installments, paid in arrears. City shall use the AB 939/SB 1383
1838 Reimbursement to refund expenses including but not limited to, staffing costs related to City programs,
1839 pilot studies, education and outreach campaigns, technical assistance to Customers, reporting,
1840 compliance, capacity planning, provision of special Containers, or other activities involved in compliance
1841 with AB 939 and/or SB 1383. The City shall retain the sole right to set priorities for the use of its AB 939/SB
1842 1383 Fee.

1843 **7.3 VEHICLE IMPACT MITIGATION REIMBURSEMENT**

1844 The Contractor shall pay a Vehicle Impact Mitigation Fee to City each quarter. The amount of the Vehicle
1845 Impact Mitigation Fee shall be zero dollars (\$0) per year in Rate Period One. This fee is to reimburse the
1846 City for street maintenance costs incurred from Collection vehicles traveling on City streets.

1847 **7.4 STORM WATER REIMBURSEMENT**

1848 The Contractor shall pay a Storm Water Reimbursement to the City each month. The amount of the Storm
1849 Water Reimbursement shall equal one million three-hundred thousand dollars (\$1,300,000) in Rate Period
1850 One and shall be paid in equal quarterly installments, paid in arrears. This payment is to reimburse the
1851 City for the cost of providing certain storm water-related services and programs that are related to the
1852 provision of Solid Waste services.

1853 **7.5 ADJUSTMENT TO REIMBURSEMENT**

1854 City may set other reimbursement payments or adjust the reimbursement amounts established in this
1855 Article from time-to-time during the Term of this Agreement and such adjustments shall be included in
1856 the adjustment of Rates described in Exhibit E.

1857 The amounts of the AB 939/SB 1383 Fee and Storm Water Reimbursement for subsequent Rate Periods
1858 shall be adjusted annually by the same Annual Percentage Change in the CPI-U, calculated in accordance
1859 with the adjustment method described in Exhibit E.

1860 **7.6 PAYMENT SCHEDULE AND LATE FEES**

1861 Within twenty (20) calendar days of the end of each calendar quarter, during the Term of this Agreement,
1862 Contractor shall remit to City all fees as described in this Article. Such fees shall be remitted to City and
1863 sent or delivered to the City Contract Manager. If such remittance is not paid to City on or before the
1864 twentieth (20th) calendar day following the end of a calendar quarter, all fees due shall be subject to a
1865 delinquency penalty of one and one-half percent (1.5%), which attaches on the first day of delinquency.
1866 The delinquency penalty shall be increased an additional one and one-half percent (1.5%) for each
1867 additional quarter the payment remains delinquent.

1868 Each quarterly remittance to City shall be accompanied by a statement listing the amount of each fee
1869 paid; calculation of each fee; and statement of Gross Receipts which separately identifies SB 1383 Fee
1870 eligible revenues, by Customer Type for the period collected from all operations conducted or permitted
1871 by this Agreement. City Contract Manager may, at any time during the Term, request a detailed calculation

1872 of Gross Receipts which may include, but is not necessarily limited to, the number of Customers charged
1873 at each Service Level and Rate for each billing period. Contractor shall maintain all supporting documents
1874 and calculations for each payment made to City as required by Section 6.1.

1875 City Contract Manager may, at any time during the Term, perform an audit of Contractor's billings and
1876 payment of fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should City
1877 or its agent perform this review and identify billing errors or other errors in payment of fees valued at one
1878 percent (1%) or more of Gross Receipts for the period reviewed, Contractor shall, in addition to
1879 compensating City for lost fees, reimburse the City's actual cost of the review.

1880 **7.7 PROCUREMENT REIMBURSEMENT**

1881 Within five (5) Business Days of the Effective Date of this Agreement, Contractor shall pay the City a one-
1882 time reimbursement of three hundred thousand dollars (\$300,000) to compensate City for its costs
1883 associated with performing due diligence related to the selection of Contractor for this Agreement.

1884 **ARTICLE 8.**

1885 **CONTRACTOR'S COMPENSATION AND RATE**

1886 **SETTING**

1887 **8.1 GENERAL**

1888 The Contractor's Compensation for performance of all its obligations under this Agreement shall be Gross
1889 Receipts. Contractor's Compensation provided for in this Article shall be the full, entire and complete
1890 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and
1891 supplies, Transfer, Processing and Disposal fees, City Fees, taxes, insurance, bonds, overhead, operations,
1892 profit, and all other things necessary to perform all the services required by this Agreement in the manner
1893 and at the times prescribed. Nothing herein shall obligate City to provide any compensation to Contractor
1894 beyond Gross Receipts.

1895 If Contractor's actual costs, including fees due to City, are more than Gross Receipts, Contractor shall not
1896 be compensated for the difference in actual costs and actual Gross Receipts. If Contractor's actual costs
1897 are less than the actual Gross Receipts, Contractor shall retain the difference provided that Contractor
1898 has paid City Fees pursuant to Article 7.

1899 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
1900 Customers, Rates in Exhibit G3 that are approved by the City for provision of services to Customers. The
1901 Rates for Rate Period One are based on the Contractor's Proposal. Contractor's proposed costs and
1902 operating assumptions for Rate Period Zero and Rate Period One are presented in Exhibit G3. This
1903 Agreement includes references to Contractor's ability to charge Customers for various services provided
1904 and described in this Agreement. Contractor may not charge Customer any Rate which is not approved in
1905 Exhibit G3, as may be amended from time to time. Exhibit G3 includes descriptions of the basis for and
1906 occasions upon which Contractor may charge those Rates. Contractor may not charge a Rate for a service
1907 other than that which is described in Exhibit G3. In the event of a conflict between Exhibit G3 and any
1908 other provision of this Agreement, the description in Exhibit G3 shall control.

1909 The Approved Recyclable Materials Processing Facility shall retain revenues received for the sale of
1910 Recyclable Materials including California Redemption Value revenues. Such revenues have been

1911 considered in the establishment of Rates for services provided under this Agreement. Neither Contractor
1912 nor the Approved Recyclable Materials Processing Facility are entitled to funds available through the
1913 Department of Resources Recycling and Recovery (CalRecycle) through its "City/County Payment
1914 Program" pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter
1915 Reduction Act.

1916 **8.2 RATES AND ANNUAL ADJUSTMENTS**

1917 **A. General.** The City Contract Manager shall be responsible for approving Rates as described in this
1918 Article. If at any time during the Term of the Agreement, the Contractor determines the need for
1919 a Rate that does not appear on the City-approved Rate schedule in Exhibit G3, Contractor shall
1920 immediately notify the City Contract Manager and request establishment of such Rate. For
1921 example, if a Customer requires Collection of Organic Materials in a fifteen (15) cubic yard
1922 Compactor five (5) times per week and the City-approved Rate schedule does not include this
1923 level of service, the Contractor must request that the City approve a Rate for this level of service.
1924 Approval of Rates described in this Section 8.2 may be made by the City Contract Manager.

1925 **B. Rates for Rate Period One.** Rates for Rate Period One, which are presented in Exhibit G3, were
1926 determined by Contractor and City and were approved along with the Agreement. The Rates for
1927 Rate Period One shall be effective from July 1, 2022 through June 30, 2023. Rates shall be adjusted
1928 for any City approved change in Disposal Cost that are effective July 1, 2022 in accordance with
1929 this Section 8.2 and Exhibit E.

1930 **C. Rates for Subsequent Rate Periods.** Rates for subsequent Rate Periods shall be adjusted annually
1931 in accordance with this Section 8.2 and Exhibit E.

1932 The index-based adjustment, which is described in Exhibit E1, involves use of various cost
1933 adjustment factors (such as the percentage change in the consumer price index and changes in
1934 Tonnage and tipping fees) to calculate adjusted Rates. Such Rate adjustment calculations shall be
1935 performed in strict conformance to the procedures described in Exhibit E1.

1936 In Rate Periods Four (4) and/or Eight (8) Rates shall be adjusted using the cost-based methodology
1937 described in Exhibit E2 that involves a review of Contractor's actual costs and revenues and
1938 projection of costs and revenues for the coming Rate Period. This cost-based Rate adjustment will
1939 be performed instead of the index-based Rate adjustment for that Rate Period. The cost-based
1940 adjustment process is intended to provide the City an opportunity to adjust Rates to more
1941 accurately reflect actual revenues and costs of operations. Such Rate adjustment calculations shall
1942 be performed in strict conformance to the procedures described in Exhibit E2.

1943 **D. Rate Structure.** The City may, at any time during the Term of this Agreement and in its sole
1944 discretion, change the relationship of individual Rates in comparison with other Rates. Any such
1945 changes would occur in conjunction with the annual Rate adjustment process described in this
1946 Section or in conjunction with a Rate adjustment resulting from an extraordinary Rate adjustment
1947 in accordance with Section 8.3. Changes to the Rates charged under the new structure shall be
1948 calculated in such a way that the revised Rate structure generates at least the same amount of
1949 total revenue when the current number of accounts at each Service Level are multiplied by the
1950 Rates charged for each Service Level and the total for all Service Levels are summed; provided, if
1951 after a 24 month period from the Effective Date of the new Rate structure Contractor can show a

1952 revenue loss has occurred that interferes with Contractor achieving its allowable profit as
1953 identified in Exhibit G, Contractor's Proposal, Contractor shall be entitled to a prospective
1954 extraordinary Rate adjustment to compensate Contractor for such revenue loss.

1955 **8.3 EXTRAORDINARY RATE ADJUSTMENTS**

1956 It is understood that the Contractor accepts the risk for changes in cost of providing services and the
1957 Service Levels requested by Customers and therefore the extraordinary adjustments to Rates shall be
1958 limited to a Change in Law or a City-directed change in scope. If a Change in Law or City-directed change
1959 in scope (pursuant to Section 3.5) occurs, the Contractor may petition City for an adjustment to the Rates
1960 in excess of the annual adjustment described in Section 8.2.

1961 Contractor shall prepare an application for the extraordinary Rate increase. Such submittal shall be
1962 prepared in compliance with the procedures described in Exhibit E2 and shall provide all information
1963 requested by City Contract Manager specific to the nature of the request being made. Contractor shall
1964 pay all reasonable costs incurred by City, including the costs of outside accountants, attorneys, and/or
1965 consultants, in order determine the reasonableness of the requested Rate adjustment. The application
1966 shall clearly document the reason for the proposed adjustment, include calculation of the proposed Rate
1967 adjustments, and provide supporting documentation.

1968 In the event of such an application for extraordinary Rate increase, it is understood that the Contractor
1969 shall have the burden of demonstrating to the reasonable satisfaction of the City Contract Manager that
1970 the failure of City to adjust the Rates will result in the Contractor's financial loss or failure to achieve
1971 reasonable profitability due to the Change in Law or City-directed change in scope. The Contractor will
1972 have to demonstrate financial loss or a failure to achieve reasonable profitability by allowing for City
1973 Contract Manager review of financial statements and supporting documentation.

1974 The City Contract Manager shall have the right to request any other information that they, in their sole
1975 judgment, determine is necessary to establish the reasonableness or accuracy of Contractor's request for
1976 an extraordinary Rate increase. Contractor's failure to fully cooperate in a timely manner with any
1977 reasonable request for information by the City Contract Manager may result in either the denial of or a
1978 delay in the approval of the request for an extraordinary Rate increase. If the Contractor reasonably
1979 carries its burden of showing a failure to achieve its operating ratio as originally described in Contractor's
1980 Proposal in its petition to the City under this section, the City shall grant Contractor a reasonable
1981 adjustment in its Rates to fully compensate Contractor.

1982 **ARTICLE 9.** 1983 **INDEMNITY, INSURANCE, AND PERFORMANCE** 1984 **BOND**

1985 **9.1 INDEMNIFICATION**

1986 **A. General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless
1987 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and
1988 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs
1989 (including without limitation costs and fees of litigation, including attorneys' and expert witness
1990 fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's
1991 performance, and the performance of any Subcontractor, or agent of Contractor, under this

1992 Agreement, or its failure to comply with any of its obligations contained in the Agreement, except
1993 to the extent such loss or damage was caused by the negligence or willful misconduct of City. This
1994 Section 9.1 shall survive the expiration or termination of this Agreement and shall not be
1995 construed as a waiver of City's legal and/or equitable rights as defined herein and permitted under
1996 Applicable Law.

1997 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire
1998 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or
1999 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

2000 If Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its
2001 activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory
2002 and/or remedial action reasonably required for the remediation of such environmental
2003 contamination. Prior to undertaking any investigatory or remedial action, however, Contractor
2004 shall first obtain City's approval of any proposed investigatory or remedial action. Should
2005 Contractor fail at any time to promptly take such action, City may undertake such action at
2006 Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses
2007 within thirty (30) calendar days of being billed for those expenses, and any amount not paid within
2008 that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the
2009 delinquent fee payment provision of Section 7.6. These obligations are in addition to any defense
2010 and indemnity obligations that Contractor may have under this Agreement.

2011 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any
2012 claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including, but
2013 not limited to, claims arising under Comprehensive Environmental Response, Compensation and
2014 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful
2015 misconduct.

2016 **C. Environmental Indemnity.** Contractor shall defend with counsel acceptable to City, indemnify,
2017 and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and
2018 liability for damages of every name, kind and description, including attorneys' fees and costs
2019 incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded
2020 Waste.

2021 **D. Electronic and Web based Information Indemnity.** Contractor shall defend with counsel
2022 acceptable to City, indemnify, and hold City harmless against and from any and all -related claims,
2023 including but not limited to, suits, losses, penalties, damages, responsibility for costs, regulatory
2024 fines, penalties, credit monitoring expenses, and liability for damages of every name, kind and
2025 description, including attorneys' fees and costs incurred, attributable to the negligence or willful
2026 misconduct of Contractor and any Subcontractors used in performance of this Agreement in
2027 handling or protecting Customer information over which Contractor has control, including but not
2028 limited to billing details, electronic payment(s), and Customer account information that is not
2029 readily available to the general public. Contractor shall maintain electronic files and Contractor's
2030 website in accordance with the industry best practices for maintaining such information as safely
2031 and securely as possible. Nothing in this Section 9.1(D) shall prevent or restrict Contractor's
2032 obligation and responsibility to provide City with information required under this Agreement.

2033 E. **Related to AB 939, AB 341, AB 1826, and SB 1383.** Contractor's duty to defend and indemnify
2034 herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939,
2035 AB 341, AB 1826, and/or SB 1383 are not met by the Contractor with respect to the Contractor's
2036 obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet
2037 its obligations under this Agreement; or, (ii) due to Contractor delays in providing information
2038 that prevents Contractor or City from submitting reports to regulators in a timely manner. This
2039 indemnity is subject to the provisions of Public Resources Code § 40059.1.

2040 F. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
2041 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
2042 (Commonly Proposition 218), which impacts the Rates for the Collection services established in
2043 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the
2044 impact of such Change in Law on either Party's ability to perform under this Agreement.

2045 If, at any time, a Rate adjustment determined to be appropriate by both City and Contractor to
2046 compensate Contractor for increases in costs as described in this Agreement cannot be
2047 implemented for any reason, Contractor shall be granted the option to negotiate with City, in
2048 good faith, a reduction of services equal to the value of the Rate adjustment that cannot be
2049 implemented. If City and Contractor are unable to reach agreement about such a reduction in
2050 services, then Contractor may terminate this Agreement upon one (1) year's prior written notice
2051 to City, in which case the Contractor and City shall each be entitled to payment of amounts due
2052 for contract performance through the date of termination but otherwise will have no further
2053 obligation to one another unless this Agreement specifically states otherwise, after the date of
2054 such termination. Should a court of competent jurisdiction determine that the Contractor cannot
2055 charge and/or increase its Rates for charges related to Franchise Fees and governmental fees and
2056 charges, Contractor shall reduce the Rates it charges Customers a corresponding amount,
2057 providing said fees, reimbursements, Rates and/or charges disallowed by the court are not related
2058 to the cost of providing service hereunder and had been incorporated in the Rates charged by
2059 Contractor to its Customers.

2060 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the
2061 Rates established for services provided under this Agreement; rather this Section is provided
2062 merely to allocate risk of an adverse judicial interpretation between the Parties.

2063 G. **CalPERS Eligibility Indemnification.** Contractor's employees, agents, or Subcontractors providing
2064 service under this Agreement shall not: (i) qualify for any compensation and benefit under
2065 CalPERS; (ii) be entitled to any benefits under CalPERS; (iii) enroll in CalPERS as an employee of
2066 City; (iv) receive any employer contributions paid by City for CalPERS benefits; or (v) be entitled
2067 to any other CalPERS-related benefit that would accrue to a City employee. Contractor's
2068 employees, agents, or Subcontractors hereby waive any claims to benefits or compensation
2069 described in this Section 9.1. This Section 9.1 applies to Contractor notwithstanding any other
2070 agency, State or Federal policy, rule, regulation, law, or ordinance to the contrary.

2071 If Contractor's employees, agents, or Subcontractors providing services under this Agreement
2072 claim, or are determined by a court of competent jurisdiction or the California Public Employees
2073 Retirement System ("CalPERS") to be eligible for enrollment in CalPERS of the City, Contractor
2074 shall indemnify, defend, and hold harmless City for the payment of any employer and employee
2075 contributions for CalPERS benefits on behalf of the employee as well as for payment of any

2076 penalties and interest on such contributions which would otherwise be the responsibility of the
2077 City.

2078 Contractor's Compensation under this Agreement shall be the full and complete compensation to
2079 which Contractor and Contractor's officers, employees, agents, and Subcontractors are entitled
2080 for performance of any work under this Agreement. Neither Contractor nor Contractor's officers,
2081 employees, agents, and Subcontractors are entitled to any salary or wages, or retirement, health,
2082 leave or other fringe benefits applicable to City employees. The City will not make any Federal or
2083 State tax withholdings on behalf of Contractor. The City shall not be required to pay any workers'
2084 compensation insurance on behalf of Contractor.

2085 Contractor agrees to defend and indemnify the City for any obligation, claim, suit, or demand for
2086 tax, retirement contribution including any contribution to CalPERS, social security, salary or
2087 wages, overtime payment, or workers' compensation payment which the City may be required to
2088 make on behalf of (1) Contractor, (2) any employee of Contractor, or (3) any employee of
2089 Contractor construed to be an employee of the City, for work performed under this Agreement.

2090 **9.2 INSURANCE**

2091 **A. General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times
2092 during the Term of this Agreement not less than the following coverage and limits of insurance:

2093 **B. Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
2094 maintain, at its expense, the following coverages and requirements. Failure to maintain the
2095 identified insurance requirements during the entire Term of this Agreement shall constitute an
2096 event of default subject to Section 10.1(C). The comprehensive general liability insurance shall
2097 include broad form property damage insurance.

2098 1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

2099 **Comprehensive General Liability** – \$10,000,000 combined single limit per occurrence for
2100 bodily injury, personal injury, and property damage.

2101 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily injury
2102 and property damage (include coverage for Hired and Non-owned vehicles).

2103 **Workers' Compensation – Statutory Limits/Employers' Liability** - \$1,000,000/accident
2104 for bodily injury or disease.

2105 **Employee Blanket Fidelity Bond** – \$500,000 per employee loss covering dishonesty,
2106 forgery, alteration, theft, disappearance, and destruction (inside or outside).

2107 **Pollution Liability** – \$10,000,000 per loss and annual aggregate applicable to bodily injury;
2108 property damage, including loss of use of damaged property or of property that has not
2109 been physically damaged or destroyed; clean-up costs, including first party cleanup of the
2110 City's property and third-party cleanup, and bodily injury costs if pollutants impact other
2111 properties; and defense, including costs, fees and expenses incurred in the investigation,
2112 defense, or resolution of claims. Coverage shall include completed operations and shall
2113 apply to sudden and non-sudden pollution conditions. Coverage shall apply to acts, errors

2114 or omissions arising out of, or in connection with, Contractor's scope of work under this
2115 Agreement. Coverage shall also apply to non-owned deposit sites ("NODS") that shall
2116 protect against, for example, claims regarding bodily injury, property damage, and/or
2117 cleanup costs involving NODS. Coverage is preferred by the City to be occurrence based.
2118 However, if provided on a claims-made basis, Contractor warrants that any retroactive
2119 date applicable to coverage under the policy precedes the Effective Date of this
2120 Agreement, and that continuous coverage shall be maintained, or an extended discovery
2121 period will be exercised through completion or termination of this Agreement for a
2122 minimum of five (5) years. This provision does not limit or alter any rights or remedies to
2123 City allowable under this Agreement and/or Applicable Law in perpetuity.

2124 **Technology Professional Liability Errors and Omissions Insurance (Cyber Liability)**
2125 appropriate to the Contractor's profession and industry practice, with limits not less than
2126 \$2,000,000 per occurrence. Coverage for cyber risks shall be sufficiently broad to respond
2127 to the duties and obligations as are undertaken by Contractor under this Agreement and
2128 shall include, but not be limited to claims involving infringement of intellectual property,
2129 including but not limited to infringement of copyright, trademark, trade dress, invasion
2130 of privacy violations, information theft, damage to or destruction of electronic
2131 information, release of private information, alteration of electronic information,
2132 extortion, and network security. The policy shall provide coverage for breach response
2133 notification and remediation costs, regulatory fines and penalties, credit monitoring
2134 expenses, electronic funds transfer losses, electronic data restoration expenses, and
2135 business interruption costs with limits sufficient to respond to these obligations, in the
2136 sole discretion of the City's Risk Manager.

2137 2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as
2138 additional insured on all but the workers' compensation and professional liability
2139 coverages.

2140 3. Said policies shall remain in force through the life of this Agreement and, with the
2141 exception of professional liability coverage, shall be payable on a "per occurrence" basis
2142 unless City's Risk Manager specifically consents in writing to a "claims made" basis. For all
2143 "claims made" coverage, if the Contractor changes insurance carriers Contractor shall
2144 purchase "tail" coverage or otherwise provide for continuous coverage covering the Term
2145 of this Agreement and not less than three (3) years thereafter, except for the five (5) year
2146 tail of Pollution Liability Coverage as described above. Proof of such "tail" or other
2147 continuous coverage shall be required at any time that the Contractor changes to a new
2148 carrier prior to receipt of any payments due.

2149 4. The Contractor shall declare all aggregate limits on the coverage before commencing
2150 performance of this Agreement, and City's Risk Manager reserves the right to require
2151 higher aggregate limits to ensure that the coverage limits required for this Agreement as
2152 set forth above are available throughout the performance of this Agreement.

2153 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
2154 the sole responsibility of the Contractor.

2155 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be

- 2156 suspended, voided, canceled by either Party, reduced in coverage or in limits except after
2157 thirty (30) calendar days prior written notice by certified mail, return receipt requested,
2158 has been given to City Contract Manager ten (10) Business Days for delinquent insurance
2159 premium payments).
- 2160 7. Insurance must be placed with insurers with a current A.M. Best's rating of no less than
2161 A-VII, or with a surplus line carrier appearing on the List of Approved Surplus Line Insurers,
2162 ("LASLI") with a Best's Key Rating Guide of at least A: X. Insurers, and corresponding
2163 policies required by this Section, must also comply with all other aspects of City Council
2164 Policy # 70.
- 2165 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
2166 volunteers arising out of or in connection with this Agreement.
- 2167 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
2168 primary, including as respects City, its officers, agents, employees, and volunteers. Any
2169 insurance maintained by City shall apply in excess of, and not contribute with, insurance
2170 provided by Contractor's liability insurance policy.
- 2171 10. The Contractor shall waive all rights of subrogation against City, its officers, employees,
2172 agents, and volunteers.
- 2173 **C. Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish
2174 City Contract Manager with certificates or original endorsements reflecting coverage required by
2175 this Agreement. The certificates or endorsements are to be signed by a Person authorized by that
2176 insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and
2177 are subject to the approval of, City Risk Manager before work commences.
- 2178 **D. Renewals.** During the Term of this Agreement, Contractor shall furnish City Contract Manager
2179 with certificates or original endorsements reflecting renewals, changes in insurance companies,
2180 and any other documents reflecting the maintenance of the required coverage throughout the
2181 entire Term of this Agreement. The certificates or endorsements are to be signed by a Person
2182 authorized by that insurer to bind coverage on its behalf.
- 2183 **E. No Cap on Indemnity.** The minimum amounts of coverage described in this Section 9.2 will not
2184 constitute any limitations or cap on Contractor's indemnification obligations under this
2185 Agreement.
- 2186 **F. Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
2187 by State law and shall comply with Section 3700 of the State Labor Code.

2188 **9.3 PERFORMANCE BOND**

2189 Within seven (7) calendar days of the City's notification to Contractor that the City has executed this
2190 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's
2191 performance of its obligations under this Agreement and such bond shall be renewed annually if
2192 necessary, so that the performance bond is maintained at all times during the Term. The principal sum of
2193 the bond shall be six million seven-hundred thousand dollars (\$6,700,000) and shall be adjusted every
2194 three (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period's

2195 annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety
2196 bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key
2197 Rating Guide, and that has a record of service and financial condition satisfactory to the City. The bond
2198 shall be in the form approved by the City's Risk Manager.

2199
2200

ARTICLE 10. DEFAULT AND REMEDIES

2201 10.1 EVENTS OF DEFAULT

2202 All provisions of the Agreement are considered material. Each of the following shall constitute an event
2203 of default.

2204 A. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.

2205 B. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or
2206 upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

2207 C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force the workers'
2208 compensation, insurance coverage required by Section 9.2, or indemnification coverage as
2209 required by this Agreement.

2210 D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having
2211 authority over Contractor relative to this Agreement, which violation the City reasonably
2212 determines is material. If Contractor contests any such orders or filings by appropriate
2213 proceedings conducted in good faith, and the regulatory body determines no violation occurred,
2214 no breach or default of this Agreement shall be deemed to have occurred.

2215 E. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement,
2216 which violation the City reasonably determines is material.

2217 F. **Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or
2218 Processing services as required under this Agreement for a period of two (2) consecutive calendar
2219 days or more, for any reason within the control of Contractor.

2220 G. **Failure to Pay or Report.** Contractor fails to make any payments to City required under this
2221 Agreement including payment of City Fees or Liquidated Damages and/or refuses to provide City
2222 with required information, reports, and/or records in a timely manner as provided for in the
2223 Agreement.

2224 H. **Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,
2225 or requirements of this Agreement, or Applicable Law and which is not corrected or remedied
2226 within the time set in the written notice of the violation. Additionally, an event of default occurs
2227 if Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice
2228 of violation, or if Contractor fails to commence to correct or remedy such violation within the time
2229 set forth in such notice and diligently effect such correction or remedy thereafter.

2230 I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City

- 2231 by Contractor in connection with or as an inducement to entering into this Agreement, or any
 2232 future amendment to this Agreement, which proves to be false or misleading in any material
 2233 respect as of the time such representation or disclosure is made, whether or not any such
 2234 representation or disclosure appears as part of this Agreement. Additionally, a default occurs if
 2235 any Contractor-provided report contains a misstatement, misrepresentation, data manipulation,
 2236 or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical
 2237 typographical and grammatical errors.
- 2238 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's
 2239 operating equipment, including without limits its equipment, maintenance or office facilities,
 2240 Approved Facility(ies), or any part thereof.
- 2241 **K. Suspension or Termination of Service.** There is any termination or suspension of the transaction
 2242 of business by Contractor related to this Agreement, including without limit, due to labor unrest
 2243 including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action
 2244 lasting more than two (2) calendar days.
- 2245 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
 2246 activity related directly or indirectly to performance of this Agreement or any other agreement
 2247 held with the City.
- 2248 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the
 2249 expressed written approval of the City unless the assignment is permitted without City approval
 2250 pursuant to Section 12.6.
- 2251 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
 2252 proposal for new services or changes to services or fails to implement a change in service as
 2253 requested by the City as specified in Section 3.5.
- 2254 **O. Failure to Complete Transition.** Contractor fails to complete the tasks identified in Contractor's
 2255 Implementation Plan as specified in Exhibit G4.
- 2256 **P. Failure to Implement Collection Program.** Contractor fails to implement a Collection program
 2257 that complies with the requirements of Article 4 and Exhibit B, which is essential for the City to
 2258 achieve compliance with SB 1383.
- 2259 **Q. Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity
 2260 in accordance with Articles 4 and 5, which is essential for the City to achieve compliance with SB
 2261 1383.
- 2262 **R. Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards
 2263 specified in Articles 4 and 5 including achievement of minimum Organic Waste recovery rates,
 2264 which are essential for the City to achieve SB 1383 compliance.
- 2265 **S. Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other
 2266 requirements of the Agreement including, but not limited to, public education, reporting,
 2267 contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement
 2268 that delegate the City's responsibility and/or authority under SB 1383 to the Contractor.

2269 T. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
2270 this Agreement, which the City reasonably determines is material.

2271 City shall provide Contractor written notice of default within seven (7) calendar days of the City's first
2272 knowledge of the Contractor's default.

2273 **10.2 CONTRACTOR'S RIGHT TO CURE; RIGHT TO TERMINATE UPON EVENT OF**
2274 **DEFAULT**

2275 Contractor shall be given ten (10) Business Days from written notification by the City Contract Manager
2276 to cure any default which, in the City Contract Manager's sole opinion, creates a potential public health
2277 and safety threat.

2278 Contractor shall be given ten (10) Business Days from written notification by the City Contract Manager
2279 to cure any default arising under subsections C, E, F, I, J, and K in Section 10.1. However, the City shall not
2280 be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed
2281 the same or similar breach/default within a twenty-four (24) month period.

2282 Contractor shall be given thirty (30) calendar days from written notification by the City Contract Manager
2283 to cure any other default (which is not required to be cured within ten (10) Business Days). Furthermore,
2284 if Contractor cannot reasonably cure a default within the applicable period described in this section,
2285 except for defaults that create a potential health and safety threat, and Contractor promptly commences
2286 the cure or remedy within the initial cure period and thereafter diligently pursues the cure or remedy to
2287 completion, Contractor shall not be in default of this Agreement. However, the City shall not be obligated
2288 to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or
2289 similar breach/default within a twenty-four (24) month period.

2290 **10.3 CITY'S REMEDIES IN THE EVENT OF DEFAULT**

2291 Upon Contractor's default, City has the following remedies in the event of Contractor default:

2292 A. **Waiver of Default.** City may waive any event of default or may waive Contractor's requirement
2293 to cure a default event if City determines that such waiver would be in the best interest of the
2294 City. City's waiver of an event of default is not a waiver of future events of default that may have
2295 the same or similar conditions.

2296 B. **Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its
2297 obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such
2298 time the Contractor can provide assurance of performance in accordance with Section 10.8.

2299 C. **Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet specific
2300 performance standards pursuant to Section 10.6 and Exhibit F.

2301 D. **Termination.** The City Contract Manager may, in their sole discretion, set a public hearing for the
2302 City Council to determine whether to terminate this Agreement. Subject to Contractor's right to
2303 cure as described in Section 10.2, such termination hearing must be set if a default remains
2304 uncured thirty (30) calendar days after receipt of written notice of default from the City. Such
2305 termination hearing must also be set if a Contractor's default is not cured within ten (10) calendar
2306 days and the default:

- 2307 1. Creates a potential public health and safety threat; or
2308 2. Arises under Section 10.1.C, E, F, I, J, or K.

2309 If the City terminates this Agreement based on the adopted findings of the termination hearing,
2310 the City Contract Manager shall first provide written notice to the Contractor twenty (20) calendar
2311 days before the date of termination. The Contractor shall thereafter be relieved on a going-
2312 forward basis of all liabilities and obligations required by this Agreement, except for Section 9.1
2313 and any other provisions specifically identified to survive termination of this Agreement. Upon
2314 expiration of the twenty (20) day notice, the City may, in its sole discretion:

- 2315 1. Directly undertake performance of the services; or
2316 2. Arrange with other Persons to perform the services with or without a written
2317 agreement; or
2318 3. Permit Contractor to continue operating under this Agreement including
2319 Contractor's Compensation until such time that City is able to find substitute
2320 services.

2321 This right of termination is in addition to any other rights upon a failure of Contractor to perform
2322 its obligations under this Agreement.

2323 Contractor shall not be entitled to any further revenues from Collection operations authorized
2324 hereunder from and after the date of termination.

2325 E. **Other Available Remedies.** City's election of one (1) or more remedies described herein shall not
2326 limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

2327 **10.4 POSSESSION OF RECORDS UPON TERMINATION**

2328 In the event of termination for an event of default, the Contractor shall furnish City Contract Manager
2329 with immediate access to all of its business records, including without limitation, Proprietary Contractor
2330 computer systems, related to its Customers, Collection routes, and billing of accounts for Collection
2331 services.

2332 **10.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

2333 City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's
2334 records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the
2335 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall
2336 be in addition to any and all other legal and equitable rights and remedies which City may have.

2337 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service; the
2338 lead time required to effect alternative service; and, the rights granted by City to the Contractor, the
2339 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive
2340 relief (including but not limited to specific performance).

2341 **10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

2342 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical,
2343 if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City

2344 as a result of a breach by Contractor of its obligations under this Agreement. The factors relating
2345 to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
2346 substantial damage results to members of the public who are denied services or denied quality or
2347 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of
2348 the benefits of the Agreement to individual members of the general public for whose benefit this
2349 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of
2350 measurement in precise monetary terms; (iii) that exclusive services might be available at
2351 substantially lower costs than alternative services and the monetary loss resulting from denial of
2352 services or denial of quality or reliable services is impossible to calculate in precise monetary
2353 terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at
2354 best, a means of future correction and not remedies which make the public whole for past
2355 breaches.

2356 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties
2357 further acknowledge that consistent, reliable Collection services are of utmost importance to City
2358 and that City has considered and relied on Contractor's representations regarding its quality-of-
2359 service commitment in awarding the Agreement to it. The Parties recognize that some quantified
2360 standards of performance are necessary and appropriate to ensure consistent and reliable service
2361 and performance. The Parties further recognize that if Contractor fails to achieve the performance
2362 standards or fails to submit required documents in a timely manner, City and its residents and
2363 businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to
2364 ascertain and determine the exact amount of damages which City will suffer. Therefore, without
2365 prejudice to City's right to treat such non-performance as an event of default under this Section,
2366 the Parties agree that the Liquidated Damages amounts established in Exhibit F of this Agreement
2367 and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of
2368 such damages considering all of the circumstances existing on the Effective Date of this
2369 Agreement, including the relationship of the sums to the range of harm to City that reasonably
2370 could be anticipated and the anticipation that proof of actual damages would be costly or
2371 impractical.

2372 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
2373 the Performance Standards and Liquidated Damages, Exhibit F.

2374 Before assessing Liquidated Damages, City Contract Manager shall give Contractor notice of City's
2375 intention to do so. The notice will include a brief description of the incident(s) and non-
2376 performance. City Contract Manager may review (and make copies at City's own expense) all
2377 information in the possession of Contractor relating to incident(s) and/or non-performance. City
2378 Contract Manager may, within ten (10) Business Days after issuing the notice, request a meeting
2379 with Contractor. City Contract Manager may present evidence of non-performance in writing and
2380 through testimony of City's employees and others relevant to the incident(s) and non-
2381 performance. City Contract Manager will provide Contractor with a written explanation of their
2382 determination on each incident(s) and non-performance prior to authorizing the assessment of
2383 Liquidated Damages under this Section 10.6. The decision of City Contract Manager may be
2384 appealed by Contractor to the Deputy City Manager.

2385 **C. Amount.** City Contract Manager may assess Liquidated Damages for each calendar day or event,
2386 as appropriate, that Contractor is determined to be liable in accordance with this Agreement in
2387 the amounts specified in Exhibit F subject to annual adjustment described below.

2388 **D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City Contract
2389 Manager within ten (10) Business Days of the date the Liquidated Damages are assessed. If they
2390 are not paid within the ten (10) Business Day period, City Contract Manager may proceed against
2391 the performance bond required by the Agreement, order the termination (subject to the
2392 provisions of Section 10.2) of the rights granted by this Agreement, or all of the above.

2393 **10.7 EXCUSE FROM PERFORMANCE**

2394 The Parties understand and agree herein that the services provided under this Agreement are critical to
2395 the protection of public health and safety and that Contractor is expected to perform these services
2396 despite the occurrence of events that may otherwise give rise to Force Majeure conditions. The Parties
2397 herein agree that the obligations for excuse from performance under this Agreement should and do have
2398 a higher standard than the general law understanding of Force Majeure. In particular, a Party shall be
2399 excused from performing their obligations hereunder and from any obligation to pay Liquidated Damages
2400 if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil
2401 insurrection, riots, acts of any domestic government (including judicial action), and other similar
2402 catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from
2403 performance hereunder. However, performance shall only be excused if the Party requesting relief from
2404 performance can specifically demonstrate that the performance of a specific obligation is impossible and
2405 shall only be excused from those requirements which are demonstrated to be impossible. All other
2406 performance obligations that remain possible, shall be required to continue.

2407 In the case of labor unrest or job action directed at a third party over whom Contractor has no control,
2408 the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness
2409 or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees
2410 while providing such services; or, (ii) make reasonable accommodations with respect to Container
2411 placement and point of Delivery, time of Collection, or other operating circumstances to minimize any
2412 confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited
2413 extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in
2414 performing Collection services at different times and in different locations. Further, in the event of labor
2415 unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other
2416 concerted job action conducted by the Contractor's employees or directed at the Contractor, or a
2417 subsidiary, the Contractor shall not be excused from performance. In such case, Contractor shall continue
2418 to provide a reasonably satisfactory level of performance during the pendency thereof, but the Contractor
2419 shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes,
2420 Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar
2421 days elapse between pickups for Residential and Commercial Customers. Any labor action initiated by
2422 Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance
2423 and Contractor shall perform all obligations under this Agreement during the pendency of such
2424 Contractor-initiated labor action.

2425 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice
2426 of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to
2427 excuse under this Section.

2428 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against
2429 each other for any damages sustained thereby.

2430 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more
2431 of the events described in this Article shall not constitute a default by Contractor under this Agreement.
2432 Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations
2433 hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, City
2434 shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10)
2435 Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall apply.

2436 **10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

2437 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those
2438 members of the public residing or doing business within City who will be adversely affected by interrupted
2439 waste management service, that there be no material interruption in services provided under this
2440 Agreement.

2441 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
2442 picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to
2443 regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order
2444 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes
2445 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in
2446 substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand
2447 from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form
2448 and substance as City believes in good faith is reasonably necessary in the circumstances to evidence
2449 continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory
2450 assurances of timely and proper performance in the form and by the date required by City, such failure or
2451 refusal shall be an event of default for purposes of Section 10.1.

2452 **10.9 DISPUTE RESOLUTION**

2453 In the event of dispute between the City Contract Manager and the Contractor regarding the
2454 interpretation of or the performance of services under this Agreement which results in a material impact
2455 to the Contractor's revenue and/or cost of operations, as defined in Section 5.9, the provisions of Section
2456 10.9 shall apply.

2457 **A. Meet and Confer.** In the event of disputes regarding the performance of any obligation under this
2458 Agreement which results in a material impact to the Contractor's revenue and/or cost of
2459 operations, the City and Contractor agree that they promptly will meet and confer to attempt to
2460 resolve the matter between themselves.

2461 **B. Mediation.** If disputes which arise under this Agreement cannot be resolved satisfactorily
2462 between the Parties in accordance with Section 10.9.A, the City and Contractor agree that such
2463 disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon
2464 independent third party.

2465 **C. Period of Time.** Insofar as allowed by Applicable Law, the period otherwise applicable for filing
2466 claims against the City under Applicable Law shall be tolled during the period of time for which
2467 meet and confer or mediation procedures are pending, in accordance with Sections 10.9.A and
2468 10.9.B.

2469 **D. Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the dispute(s)

2470 pursuant to Sections 10.9.A, 10.9.B, and 10.9.C have failed and any necessary claim(s) have been
2471 denied.

2472 **ARTICLE 11.**
2473 **REPRESENTATIONS AND WARRANTIES OF**
2474 **THE PARTIES**

2475 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this
2476 Article.

2477 **11.1 CONTRACTOR'S CORPORATE STATUS**

2478 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the
2479 State. It is qualified to transact business in the State and has the power to own its properties and to carry
2480 on its business as now owned and operated and as required by this Agreement.

2481 **11.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

2482 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
2483 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by
2484 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
2485 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
2486 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2487 **11.3 AGREEMENT WILL NOT CAUSE BREACH**

2488 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or delivery
2489 of this Agreement or the performance by either Party of their obligations hereunder does not conflict
2490 with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any judgment,
2491 order, or decree of any court, administrative agency or other governmental authority, or any agreement
2492 or instrument to which Contractor or City is a party or by which Contractor or any of its properties or
2493 assets are bound, or constitutes a default hereunder.

2494 **11.4 NO LITIGATION**

2495 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,
2496 proceeding or investigation, at law or in equity, before or by any court or governmental authority,
2497 commission, board, agency or instrumentality decided, pending or threatened against either Party
2498 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- 2499 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 2500 B. Adversely affect the validity or enforceability of this Agreement; or,
- 2501 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity
2502 guaranteeing Contractor's performance under this Agreement.

2503 **11.5 NO ADVERSE JUDICIAL DECISIONS**

2504 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial
2505 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

2506 **11.6 NO LEGAL PROHIBITION**

2507 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in effect
2508 on the date that Party signed this Agreement that would prohibit the performance of either their
2509 obligations under this Agreement and the transactions contemplated hereby.

2510 **11.7 CONTRACTOR'S ABILITY TO PERFORM**

2511 Contractor possesses the business, professional, and technical expertise to perform all services,
2512 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
2513 Contractor possesses the ability to secure equipment, facility, and employee resources required to
2514 perform its obligations under this Agreement.

2515 **ARTICLE 12.**
2516 **OTHER AGREEMENTS OF THE PARTIES**

2517 **12.1 RELATIONSHIP OF PARTIES**

2518 The Parties intend that Contractor shall perform the services required by this Agreement as an
2519 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner
2520 or agent of, or joint venture with, City. No employee or agent of Contractor shall be, or shall be deemed
2521 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and
2522 means of performing services under this Agreement, except as expressly provided herein. Contractor shall
2523 be solely responsible for the acts and omissions of its officers, employees, Subcontractors and agents.
2524 Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any rights to
2525 retirement benefits, workers' compensation benefits, or any other benefits which accrue to City
2526 employees by virtue of their employment with City.

2527 **12.2 COMPLIANCE WITH LAW**

2528 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the
2529 United States, the State, County, and City and with all applicable regulations promulgated by Federal,
2530 State, regional or local administrative and regulatory agencies, now in force and as they may be enacted,
2531 issued or amended during the Term.

2532 **12.3 GOVERNING LAW**

2533 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
2534 State.

2535 **12.4 JURISDICTION**

2536 Any lawsuits, at law or in equity, between the Parties arising out of this Agreement shall be filed in a court
2537 of competent jurisdiction in the County. With respect to venue, the Parties agree that this Agreement is

2538 made in and will be performed in the County. The Parties waive all provisions of law providing for a change
2539 of venue in these proceedings to any other county.

2540 **12.5 BINDING ON SUCCESSORS**

2541 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
2542 permitted assigns of the Parties.

2543 **12.6 ASSIGNMENT**

2544 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement
2545 to any other Person without the prior written consent of the other Party. Any such assignment made
2546 without the consent of the other Party shall be void and the attempted assignment shall constitute a
2547 material breach of this Agreement.

2548 For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other
2549 transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to service
2550 under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more
2551 of the local, regional, and/or corporate assets, stock, or ownership of Contractor to a Person (other than
2552 a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his
2553 family or to another owner of shares in Contractor) except that no cumulative sale, exchange, or transfer
2554 of shares may exceed twenty percent (20%) during the Term of the Agreement (other than a transfer of
2555 shares in Contractor by the owner of such shares to a revocable trust for the benefit of his family or to
2556 another owner of shares in Contractor); (iii) any reorganization, consolidation, merger, recapitalization,
2557 stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other
2558 transaction to which Contractor or any of its shareholders is a party which results in a change of ownership
2559 or control of ten percent (10%) or more of the value or voting rights in the local, regional, and/or corporate
2560 stock of Contractor; (iv) divestiture of an Affiliate (e.g., trucking company, materials recovery facility,
2561 transfer station, etc.) used by Contractor to fulfill its obligations under this Agreement; and, (v) any
2562 combination of the foregoing (whether or not in related or contemporaneous transactions) which has the
2563 effect of any such transfer or change of local, regional, and/or corporate ownership and/or control of
2564 Contractor. For purposes of this Section, the term "proposed assignee" shall refer to the proposed
2565 transferee(s) or other successor(s) in interest pursuant to the assignment.

2566 Notwithstanding any of the foregoing, Contractor may assign this Agreement without the City's consent
2567 to another wholly owned subsidiary of Allied Waste Services, Inc. provided that the transferee subsidiary
2568 receives substantially all the assets, management, and personnel of Contractor and such assignment is
2569 not part of a planned merger with or conveyance to a party that is not a wholly owned subsidiary of Allied
2570 Waste Services, Inc.

2571 Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and
2572 businesses, and that City has selected Contractor to perform the services specified herein based on: (i)
2573 Contractor's experience, skill, and reputation for conducting its Recyclable Materials, Organic Materials,
2574 and Solid Waste management operations in a safe, effective, and responsible fashion, at all times in
2575 keeping with applicable waste management laws, regulations, and good waste management practices;
2576 and, (ii) Contractor's financial resources on a local, regional, and/or corporate level to maintain the
2577 required equipment and to support its indemnity obligations to City under this Agreement. City has relied
2578 on each of these factors, among others, in choosing Contractor to perform the services to be rendered by

2579 Contractor under this Agreement.

2580 If Contractor requests City's consideration of and consent to an assignment, City may deny or approve
2581 such request in its sole discretion at a regularly scheduled meeting of the City Council. No request by
2582 Contractor for consent to an assignment need be considered by City unless and until Contractor has met
2583 requirements A – E below. The City may, in its sole discretion, waive one (1) or more of the following
2584 requirements:

2585 A. On the date the Contractor submits a written request for the City's written consent of an
2586 assignment, Contractor shall pay the City a Transfer fee in the amount of one percent (1%) of the
2587 Gross Receipts for the most-recently completed Rate Period.

2588 B. Contractor shall pay City its actual expenses for attorneys', consultants', accountants' fees, staff
2589 time, and investigation costs necessary to investigate the suitability of any proposed assignee,
2590 and to review and finalize any document required as a condition for approving any such
2591 assignment. Such payment shall be required regardless of the ultimate determination of the City
2592 regarding the approval or denial of the assignment. Upon submittal of Contractor's request for
2593 assignment to City, Contractor shall submit an initial deposit of one hundred thousand dollars
2594 (\$100,000) for this purpose.

2595 C. Contractor shall furnish City with reviewed financial statements of the proposed assignee's
2596 operations for the immediately preceding three (3) operating years.

2597 D. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten
2598 (10) years of Recyclable Materials, Organic Materials, and Solid Waste management experience
2599 on a scale equal to or exceeding the scale of operations conducted by Contractor under this
2600 Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations
2601 or other censure from any Federal, State or local contractor having jurisdiction over its waste
2602 management operations due to any significant failure to comply with State, Federal or local waste
2603 management laws and that the assignee has provided the City with a complete list of such
2604 citations and censures; (iii) that the proposed assignee has at all times conducted its operations
2605 in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its
2606 operations and management practices in accordance with sound waste management practices in
2607 full compliance with all Federal, State, and local laws regulating the Collection, Transportation,
2608 Processing and Disposal of Recyclable Materials, Organic Materials, and Solid Waste including
2609 Hazardous Waste; and, (v) that any other information required by City demonstrates that the
2610 proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

2611 E. Contractor shall provide the City with any and all additional records or documentation which, in
2612 the City Contract Manager's sole determination, would facilitate the City's review of the proposed
2613 assignment.

2614 Under no circumstances shall any proposed assignment be considered by City if Contractor is in default at
2615 any time during the period of consideration. If, in the City Contract Manager's sole determination, there
2616 is any doubt regarding the compliance of the Contractor with the Agreement, City Contract Manager may
2617 require an audit of the Contractor's compliance and the costs of such audit shall be paid by Contractor in
2618 advance of the performance of said audit.

2619 **12.7 NO THIRD-PARTY BENEFICIARIES**

2620 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
2621 party to bring an action to enforce any of its terms.

2622 **12.8 WAIVER**

2623 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
2624 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of
2625 violation of the same or any other provision. The subsequent acceptance by either Party of any monies
2626 which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach
2627 or violation by the other Party of any provision of this Agreement.

2628 **12.9 NOTICE PROCEDURES**

2629 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
2630 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally
2631 delivered to a representative of the Parties at the address below or deposited in the United States mail,
2632 first class postage prepaid, addressed as follows:

2633 If to City:

2634 City of Carlsbad
2635 Attn: City Manager
2636 1200 Carlsbad Village Drive
2637 Carlsbad, CA 92008

2638
2639 City of Carlsbad
2640 Attn: Deputy City Manager, Public Works
2641 1635 Faraday Avenue
2642 Carlsbad, CA 92008

2643 City of Carlsbad
2644 Attn: Environmental Manager, Public Works
2645 1635 Faraday Ave
2646 Carlsbad, CA 92008

2647 With a copy to:

2648 City of Carlsbad
2649 Attn: City Attorney
2650 1200 Carlsbad Village Drive
2651 Carlsbad, CA 92008

2652 If to Contractor:

2653 General Manager
2654 Allied Waste Systems, Inc.
2655 8364 Clairemont Mesa Blvd.

2656 San Diego, CA 92111
2657 (858) 576-5715

2658
2659 With a copy to:

2660 General Counsel's Office
2661 Chief Legal Officer
2662 18500 North Allied Way
2663 Phoenix, Arizona 85054
2664

2665 The address to which communications may be delivered may be changed from time to time by a notice
2666 given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered
2667 or, if mailed, three (3) calendar days from the date it is deposited in the mail. Either Party may choose to
2668 provide email notification to the other Party that notice has been deposited in the mail, however such
2669 email notification shall not constitute official notice.

2670 **12.10 REPRESENTATIVES OF THE PARTIES**

2671 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken
2672 by City except as otherwise provided in this Section 12.10. Each reference to an act performed by, or
2673 obligation of the City Contract Manager in this Agreement is itself a delegation of authority from the City.
2674 The City may delegate, in writing, further authority to the City Contract Manager and/or to other City
2675 officials and may permit such officials, in turn, to delegate in writing some or all of such authority to
2676 subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the
2677 scope of the authority properly delegated to them.

2678 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
2679 the representative of the Contractor in all matters related to the Agreement and shall inform City in
2680 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City
2681 may rely upon action taken by such designated representative as actions of the Contractor unless they
2682 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

2683 **ARTICLE 13.** 2684 **MISCELLANEOUS AGREEMENTS**

2685 **13.1 ENTIRE AGREEMENT**

2686 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
2687 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party
2688 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
2689 construed against any Party on the basis of drafting. This Agreement may be amended only by an
2690 agreement in writing, signed by each of the Parties hereto.

2691 **13.2 SECTION HEADINGS**

2692 The article headings and section headings in this Agreement are for convenience of reference only and
2693 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
2694 provisions.

2695 **13.3 REFERENCES TO LAWS**

2696 All references in this Agreement to laws and regulations shall be understood to include such laws as they
2697 may be subsequently amended or recodified, unless otherwise specifically provided herein.

2698 **13.4 AMENDMENTS**

2699 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

2700 **13.5 SEVERABILITY**

2701 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,
2702 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this
2703 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained
2704 herein.

2705 **13.6 COUNTERPARTS**


2706 This Agreement may be executed in counterparts, each of which shall be considered an original.

2707 **13.7 EXHIBITS**

2708 Each of the Exhibits identified as Exhibit "A" through "I" is attached hereto and incorporated herein and
2709 made a part hereof by this reference. Except as described in Section 8.1 related to Exhibit G3, in the event
2710 of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement
2711 shall control. In the event of a conflict between Exhibit G1 or G6, and any other Exhibit(s), such other
2712 Exhibit(s) shall control.


2713 IN WITNESS WHEREOF, this Agreement is entered by the Parties hereto in San Diego County, California on
2714 the day and year first above written.

City of Carlsbad
A Municipal Corporation "CITY"



Matt Hall
Mayor


04/28/2021



Scott Chadwick
City Manager

28 APR 21

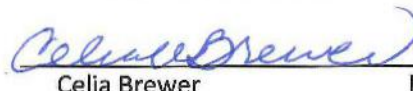
The Foregoing Agreement Has been Reviewed and Approval Is Recommended:



Paz Gomez
Deputy City Manager, Public Works

4/26/2021

APPROVED AS TO FORM:



Celia Brewer
City Attorney

4/23/2021

ATTEST:


for _____
Barbara Engelson
City Clerk

4/28/2021

"CONTRACTOR"



Signature


3/12/21
Date

Gasser Brunes

Print Name of Signatory

Director of Operations

Title of Signatory



Signature

3/12/21
Date

Scott Sterner

Print Name of Signatory

General Manager

Title of Signatory

____ City Business License #

Resolution Number XXXX-XXX 2021-075

Approved by City Council

2715

FRANCHISE EXHIBITS

EXHIBIT A: DEFINITIONS

EXHIBIT A DEFINITIONS

For purposes of this Agreement, 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 Agreement:

"Abandoned Waste" means Recyclable Materials, Organic Materials, Solid Waste, C&D, Excluded Waste, Bulky Items, or other materials which have been abandoned, littered, or illegally dumped in the public right of way or on public or City property.

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

"AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

"Agreement" means this Agreement between City and Contractor, including all exhibits, and any future amendments hereto.

"Alternative Daily Cover" or "ADC" has the same meaning as in Section 20690 of Title 27 of the California Code of Regulations.

"Alternative Intermediate Cover" or "AIC" has the same meaning as in Section 20700 of Title 27 of the California Code of Regulations.

"Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

"Approved Facility(ies)" means any one of or any combination of the: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; Designated Organic Materials Processing Facility; Designated Transfer Facility; Approved Reusable Materials Processing Facility; and/or Designated Disposal Facility.

"Approved Processing Facility(ies)" means any one of or any combination of the: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; Designated Organic

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Materials Processing Facility; Designated Transfer Facility; or, Approved Reusable Materials Processing Facility.

"Approved Organic Materials Processing Facility" means the Otay Landfill Composting Facility, 1700 Maxwell Rd, Chula Vista, CA 91911, which is owned and operated by Otay Landfill Inc., a subsidiary of Republic Services.

"Approved Recyclable Materials Processing Facility" means the Escondido Resource Recovery facility, which is owned and operated by SANCO Services.

"Approved Reusable Materials Processing Facility" Palomar Transfer Station (PTS), at 5960 El Camino Real, Carlsbad, CA, which is owned by the County and operated by Republic Services.

"Bin" means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.

"Bulky Item" means discarded Appliances (including refrigerators), furniture, tires, carpets, mattresses, E-Waste, bundled and tied Yard Trimmings and/or wood waste, and similar large items which can be handled by two (2) people, weigh no more than two hundred (200) pounds, and require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. Bulky Items must be generated by the Customer and at the service address wherein the Bulky Items are Collected. Bulky Items do not include abandoned automobiles, large auto parts, trees, Construction and Demolition Debris, or items herein defined as Excluded Waste.

"Business Days" mean days during which the City offices are open to do business with the public.

"California Code of Regulations (CCR)" means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

"CalRecycle" means California's Department of Resources Recycling and Recovery.

"Cardboard" means corrugated fiberboard consisting of a fluted corrugated sheet and one (1) or two (2) flat linerboards, as is often used in the manufacture of shipping containers and corrugated boxes. Cardboard is a subset of Recyclable Materials.

"Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).

"City" means the City of Carlsbad, a municipal corporation, and all the territory lying within its boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

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“City Council” means the duly elected representative council, or its successor municipal governing body, of the City.

“City Contract Manager” means City’s Environmental Services Manager, who is responsible for the administrative management of this Agreement, or their designee.

“City Fees” means all fees payable to the City, identified and referenced in Article 7 of this Agreement.

“Change in Law” means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; 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 City or of the Contractor, 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.

“Collect” or “Collection” (or any variation thereof) means the act of taking possession of Recyclable Materials, Organic Materials, Solid Waste, Bulky Items, and other material at the place of generation in City.

“Commencement Date” means the date specified in Section 2.1 when Collection, Transportation, and Processing services required by this Agreement shall be provided.

“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, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Commercial Edible Food Generator” includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

“Community Composting” means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed one hundred (100) cubic yards and seven hundred fifty

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(750) square feet, as specified in 14 CCR Section 6 17855(a)(4); or as otherwise defined in 14 CCR Section 18982(a)(8).

"Compostable Plastics" or "Compostable Plastic" means plastic materials that meet the ASTM D6400 standard for Compostability.

"Compactor" means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection vehicles.

"Complaint" shall mean each written or orally communicated statement made by any Person, whether to City or Contractor, alleging: (1) non-performance, or deficiencies in Contractor's performance, of its duties under this Agreement; (2) a violation by Contractor of this Agreement; or, (3) an SB 1383 Non-Compliance Complaint.

"Composting" or "Compost" (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.

"Construction and Demolition Debris (C&D)" includes 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 Excluded Waste. Construction and Demolition Debris includes rocks, soils, tree remains, and other Yard Trimmings which results from land clearing or land development operations in preparation for construction.

"Container(s)" mean Bins, Carts, Compactors, and Drop Boxes.

"Contamination Processing Fee Notice" means the notice as described in Section 4.11.1.E.

"Contractor" means Allied Waste Systems, Inc. organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

"Contractor's Compensation" means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 8.

"Contractor's Contract Administrator" means the individual authorized by Contractor as described by Section 5.7.E.1.

"Contractor's Proposal" means the proposal submitted to City by Contractor on September 10, 2020 for provision of Recyclable Materials, Organic Materials, and Solid Waste Collection and Processing services

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and certain supplemental written materials, which are included as Exhibit G to this Agreement and are incorporated by reference.

"County" means the County of San Diego, a political subdivision of the State of California.

"Courtesy Pick-Up Notice" means the Contractor's notice to Customer(s) as described in Section 4.11.1.C.

"Curb" or "Curbside" (or any variation thereof) means the cornered edging between the street and sidewalk. Curb or Curbside also means and describes the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb exists, the Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

"Customer" means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

"Customer Account Information Database" means the Customer Account Information Database as identified in Section 4.7 that shall be developed, maintained, and monitored in accordance with the requirements of this Agreement.

"Customer Type" means the Customer's sector category including, but not limited to, Single-Family, Multi-Family, Commercial, Drop Box, and City.

"Designated C&D Processing Facility" means the Otay C&D/Inert Debris Processing Facility, at 1700 Maxwell Rd, Chula Vista, CA 91911, which is owned by the County and operated by Republic Services.

"Designated Disposal Facility" means the landfill or transfer station, selected by the operator of the Designated Transfer Facility, where Solid Waste Collected under this Agreement is sent for final Disposal.

"Designated Organic Materials Processing Facility" means the Otay C&D/Inert Debris Processing facility, at 1700 Maxwell Rd, Chula Vista, CA 91911, which is owned by the County and operated by Republic Services. The Designated Organic Materials Processing Facility shall serve as the Processing site for all Organic Materials Collected by Contractor.

"Designated Waste" means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

"Divert" or "Diversion" (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation,

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gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

"Diversion Coordinator" means the individual authorized by Contractor as described by Section 5.7.E.3.

"Discarded Materials" means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

"Disposal" or "Dispose" (or any variation thereof) means the final disposition of Solid Waste, or Processing Residue at a Disposal Facility.

"Disposal Facility" means a landfill, or other facility for ultimate Disposal of Solid Waste.

"Drop Box" means an open-top Container with a capacity of seven (7) to forty (40) cubic yards that is serviced by a roll-off Collection vehicle.

"Dwelling Unit" means any individual living unit in a; Single-Family dwelling (SFD) or Multi-Family dwelling (MFD) structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a Hotel or Motel.

"Edible Food" means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

"Effective Date" means the date on which the latter of the two Parties signs this Agreement.

"Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include Used Motor Oil and

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Filters, or household batteries when properly placed for Collection by Contractor as set forth in this Agreement.

"Extra Service Tags" are tags approved by City and provided by the Contractor which may be purchased by Residents and affixed to a bag provided by Residents for the Collection of Solid Waste overages.

"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 or include Hazardous Substances and thus require special handling, Processing, or Disposal.

"Field Supervisor" means the individual authorized by Contractor as described by Section 5.7.E.2.

"Federal" means belonging to or pertaining to the Federal government of the United States.

"Flow Control" means City right to direct Discarded Materials to a facility of the City's choosing.

"Food Recovery" means actions to Collect and distribute food for human consumption which otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

"Food Recovery Organization" means an entity that primarily engages in the Collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

"Food Recovery Service" means a Person or entity that Collects and Transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

"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) fruit waste, grain waste, dairy waste, meat,

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and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.

"Food-Soiled Paper" means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

"Food Waste" means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of Organic Materials.

"Generator" means any Person whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes Discarded Materials to become subject to regulation.

"Franchise Fee" means the fee paid by Contractor to the City as described in Section 7.1.

"Gross Receipts" shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials.

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant", or "toxic substances", or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

"Holidays" are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

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“Household Hazardous Waste” or “HHW” means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil and Filter, Used Oil Filter, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

“Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

“In-Home Recycling Container” refers to a small, easily portable tote bag with a capacity of at least three (3) gallons to be included by Contractor in the Multi-Family Move-in Kit to facilitate convenient accumulation of Recyclable Materials within a Multi-Family Dwelling Unit.

“Late Container Delivery Rebate” means the rebate payment to be provided by Contractor to a Customer in accordance with Section 5.13 for failure to deliver one or more Container(s) to a Customer Premises.

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 10.6 and Exhibit F.

“Missed Collection Rebate” means the rebate payment to be provided by Contractor to a Customer in accordance with Section 5.13 for failure to Collect materials from a Customer Premises.

“Move-in Kit” refers to a pre-prepared and standardized collection of useful items to be given by property managers or Ownersowners of Multi-Family Premises to new Multi-Family tenants upon move-in to a Multi-Family Dwelling Unit. At a minimum, Move-in Kits shall include a Multi-Family Recycling guide, an In-Home Recycling Container, and stickers or refrigerator-magnets that clearly define the accepted and prohibited materials in the Recycling program.

“Multi-Family” or “MFD” means any Residential Premises, other than a Single-Family Premises, with five (5) or more Dwelling Units used for Residential purposes (regardless of whether residence therein is temporary or permanent), including such Premises when combined in the same building with Commercial establishments, that receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive individual service and are billed separately shall not be considered Multi-Family.

“Mulch” means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):

- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section

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17852(a)(24.5)(A)(1) through (3).

- B. Was produced at one or more of the following types of Facilities:
1. A Compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10); Guidance: Note that this criteria disallows Mulch produced from chipping and grinding operations to count toward fulfillment of a jurisdiction's annual Organic Waste product procurement target;
 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,
 3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

"Non-Collection Notice" means the notice as described in Section 4.11.1.D.

"Occupant" means the Person who occupies a Premises.

"Organic Materials" means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.

"Organic Waste" means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

"Owner" means the Person(s) holding legal title to real property and/or any improvements thereon, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

"Paper Garden Bags" means a paper bag approved by City and provided by the Contractor which may be purchased by Residents for the Collection of Organic Materials overages.

"Party" or "Parties" refers to the City and Contractor, individually or together.

"Person(s)" means any individual, firm, association, organization, partnership, consortium, corporation, trust, joint venture, Commercial entity, governmental entity, public entity, or any other legal person.

"Personal Recycling Tote" or "PRT" means the recycling totes required to be provided to individual Multi-Family Dwelling Units in Exhibit B2.1 of this Agreement.

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"Premises" means any land or building in the City where Recyclable Materials, Organic Materials, or Solid Waste are generated or accumulated.

"Processing" or "Process" means to prepare, treat, or convert through some special method.

"Processing Facility" means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

"Prohibited Container Contaminants" means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the City's Collection program; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the City's Collection program; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the City's Recyclable Materials or Organic Materials Containers or otherwise managed under the City's Collection program; and, (iv) Excluded Waste placed in any Container.

"Proprietary Information" or "Proprietary" means that information provided by Contractor to the City which is protected from disclosure by the California Public Records Act and meets that definition of Proprietary Information. Nothing shall be considered Proprietary which is required to be submitted to the City in any report described in this Agreement. Contractor's Customer lists for Customers served under this Agreement are specifically not considered Proprietary for the purposes of this Agreement, however, the City may protect such information from disclosure consistent with the provisions of the Public Records Act.

"Public Street" means all City-owned and maintained paved areas between the normal Curb line of a roadway, including public parking lots, roadway dividers, and medians.

"Rate" means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing services under this Agreement. A Rate has been established for each individual Service Level and the initial Rates for Rate Period Zero and Rate Period One are presented in Exhibit G3. The Rates approved by City are the maximum Rate that Contractor may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the City.

"Rate Period" means a twelve (12) month period, commencing January 1 and concluding December 31.

"Recyclable Materials" means those Discarded Materials that: the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials, and Solid Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons,

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telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, gabletop beverage containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, Tyvex non-tearing paper envelopes); chipboard; corrugated Cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin, or bi-metal cans; mixed plastics such as plastic containers (no. one (1) to seven (7)), except expanded Polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; film plastic (when clean, dry, and contained inside of a plastic bag); dry cell household batteries when placed on the Recycling Cart in a sealed heavy-duty plastic bag; and, those materials added by the Contractor from time to time.

“Recycle” or “Recycling” means the Process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling includes Processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

“Related-Party Entity” means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be affiliated with Contractor and included within the term “Related-Party Entity” as used herein. A Related-Party Entity shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect Ownership interest exists, the constructive Ownership provisions of Section 318(a) of the Internal Revenue code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, the (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater. Related-Party Entities shall be limited to those businesses which are directly or indirectly involved in the provision of service under this Agreement.

“Renewable Natural Gas” or “RNG” means gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

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“Residential” shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, Townhouse complexes, mobile home parks, and cooperative apartments.

“Residue” means those materials which, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.

“Reusable Materials” means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.

“Service Opportunity” shall mean each individual scheduled opportunity the Contractor has to Collect from a Container at a Customer’s location. For example, a Commercial Customer receiving Recyclable Materials Collection service two (2) times per week from two (2) Containers, Organic Materials Collection service two (2) times per week from (2) Containers, and Solid Waste Collection service two (2) times per week from two (2) Containers would have a total of twelve (12) Service Opportunities each week. Service Opportunities shall be calculated based on the subscription levels presented in Contractor’s most recent Quarterly Report to City.

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-Hauler” or “Self-Haul” means a Person who hauls Discarded Materials, recovered material, or any other material, that such Person generates at their own Premises, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste from Premises they own and operate, as defined in 14 CCR Section 18982(a)(66)(A).

“Service Level” refers to the size of a Customer’s Container and the frequency of Collection service.

“Single-Family” or “SFD” means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses, and each independent unit of duplex, tri-plex, or four-plex Residential structures, regardless of whether each unit is separately billed for their specific Service Level.

EXHIBIT A DEFINITIONS

“Solid Waste” means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

“Specialty Recyclable Material” means material not specified in this Agreement that can be or will be Collected for purposes of Recycling. Such Specialty Recyclable Material may include, but is not limited to, scrap metal, high-grade paper (including office mixed paper), pallets, and plastic film.

“Split-Bin” means a Bin that is split or divided into two (2) sections in order to segregate two (2) Source Separated Discarded Material types in one Container.

“State” means the State of California.

“Subcontractor” means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Subcontractors.

“Term” means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.
- B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

EXHIBIT A DEFINITIONS

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with two hundred fifty (250) or more seats, or a total facility size equal to or greater than five thousand (5,000) square feet.
- B. Hotel with an on-site food facility and two hundred (200) or more rooms.
- C. Health facility with an on-site food facility and one hundred (100) or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet.
- G. A local education agency with an on-site food facility. If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

“Ton” or “Tonnage” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

“Total Service Opportunities” shall mean the sum of all Service Opportunities in a given time period.

“Townhouse” means an attached or semi-attached Single-Family Premises within a group of attached or semi-attached Single-Family Premises, regardless of whether the Premises is billed individually or through a central account (e.g. homeowner association, property manager), wherein each unit maintains individual Collection service subscription, as determined in writing by the City Contract Manager.

“Trade Secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives actual independent economic value from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use; and, (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“Transfer” means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

“Transportation” or “Transport” means the act of conveying Collected materials from one location to another.

“Universal Waste” or “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.

“Used Motor Oil and Filter” means used oil fluids for vehicles including motor oil, brake, transmission and hydraulic fluids, crankcase and differential oils, lubricating oils for vehicles, and oil filters from automobiles and light trucks.

EXHIBIT A DEFINITIONS

“Used Oil Recovery Kit” means a kit containing: one (1) reusable plastic jug of at least one (1) gallon capacity with a leak-proof, watertight screw-on top to contain Used Motor Oil or used cooking oil; one (1) six (6) mil plastic Disposable resealable bag with double track seal of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other informational media approved by the City intended to educate Customers about the Used Motor Oil and Filter Collection program and the benefits resulting from the proper handling of Used Motor Oil and Filters. The Used Oil Recovery Kit is to be provided to Customers by Contractor to recover Used Motor Oil and Filter, and used cooking oil from Single-Family and Townhouse residents.

“Working Days” means days on which the Contractor is required to provide regularly scheduled Collection services under this Agreement.

“Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Materials resulting from normal yard and landscaping maintenance that may be specified in City Legislation for Collection and Processing as Organic Materials under this Agreement. Yard Trimmings does not include items herein defined as Excluded Waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

EXHIBIT B: DIRECT SERVICES

The following Exhibits (B1 through B5) describe the programs which, in aggregate, represent the direct services to be performed under this Agreement by the Contractor.

Each of the following Exhibits (B1 through B5) present the programs to be provided to each Customer Type by Contractor. Within each program description are specific requirements for the:

- Type and size of Containers or Service Level to be offered by Contractor under each program;
- Frequency of service to be offered by Contractor to Customers;
- Location of service, including an indication of whether or not additional charges may apply if a Customer selects a location that is more costly to serve (e.g. back-yard service);
- Materials that are acceptable or prohibited within the program;
- Provision of additional services to the Customer if the standard Service Levels are inadequate, either on a regular or periodic basis, and an indication of whether or not additional charges may apply; and/or,
- Other requirements and considerations of the program.

Contractor shall provide the services for each program described in accordance with the specific program requirements detailed in Exhibits B1 through B5 and Contractor shall promote such programs using the public education and outreach methods described in Exhibit C.

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EXHIBIT B1:
SINGLE-FAMILY RESIDENTIAL SERVICE

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers one (1) time per week from Single-Family (including Townhouse) Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

Containers:	Carts
Container Sizes:	32-, 64-, and 96-gallons (or comparable sizes approved by the City). Standard Container size is 64-gallon. 96-gallon service shall be made available for no additional charge, upon request by Customer.
Service Frequency:	One (1) time per week on the same day as Organic Materials and Solid Waste Collection services.
Service Location:	Curbside
Acceptable Materials:	Recyclable Materials
Prohibited Materials:	Solid Waste, Organic Materials, Excluded Waste
Additional Service:	Single-Family Customers shall receive one (1) Recyclable Materials Cart standard and may request up to two (2) additional Recyclable Materials Carts at no additional charge. Contractor shall provide additional Recyclable Materials Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City. Contractor shall allow Single-Family Customers to place unlimited flattened Cardboard (pieces no larger than 2' x 3'), and additional volumes of mixed Recyclable Materials contained in paper bags or Cardboard boxes adjacent to the Recyclable Materials Cart on their regularly-scheduled Collection day at no additional charge to the Customer.
Other Requirements:	Contractor shall accept household batteries in the Recyclable Materials program, provided that those batteries have been separately packaged in a sealed, fluorescent, storage plastic bag and placed on top of the Recyclable Materials Cart. Contractor may refuse to Collect a Recyclable Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.11 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

2. Organic Materials Collection

Contractor shall Collect Organic Materials placed in Contractor-provided Carts one (1) time per week from Single-Family Customers (including Townhouse) and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. As of the Commencement Date, Organic Materials Collection service, as described in this Section 2 shall not be available to

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

Containers:	Carts
Container Sizes:	32, 64, 96-gallons (or comparable size approved by the City).
Service Frequency:	One (1) time per week on the same day as Recyclable Materials and Solid Waste Collection service.
Service Location:	Curbside
Acceptable Materials:	Organic Materials (including Yard Trimmings and Food Waste)
Prohibited Materials:	Recyclable Materials, Solid Waste, Excluded Waste
Additional Service:	Single-Family Customers shall receive one (1) Organic Materials Cart standard and may request up to two (2) additional Organic Materials Carts at no additional charge. Contractor shall provide additional Organic Materials Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City.
Other Requirements:	<p>Contractor shall provide to all Single-Family Customers kitchen pails designed to contain Food Scraps prior to placement in the Customer's Organic Materials Cart. Kitchen pail specifications shall be approved by the City prior to ordering and distribution.</p> <p>Single-Family Customers may place Organic Materials in Compostable Plastic bags and then place the bagged Organic Materials into their Organic Materials Carts for Collection. Such bags must be labeled as "Compostable" by the manufacturer and certified by BPI. Contractor shall submit the required Compostable Plastic Processing notifications in accordance with Section 4.2.C and Exhibit D of this Agreement.</p> <p>Contractor may refuse to Collect an Organic Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.11 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.</p>

3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Carts one (1) time per week from Single-Family Customers (including Townhouse) and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

Containers:	Carts
Container Sizes:	32-, 64-, and 96-gallons (or comparable sizes approved by the City). As requested by Customer.
Service Frequency:	One (1) time per week on the same day as Recyclable Materials and Organic Materials Collection service.
Service Location:	Curbside

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Recyclable Materials, Organic Materials, Excluded Waste
- Additional Service:** Contractor shall provide additional Solid Waste Carts to Single-Family Customers upon request and may charge the appropriate Rate approved by the City.
- Other Requirements:** None

4. Used Oil and Filter Collection

Contractor shall Collect Used Motor Oil and Filters and used cooking oil placed in a Contractor-provided Used Oil Recovery Kit from Single-Family Customers (including Townhouse) and shall Recycle all Used Motor Oil and Filters and used cooking oil Collected pursuant to this Agreement.

- Containers:** Used Oil Recovery Kit
- Container Sizes:** 1-gallon filter bags; and, 1-gallon oil jugs
- Service Frequency:** Up to one (1) time per week on the same day as Solid Waste Collection service.
- Service Location:** Curbside (adjacent to Recyclable Materials Cart)
- Acceptable Materials:** Used Motor Oil and Filter, used cooking oil
- Prohibited Materials:** Recyclable Materials, Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Not applicable
- Other Requirements:** Contractor shall provide a Used Oil Recovery Kit to a Customer within three (3) Working Days of Customer request, at no additional cost to Customer. Upon Collection of Used Motor Oil and Filter from a Customer, Contractor shall leave a clean and empty Used Oil Recovery Kit adjacent to the Recyclables Cart.
- Contractor shall Recycle the Used Motor Oil and Filter and used cooking oil only with Persons who are authorized by the State of California to Recycle such materials. In the event the Used Motor Oil and Filter and/or used cooking oil Collected pursuant to this Agreement is contaminated to the extent that the materials require Disposal as a Hazardous Waste, Contractor shall Dispose of such materials, at Contractor's own cost and expense in accordance with Applicable Law.
- Contractor shall notify the City Contract Manager of any contamination which renders the Used Motor Oil and Filter or used cooking oil unacceptable for Recycling or which requires Disposal as a Hazardous Waste.
- Contractor shall keep all Used Motor Oil and Filters and used cooking oil Collected pursuant to this Agreement segregated from other materials.
- Contractor may refuse to Collect Used Motor Oil and Filter if it is not contained in an approved Used Oil Recovery Kit, provided that Contractor leaves a Non-Collection Notice which explains the reason for Non-Collection, and also leaves a clean and empty Used Oil Recovery Kit adjacent to the refused Used Motor Oil and Filter set-out. Contractor may refuse to Collect a Used Motor Oil Recovery Kit which contains liquid other than Used Motor Oil or cooking oil, provided that Contractor leaves a Non-Collection Notice which explains the reason for Non-

EXHIBIT B1 SINGLE-FAMILY RESIDENTIAL SERVICES

Collection.

5. On-Call Bulky Item/Reusable Materials Collection

Contractor shall Collect Bulky Items, Reusable Materials, and other materials described herein from Single-Family Customers (including Townhouse). Contractor shall Transport all Collected materials to the appropriate Approved Facility for reuse, Processing, or Disposal.

Containers:	Not applicable
Service Level:	Up to five (5) Bulky Items or Discarded Materials where each cubic yard of Recyclable Materials, Yard Trimmings, Solid Waste, and/or E-Waste shall count as one (1) item
Service Frequency:	Three (3) times per year
Service Location:	Curbside
Acceptable Materials:	Reusable Materials, Bulky Items, Recyclable Materials, Yard Trimmings, and Solid Waste
Prohibited Materials:	Food Scraps, Hazardous Materials, abandoned automobiles, trees, Excluded Waste or any single item (e.g. large auto parts, etc.) that exceeds two hundred (200) lbs. in weight
Additional Service:	Contractor shall provide additional Bulky Item/Reusable Materials Collections to Single-Family Customers, beyond three (3) per year, and shall Collect additional Acceptable Materials (as described herein) that exceed the required Service Level (as requested by Customer), and may charge the appropriate Rates approved by the City for such additional service.
Other Requirements:	Contractor shall provide the service to the Customer within one (1) Working Day of the Customer's requested service date, as mutually agreed upon by the Customer and Contractor. Contractor shall not Dispose of materials Collected through the on-call Bulky Item/Reusable Materials Collection program unless the materials cannot be reused or Recycled. Contractor shall Process and Dispose of Bulky Items and Reusable Materials Collected from Customers in accordance with the following hierarchy: (1) reuse as is (where energy efficiency is not compromised); (2) disassemble for reuse or Recycling; (3) Recycle or Compost; and if none of the other options are practicable; then, (4) Dispose.

6. Holiday Tree Collection

Annually, commencing the day after December 25 and three (3) weeks thereafter, the Contractor shall Collect holiday trees from Single-Family Customers (including Townhouse). Customers are required to place the holiday trees Curbside on the Customer's regularly scheduled Collection day. Holiday trees must be removed from stands; cut into lengths no longer than four (4) feet; and, be free of ornaments, garlands, tinsel, flocking, or other decorations. The Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria. The Contractor shall affix a Non-Collection Notice to any non-

EXHIBIT B1

SINGLE-FAMILY RESIDENTIAL SERVICES

Collected tree informing the Customer of the reason(s) for Non-Collection. Contractor may charge City-approved Rates to return and Collect a previously non-Collected holiday tree that has been corrected and set out. Contractor shall deliver all Collected holiday trees to the Approved/Designated Organic Materials Processing Facility for Processing.

Holiday tree Collection services shall be provided at no additional cost to the City or the Customer.

7. Alternative Service Location for Disabled Single-Family Customers

Contractor shall allow for Persons that have a disability as defined by the Americans with Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C. 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family Premises (including Townhouse Premises) to receive Collection services at a location other than Curbside at no extra charge to the Customer. Contractor shall review all applications (which shall include statements from physicians) made by Customers to determine conformance with this exemption provision and shall grant exemptions, if applicable. Contractor shall make reasonable accommodations with regard to provision of and servicing of Containers (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional cost to the Customer. Upon Customer request, Contractor may make such alternative service locations available to Single-Family Customers that do not have a disability (as defined herein) for an additional, City-approved Rate.

8. On Call Electronic Waste Collection

Contractor shall provide Electronic Waste Collection Service to all Single-Family Customers in the Service Area whose Electronic Waste has been placed within three (3) feet of the Curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the Contractor and Customer, that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Customers are required to call in to schedule an Electronic Waste pick-up by 5:00 PM the day prior to the Customer's regular Collection day.

Customer may place up to five (5) items out for Collection per Collection event. SFD and MFD Customers are entitled to three (3) Collection events per Dwelling per Rate Period at no additional charge. Contractor shall not be required to Collect oversized items of Electronic Waste that cannot be handled by one (1) Person.

9. Sharps Waste Collection

Contractor shall provide for Sharps Waste generated by Single-Family Customers (including Townhouse Customers) at no charge through a container placed at up to three (3) locations at City facilities designated by the City. Contractor will replace the container at the City facility up to ten (10) times each Rate Period, on an as-needed basis. Contractor shall also make available to Customers a sharps by mail service from a

EXHIBIT B1
SINGLE-FAMILY RESIDENTIAL SERVICES

third party provider through its website, at the rate established by the third party provider from time to time.

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EXHIBIT B2:
MULTI-FAMILY RESIDENTIAL SERVICES

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Multi-Family Customers at no additional charge with Customer subscription to Solid Waste Collection service, and shall Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing. Recyclable Materials Collection Services shall be provided to Multi-Family Customers at no additional charge.

- Containers:** Carts, Bins
- Container Sizes:** 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); and 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins, and 3 cubic yard Split-Bins. As requested by Customer
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week (as requested by Customer), unless the Customer has received a Collection frequency waiver for Recyclable Materials in accordance with Section 4.10.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days.
- Service Location:** Curbside or other Customer-selected service location at the Multi-Family Premises
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor shall provide to all Multi-Family Dwelling Units Personal Recycling Totes designed to contain Recyclable Materials prior to placement in the Recyclable Materials Container. Personal Recycling Tote specifications shall be approved by the City prior to ordering and distribution.
- Contractor shall make contact with each and every Multi-Family Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Recyclable Materials Containers to each and every Multi-Family Customer at the same time that the Contractor delivers Solid Waste Containers.
- Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).
- Contractor may refuse to Collect a Recyclable Materials Container that contains

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.11 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

2. Organic Materials Collection

Contractor shall Collect Organic Materials in Contractor-provided Carts not less than one (1) time per week from Multi-Family Customers and Transport all Organic Materials to the Approved Organic Materials Processing Facility for Processing. Organic Materials Collection services shall be provided to Multi-Family Customers at no additional charge.

Containers:	Carts, Bins
Container Sizes:	32-, 64-, and 96-gallon Carts (or comparable size approved by the City); and, 1-, 2-, 3-, and 4-cubic yard Bins. As requested by Customer.
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by the Multi-Family Customer.
Service Location:	Curbside or other Customer-selected service location at the Multi-Family Premises
Acceptable Materials:	Organic Materials (including Yard Trimmings and Food Waste)
Prohibited Materials:	Recyclable Materials, Solid Waste, Excluded Waste
Additional Service:	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
Other Requirements:	Contractor shall provide to all Multi-Family Dwelling Units kitchen pails designed to contain Food Scraps prior to placement in the Customer's Organic Materials Container. Kitchen pail specifications shall be approved by the City prior to ordering and distribution.

Contractor shall make contact with each and every Multi-Family Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Multi-Family Customer at the same time that the Contractor delivers Solid Waste Containers.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

Contractor may refuse to Collect an Organic Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.11 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

Containers:	Carts, Bins
Container Sizes:	32, 64-, and 96-gallon Carts (or comparable size approved by the City); and 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins, and 3 cubic yard Split-Bins. As requested by Customer.
Service Frequency:	Up to three (3) times per week but not less than one (1) time per week, as requested by Customer, unless the Customer has received a Collection frequency waiver for Solid Waste in accordance with Section 4.10.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days.
Service Location:	Curbside or other Customer-selected service location at the Multi-Family Premises
Acceptable Materials:	Solid Waste
Prohibited Materials:	Recyclable Materials, Organic Materials, Excluded Waste
Additional Service:	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks ups can be scheduled equating to up to three (3) days per week total service.
Other Requirements:	Contractor shall make contact with each and every Multi-Family Customers in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

EXHIBIT B2

MULTI-FAMILY RESIDENTIAL SERVICES

4. Bulky Item/Reusable Materials Collection

Contractor shall Collect Bulky Items, Reusable Materials, and other materials described herein from Multi-Family Customers. Contractor shall Transport all Collected materials to the appropriate Approved Facility for reuse, Processing, or Disposal.

Containers:	Not applicable
Service Level:	Up to five (5) Bulky Items or Discarded Materials where each cubic yard of Recyclable Materials, Yard Trimmings, Solid Waste, and/or E-Waste shall count as one (1) item
Service Frequency:	Three (3) times per year
Service Location:	Curbside
Acceptable Materials:	Reusable Materials, Bulky Items, Recyclable Materials, Yard Trimmings, and Solid Waste
Prohibited Materials:	Food Scraps, Hazardous Materials, abandoned automobiles, trees, Excluded Waste or any single item (e.g. large auto parts, etc.) that exceeds two hundred (200) lbs. in weight
Additional Service:	Contractor shall provide additional Bulky Item/Reusable Materials Collections to Multi-Family Customers, beyond three (3) per year, and shall Collect additional Acceptable Materials (as described herein) that exceed the required Service Level (as requested by Customer), and may charge the appropriate Rates approved by the City for such additional service.
Other Requirements:	Contractor shall provide the service to the Customer within one (1) Working Day of the Customer's requested service date, as mutually agreed upon by the Customer and Contractor. Contractor shall not Dispose of materials Collected through the on-call Bulky Item/Reusable Materials Collection program unless the materials cannot be reused or Recycled. Contractor shall Process and Dispose of Bulky Items and Reusable Materials Collected from Customers in accordance with the following hierarchy: (1) reuse as is (where energy efficiency is not compromised); (2) disassemble for reuse or Recycling; (3) Recycle or Compost; and if none of the other options are practicable, (4) Dispose.

5. Holiday Tree Collection

Annually, commencing the day after December 25 and three (3) weeks thereafter, or as otherwise approved by the City Contract Manager, Contractor shall Collect Holiday trees from Multi-Family Customers at a mutually agreed upon time, date, and designated Collection location, as arranged by the Contractor and each Multi-Family property Owner or manager. Contractor shall offer each Multi-Family property Owner or manager the option to receive Christmas tree Collection service in Bins or Drop Boxes, which Contractor shall provide for such service. Contractor shall also offer each Multi-Family property Owner or manager the option to receive un-containerized Christmas tree Collection service Curbside, or from designated location at the Multi-Family Premises mutually agreed upon between Contractor and the property Owner or manager.

EXHIBIT B2 MULTI-FAMILY RESIDENTIAL SERVICES

Holiday trees must be removed from stands; cut into lengths no longer than four (4) feet; and, be free of ornaments, garlands, tinsel, flocking, or other decorations. The Contractor shall not be required to Collect holiday trees that do not meet the aforementioned criteria and/or are not placed at the agreed upon Collection location and time period. The Contractor shall affix a Non-Collection Notice to any non-Collected holiday tree informing the Customer of the reason(s) for Non-Collection.

6. Container Sharing and Split-Bins

In special circumstances for Customers with significant space limitations and upon approval by the City Contract Manager, the Contractor shall permit Multi-Family Customers to share Discarded Materials service with other geographically proximate Customers. Such shared service shall be performed and billed, as if it were being provided to a single Customer, with the exception that Contractor shall require all Customers sharing a single service account to identify a "Primary Responsible Party" which will serve as the singular point of contact for communication and billing from Contractor and the City, along with a list of all addresses with which the Primary Responsible Party will share service.

Additionally, the Contractor shall, upon Customer request, provide Split-Bins for Multi-Family Customers with space limitations, and shall Collect, Transport, Transfer, and Process or Dispose of each material type in accordance with this Agreement.

7. On Call Electronic Waste Collection

Contractor shall provide Electronic Waste Collection Service to all Multi-Family Customers in the Service Area whose Electronic Waste has been placed at a location agreed to by the Contractor and Customer, that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Customers are required to call in to schedule an Electronic Waste pick-up by 5:00 PM the day prior to the Customer's regular Collection day.

Customer may place up to five (5) items out for Collection per Collection event. Multi-Family Customers are entitled to three (3) Collection events per Dwelling Unit per Rate Period at no additional charge. Contractor shall not be required to Collect oversized items of Electronic Waste that cannot be handled by one (1) Person.

8. Sharps Waste Collection

Contractor shall provide for Sharps Waste generated by Multi-Family Customers at no charge through a container placed at up to three (3) locations at City facilities designated by the City. Contractor will replace the container at the City facility up to ten (10) times each Rate Period, on an as-needed basis. Contractor shall also make available to Customers a sharps by mail service from a third party provider through its website, at the rate established by the third party provider from time to time.

EXHIBIT B2
MULTI-FAMILY RESIDENTIAL SERVICES

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**EXHIBIT B3:
COMMERCIAL SERVICES**

EXHIBIT B3 COMMERCIAL SERVICES

1. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from Commercial Customers subscribing to Recyclable Materials Collection service and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- Containers:** Carts, Bins, Drop Boxes, and Compactors
- Container Sizes:** 32-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, and 6- cubic yard Bins; 3 cubic yard Split-Bins; 2-, 3-, and 4-cubic yard Bin Compactors, and, 7-, 20-, 30-, and 40- cubic yard Drop Boxes; or, Customer Owned Compactors
As requested by Customer.
- Service Frequency:** Up to six (6) times per week but not less than one (1) time per week, as requested by Customer; unless the Customer has received a Collection frequency waiver for Recyclable Materials in accordance with Section 4.10.2, in which case service frequency shall be not less than one (1) time per fourteen (14) days
- Service Location:** Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the nearest point that a Collection Vehicle can access from a paved surface.
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
- Other Requirements:** Contractor shall make contact with each and every Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Recyclable Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers, unless that Commercial Customer is exempted from Recyclable Materials services by the City, or has demonstrated to the City that it is Diverting Recyclable Materials through subscription with another City-approved hauler, or other City-approved method.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply).

EXHIBIT B3 COMMERCIAL SERVICES

A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to twenty-five (25) feet then return).

Contractor may refuse to Collect a Recyclable Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.11 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address, and material type of the Container in question.

2. Organic Materials Collection

Contractor shall Collect Organic Materials placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Organic Materials to the Approved Commercial Organic Materials Processing Facility for Processing. Nothing in this Section of Exhibit B3 shall prevent other Persons from also providing similar services to businesses in the City, and charging for such service, provided that such Persons maintain a City-issued permit granting such right, in accordance with the City's Municipal Code.

Containers:	Carts, Bins, Compactors
Container Sizes:	32-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 1.5-, and 2- cubic yard Bins; and, Customer-owned Compactors As requested by Customer.
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer.
Service Location:	Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the nearest point that a Collection Vehicle can access from a paved surface.
Acceptable Materials:	Organic Materials (including Yard Trimmings and Food Scraps)
Prohibited Materials:	Recyclable Materials, Solid Waste, Excluded Waste
Additional Service:	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service
Other Requirements:	Contractor shall make contact with each and every Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Contractor shall deliver Organic Materials Containers to each and every Commercial Customer at the same time that the Contractor delivers Solid Waste Containers, unless that Commercial Customer is exempted

EXHIBIT B3 COMMERCIAL SERVICES

from Organic Materials services by the City, or has demonstrated to the City that it is Diverting Organic Materials through subscription with another City-approved hauler, or other City-approved method.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to twenty five (25) feet then return).

Contractor may refuse to Collect an Organic Materials Container that contains Prohibited Container Contaminants in the manner and subject to the limits described in Section 4.11 and provided that Contractor leaves a Non-Collection Notice in accordance with Section 5.3.B of this Agreement. Contractor shall keep a record of all Non-Collection Notices and Courtesy Pick-Up Notices issued to Customers, recording at a minimum the date, Customer address and material type of the Container in question.

3. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

Containers:	Carts, Bins, Drop Boxes, Compactors.
Container Sizes:	32-, 64-, and 96-gallon Carts (or comparable size approved by the City); 1-, 2-, 3-, 4-, 5-, and 6- cubic yard Bins; 3 cubic yard Split-Bins; 2-, 3-, and 4-cubic yard Bin Compactors, and, 7-, 20-, 30-, and 40- cubic yard Drop Boxes; or Customer Owned Compactors. As requested by Customer.
Service Frequency:	Up to three (3) times per week but not less than one (1) time per week, as requested by Customer.
Service Location:	Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than twenty-five (25) feet from the nearest point that a Collection Vehicle can access from a paved surface.
Acceptable Materials:	Solid Waste
Prohibited Materials:	Recyclable Materials, Organic Materials, Excluded Waste
Additional Service:	Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at an approved additional charge. Such additional picks-ups can be scheduled equating to up to six (6) days per week total service.
Other Requirements:	Contractor shall make contact with each and every Commercial Customer in

EXHIBIT B3 COMMERCIAL SERVICES

advance of the Commencement Date to determine appropriate Container sizes and service frequency.

Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers (additional charge may apply). A push/pull of Containers up to twenty-five (25) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 25 feet then return).

4. Commercial Container Sharing and Split-Bins

In special circumstances, for Customers with significant space limitations and upon approval by the City Contract Manager and the Contractor, the Contractor shall permit Commercial Customers to share Discarded Materials service with other geographically proximate Commercial Customers. Such shared service shall be performed, and billed, as if it were being provided to a single Customer, with the exception that Contractor shall require all Customers sharing a single service account to identify a "Primary Responsible Party" which will serve as the singular point of contact for communication and billing from Contractor and the City, along with a list of all addresses with which the Primary Responsible Party will share service. Additionally, the Contractor shall, upon Customer request, provide Split-Bins for Customers with space limitations, and shall Collect, Transport, Transfer, and Process or Dispose of each material type in accordance with this Agreement.

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**EXHIBIT B4:
CITY SERVICES**

EXHIBIT B4 CITY SERVICES

1. Commercial Customer Services to City Facilities

Contractor shall Collect Recyclable Materials, Organic Materials, and Solid Waste, from City facilities in the same manner as those services are provided to Commercial Customers, and shall provide designated personnel in accordance with Section 5.7.E of this Agreement. Contractor shall provide service to all existing City facilities identified in Exhibit B5 as well as any future City facilities established after the Commencement Date. Contractor shall provide these services at no additional cost to the City. City facility service as described by this Section shall include unlimited Drop Box Collection service, and periodic Bulky Item Collection. Contractor shall deliver Drop Boxes within twenty-four (24) hours of City request. Contractor shall Collect, empty, and return Drop Boxes within twenty-four (24) hours of City request. Contractor shall remove and not return Drop-Boxes within twenty-four (24) hour of City request.

2. Emergency Services

Contractor shall provide emergency services (i.e., special Collections, Transport, Processing and Disposal) at the request of the City Contract Manager in the event of major accidents, disruptions, or natural calamities. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City Contract Manager or as soon thereafter as is reasonably practical in light of the circumstances. For any services which exceed the scope of services under this Agreement, Contractor shall be entitled to compensation at the emergency service Rates approved under this Agreement. The City shall have discretion in the method of such compensation between direct payments by the City and allowing such costs to be considered in the adjustment of Rates for the following Rate Period.

3. Annual Pharmaceutical Collection Events

Contractor shall provide up to two (2) free Pharmaceutical Collection Events per year, including the staffing, Disposal and Transportation of Pharmaceutical Waste as requested by the City Contract Manager. The City will provide the location for the event(s). City or Contractor may request a modification of the scope of services related to Pharmaceutical Waste Collection, or terminate this program, where prohibited or rendered impractical by current or future Federal, State or local laws and regulations.

4. Annual Shredding Event

For Residential service Customers, Contractor shall provide at least two (2) annual shredding events free of charge. Contractor may require proof of residency at such events. The location of the events shall be within the City of Carlsbad and shall occur in the month specified by the City Contract Manager. The limit of shredded material accepted will be three (3) standard office storage boxes per Residential Premises. Where appropriate, this limit may be waived by Contractor on a case by case basis.

EXHIBIT B4 CITY SERVICES

5. Provision of Compost and Mulch Product

A. Bulk Compost and/or Mulch for City Use. Contractor shall provide to the City bulk Compost, Mulch, or both, each Calendar Year in an amount needed to fully achieve the City's recovered organic waste product purchasing requirements of SB 1383, as they may be determined and adjusted throughout the term of this Agreement. The production, acquisition, advertising, storage, transportation, distribution, and/or any other costs needed to achieve this requirement shall be performed by Contractor at no additional cost to the City or Customers. City will notify Contractor as to the City's needs for delivery of finished Compost, Mulch, or both, throughout each Calendar Year. Contractor shall deliver Compost, Mulch, or both, within five (5) Business Days of a request of the City Contract Manager to any accessible location within City limits at no additional cost to City. Contractor shall work actively with the City Contract Manager and appropriate City departments to educate, develop, test, and support expanded uses of qualified Compost and Mulch in the City. The City will specify the material type (i.e. Compost, Mulch, or both) to be provided and the quality specifications of the selected material type for any given application, even if that requires Contractor to procure such material from a third party in order to provide it to the City.

B. Bulk Compost and/or Mulch for Private Uses. If the City is unable to use the full amount of Compost, Mulch, or both, required by SB 1383 in a given Calendar Year, Contractor shall arrange the legal donation of the remainder of the City's SB 1383 allotment to other productive uses. The production, acquisition, advertising, storage, transportation, distribution, or any other costs needed to achieve this requirement shall be performed by Contractor at no additional cost to the City or Customers.

C. Compost Give-Away Events. Contractor shall distribute an annual total of at least one thousand (1,000) one (1) cubic-foot bags of Compost to City residents at no additional cost to the City or Customers at two (2) public Compost give-away events per Agreement Year (such that Contractor shall provide at least five hundred (500) bags per event). The location, date, and time of such events shall be mutually agreed upon by Contractor and the City Contract Manager and may be held in conjunction with other City-approved events. Contractor shall deliver the bagged Compost to the agreed-upon event location at no cost to City. Contractor shall provide at least one (1) attendant for at least six (6) hours per event. Any Compost given away to the community through this program shall count towards the Contractor's obligations to provide the City with the amount of organic waste products required under SB 1383.

D. SB 1383 Procurement. Contractor agrees that all Compost, Mulch, or both, provided through this Agreement shall comply with the municipal procurement requirements of SB 1383, including being generated from California Organic Waste Products, as defined by SB 1383 for each applicable material type.

6. News Media Relations.

Contractor shall notify the City Contract Manager by e-mail of all requests for news media interviews related to the Collection services program within twenty-four (24) hours of Contractor's receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect

EXHIBIT B4 CITY SERVICES

participation or Customer perception of services, Contractor will discuss Contractor's proposed response with the City Contract Manager.

Copies of draft news releases or proposed articles related to the provision of Collection services under this Agreement shall be submitted to City for prior review and approval at least five (5) Business Days in advance of provision to such Persons, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor shall submit such materials to City simultaneously with Contractor's submittal to such regulatory agency.

Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) Business Days after publication.

7. Waste Generation, Characterization, and Pilot Studies.

Contractor acknowledges that City, CalRecycle, or other governmental agencies may wish to perform generation and characterization studies periodically with respect to materials covered under this Agreement. Contractor agrees to participate and cooperate with City and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated, Disposed, Diverted or otherwise Processed. If City requires Contractor to participate in such a study, Contractor and City shall mutually agree on the scope of services to be provided by Contractor and the amount of compensation, if any, that the City will pay to Contractor for such participation. In any event, Contractor shall permit and in no way interfere with the Collection and handling of the subject materials by other Persons for such purposes.

Contractor that acknowledges that the County, in coordination with the City, is required by SB 1383 to conduct Organic Waste and Edible Food capacity planning studies. The Contractor shall provide information to the City as needed for the City's participation in such capacity planning studies. This information and/or participation may include, but is not limited to, conducting or supporting waste characterization studies; providing information regarding existing and potential new or expanded capacity in the Contractor's operations for the Collection, Transport, or Processing of Recyclable and Organic Materials; and any other information deemed necessary by the City or County for purposes of the study. The Contractor shall respond to any request for information from the City within thirty (30) days, unless another timeframe is otherwise specified or authorized by the City.

Contractor acknowledges that the City may, wish to conduct and/or participate in pilot studies related to the Customers and materials that are the subject of this Agreement. If City requires Contractor to participate in any such a pilot study, Contractor and City shall mutually agree on the scope of services to be provided by Contractor and the amount of compensation, if any, that the City will pay to Contractor for such participation. In any event, Contractor shall permit and in no way interfere with the Collection and handling of the subject materials by other Persons for such purposes.

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**EXHIBIT B5:
CITY FACILITY SERVICE LEVELS, LOCATIONS, AND
SPECIAL EVENTS**

EXHIBIT B5
CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL
EVENTS

Contractor will Collect Recyclable Materials, Organic Materials, and Solid Waste from City facilities (including parks) in the same manner as those services are provided to Commercial Customers. Contractor shall provide service to all City facilities, present and future, at no additional cost to the City. Contractor shall provide special event services pursuant to Section 4.5 of the Agreement.

{List of facilities to be inserted in final Agreement}

In addition to regular scheduled Collection services, Contractor shall provide, upon request, temporary Drop Box services to all City facilities at no additional cost to the City. Contractor shall deliver Source Separated Yard Trimmings Collected from City facilities, parks, and clean-up operations in Drop Boxes to the Approved Transfer Facility for Transfer to the Approved Organic Materials Processing Facility.

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**EXHIBIT C:
PUBLIC EDUCATION AND OUTREACH
REQUIREMENTS**

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

1. General Administration

The City has placed the utmost importance on effective public outreach and education in helping residents and businesses fully understand options for and benefits of source reduction, reuse, Recycling, and Composting. General provisions for public education and outreach are as follows:

- A. Prior to the Commencement Date and by October 1 of each following year during the Term of this Agreement, Contractor shall develop and submit an annual public education plan to promote the programs designed by the City and performed by Contractor under this Agreement. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be distributed, opportunities for expanded partnerships, a timeline for implementation, and an itemized description of how Contractor's annual public education budget (described in Section 3 of this Exhibit C) will be spent. The City Contract Manager shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City Contract Manager. Each plan's implementation success shall be measured based on agreed-upon metrics for the impact of each plan and/or campaign (e.g. changes in Diversion, contamination, social media engagement rates, click-through rates, etc. resulting from the education and/or outreach efforts). Contractor shall meet with the City Contract Manager to present and discuss the plan, review the prior year's activities (including sponsorships and services provided to City-sponsored events) and determine whether community activities and the provision of services to the City reflect the needs of City staff and the City Council. City Contract Manager shall be allowed up to thirty (30) calendar days after receipt to review and request modifications. The City Contract Manager may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City Contract Manager. Any further delays may result in Liquidated Damages for failure to perform education and outreach activities as identified in Exhibit C. Each Business Day that the plan is late shall count as a single event/activity.
- B. Upon request from the City Contract Manager, City Contract Manager and Contractor's Contract Administrator shall meet up to one (1) time per month to discuss services, outreach, and educational campaigns and request changes or adaptations to the annual public education plan. The City will be responsible, in its sole discretion and subject to budgetary constraints, to prepare all public education materials and may request that materials be reviewed by Contractor prior to production. If requested, Contractor shall review and comment on the materials within two (2) weeks of request from the City.
- C. Contractor shall distribute instructional information, public education, and promotion materials in advance of, and following, Commencement of services. This shall entail, at a minimum, distributing program literature to all Customers at the Commencement of the Agreement as well as to any new Customer during the Agreement Term. Contractor shall use multiple media sources including print, radio television, electronic/social media, and events to notify Customers of the

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

change in their service provider, if applicable, and to highlight new program offerings. Transition and ongoing sector-specific collateral materials shall be distributed. For any public education materials not produced by the City, the Contractor shall submit all draft materials to City Contract Manager for review and approval.

- D. All City facilities shall receive any and all public education and outreach materials and services provided to the Commercial sector. Contractor shall provide all printed public education materials to City offices and facilities to have available for the public that visits those facilities and shall replenish the materials as requested by the City Contract Manager.
- E. Bill inserts shall be designed and produced by the City; and the Contractor shall be responsible for printing and distributing the billing inserts to all Customers. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for billing inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group, if specified. Contractor shall perform this service with no additional requirement for compensation.
- F. Contractor shall develop a website specific to its operations in the City, with a section specific to City programs and Customers, that will be used to post educational materials for download, highlight program successes, and provide Diversion statistics. The Contractor's City specific website shall also include links to relevant web pages of the City's website where further information can be found.

2. Public Education and Outreach Team

To best achieve the highest possible level of public education and awareness, Contractor has proposed to employ at least one (1) full-time equivalent staff member(s) *{Proposer to insert number of proposed public education staff, if different}* to coordinate and implement all public education and outreach activities required by this Agreement. The public education and outreach staff shall, at a minimum, perform the following tasks:

1. Work to develop partnerships with and incorporate City program and educational activities into Contractor activities, and vice versa;
2. Prepare proposals and presentations to City entities;
3. Participate and represent Contractor in community activities;
4. Oversee Customer satisfaction of all program services, as described in Exhibit B to the Agreement;
5. Coordinate and produce the annual education and outreach plan required by Section 1 of this Exhibit C to the Agreement;

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

6. Coordinate implementation of the annual public education plan;
7. Perform annual visits to identify the service needs of every Customer, other than Single-Family Customers, by conducting "Diversion opportunity assessments" of Customer locations and facilities;
8. Manage follow-up Diversion opportunity assessments for businesses to conduct a more comprehensive investigation and educational process after the initial review;
9. Provide all Customers with appropriate educational information necessary to make informed, environmentally-forward decisions relative to waste reduction, reuse, and Diversion activities;
10. Maximize the opportunity for initial and sustained program success by seeking to identify a "champion" (ideally a senior manager) at each Commercial and Multi-Family Customer who will serve as a primary contact and advocate for Diversion programs within the Customer's organization;
11. Assist in planning service needs for special events and large venues with a focus on reducing the Disposal of materials resulting from such events or venues; and,
12. Create and distribute reports as required under this Agreement and/or requested by City Contract Manager.

3. Annual Budget

In addition to staffing expenses, Contractor shall spend, for the public education and outreach services described in this Exhibit C, no less than two hundred thousand dollars (\$200,000) in Rate Period One. The Rate Period One budget shall be adjusted annually thereafter by the Annual Percentage Change in CPI-U (as defined in Exhibit E). Annually, Contractor shall provide to the City Contract Manager for review and approval a detailed description of how such budget will be spent as part of the annual public education plan to be developed in accordance with Section 1 of this Exhibit C. At the conclusion of each Rate Period, any unused funds shall be transferred to the City. Contractor shall be prohibited from expending such funds without the prior written approval of the City Contract Manager. Any expenditures not approved by the City in advance shall neither be counted in Contractor's annual public education and outreach budget, nor be recovered through Rates.

4. Sector-Specific Activities

The following tables present the public education and outreach activities to be performed by Contractor each Rate Period as minimum requirements under this Agreement, as proposed by Contractor in Contractor's Proposal. Each Customer Typefaces unique Discarded Materials management opportunities and challenges; therefore, Contractor shall develop targeted, sector-specific educational materials and perform outreach activities as described for each Customer Type.

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | All Sectors - EXAMPLE

All printed materials also to be posted to the Company's website.

The following general public education and outreach materials shall each be produced for the benefit of all Customer Types that receive Collection service from the Contractor.

Activity	Description	Distribution/Frequency
Newspaper Advertisement	Distribute a City-produced newspaper advertisement that explains all programs that will be offered under the new Agreement.	One (1) time at beginning of the Agreement (20-30 days prior to contract start date).
Public Service Announcement (PSA)	Distribute a City-produced PSA for local radio and cable television broadcast describing the new programs under the Agreement.	One (1) time at beginning of the Agreement (20-30 days prior to contract start date).
Press Release	Distribute a City-produced press release to advertise and promote all programs, with particular focus on any new programs that will be offered to each sector (Single-Family, Multi-Family, Commercial, City facilities).	One (1) time at beginning of the Agreement (20-30 days prior to contract start date).
Truck-Side Advertising	Implement a City-wide truck-side advertising campaign to educate the public about Contractor's programs under this Agreement. Campaign content and messaging shall be created by the City, and each campaign should be coordinated, in terms of both message and timing, with the theme of the quarterly newsletters produced by the City and distributed by Contractor. Contractor shall produce and install truck-side signage for each side of each vehicle it operates in performing services under this Agreement.	Quarterly.

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Single-Family & Townhouse Education and Outreach Activities - EXAMPLE

All printed materials also to be posted to the Company's website.

Activity	Description	Distribution/Frequency
New Programs Mailing	Produce and Distribute a City-designed initial mailing to Single-Family Customers, which may include content such as explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; regulatory requirements, including SB 1383; and, the Effective Date of the change. Contractor shall include its Holiday schedule and the Residential Recycling and expanded services guide.	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail.
Recycling Guide	Produce and Distribute a City-designed "Recycling guide" specific to Single-Family Customers. This guide shall include information on Collection methodologies, set out instructions, set out schedule, contact information, and acceptability and necessary preparation of materials for all Single-Family programs described in Exhibit B-1. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	Affixed (inside plastic bag, zip-tied to handle) to every Single-Family and Townhouse Recyclable Materials Cart delivered prior to the Commencement Date, and thereafter to all new Customers. By direct mail annually thereafter to each Single-Family and Townhouse Customer
Neighborhood Group & HOA Visits	Upon City request, visit homeowner associations and other neighborhood groups and associations to promote and explain the Recycling programs included in this Agreement.	At City Contract Manager or Customer request.

EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN

Activity	Description	Distribution/Frequency
Quarterly Bill Insert	Produce and Distribute a City-designed quarterly bill Inserts that creatively inform Residential Customers about such topics as availability of Bulky Item pick-ups, home Composting, proper handling of Household Hazardous Waste, E-Waste, and U-Waste, other environmental conservation topics statistics, trends, and facts about programs performed under this Agreement (i.e. material Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into, and the importance of buying Recycled). Contractor's annual public education plan shall define a theme for each Quarterly bill insert.	One (1) time per quarter included in each mailed Customer bill and downloadable from electronic Customer bills.
Corrective Action Notices	Produce and distribute a Single-Family Customer oriented Non-Collection Notice, and Courtesy Pick-Up Notices for use in instances where the Customer includes prohibited materials in a Container or fails to properly prepare or set-out Containers.	As needed.
Seasonal Program Notifications	Provide written notification to all Single-Family Customers advertising each scheduled neighborhood clean-up day pursuant to Exhibit B1.5, Christmas tree Collections pursuant to Exhibit B1.7, and any other seasonal or periodic program(s). The notification shall inform Customers of the schedule, acceptable and prohibited materials, and set-out requirements for the program.	At least fourteen (14) calendar days prior to event via direct mail.
Website	Contractor shall prepare a "Single-Family Customer" section of its website where it will present Customers with "how-to" information for participating in Contractor-provided programs including proper Container set-outs, and provide Single-Family Customers with links to click on for additional resources. All other Single-Family educational materials specified in this Section shall be posted on this section of Contractor's website in PDF and/or video format. The website shall also publish the current Rates charged to Single-Family Customers within the City.	At least thirty (30) calendar days prior to Commencement Date. Updated no less than quarterly.

**EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN**

Activity	Description	Distribution/Frequency
Mandatory Recycling and Organics Outreach Activities	Produce and Distribute City-produced outreach materials containing information to assist City with outreach compliance for various Applicable Laws related to Mandatory Recycling and Organics, including but not limited to SB 1383. .	One (1) time annually

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Multi-Family Education and Outreach Activities - EXAMPLE

All printed materials also to be posted to the Company's website.

Description	Purpose	Distribution/Frequency
New Programs Mailing	Produce and Distribute a City-produced initial mailing to all Multi-Family Dwelling Units within City explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; new regulatory requirements, including SB 1383; and, the Effective Date of the change.	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail to each Multi-Family Dwelling Units in City.
Recycling Guide	Produce and Distribute a City-produced "Recycling Guide" specific to Multi-Family Customers, and updated versions of the guide as needed. This guide shall include information such as Collection methodologies, set out instructions, contact information, and acceptability and necessary preparation of materials for all Multi-Family programs described in Exhibit B2. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	One (1) time at beginning of the Agreement (20-30 days prior to Commencement Date) and as needed via direct mail to each Multi-Family Dwelling Units in City.

EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
<p>Technical Assistance: Diversion Opportunity Assessments</p>	<p>Offer Diversion opportunity assessments at least one (1) time annually to each and every Multi-Family Customer to meet with the property manager or Owner of Multi-Family Premises to promote Recyclable and Organic Materials Collection and replenish Move-in Kits as needed by each Multi-Family Premises.</p> <p>Additionally, upon City or Customer request, Contractor shall perform complete walk-throughs of each facility/complex and discuss the internal and external layout with Manager; identify areas of generation, Collection, noting areas for improved infrastructure, placement, or educational materials. Contractor shall also identify major components of the waste stream by location and identify special wastes or sourced separated materials potentials. Contractor shall then make recommendations for waste reduction, contamination prevention, and Service Level or frequency modification. Finally, Contractor shall coordinate with Customer service and operations to implement Service Level changes, as needed.</p> <p>Further, Contractor shall prepare and submit reports to City that documents Customers targeted monthly, the existing Service Levels, recommendations made, and the outcome of technical assistance provided.</p>	<p>Offer in-person meetings to each and every Multi-Family Customer conducted one (1) time per year, plus follow-up meetings with individual Customers, as needed.</p>
<p>Move-In Kits</p>	<p>Produce and Distribute Move-in Kits for property managers and Owners of Multi-Family Premises to provide new tenants. Move-in Kits shall include, at a minimum, a Multi-Family Recycling guide, an In-Home Recycling Container, and stickers or refrigerator-magnets that clearly define the accepted and prohibited materials in the Recycling program.</p>	<p>Distributed during technical assistance Diversion opportunity assessments.</p>
<p>Workshops</p>	<p>Offer and respond to requests for on-site meetings and workshops. Contractor shall conduct workshops for Customers (when requested) that will show property managers and residents, in a hands-on interactive format, how to use the Recycling and Organics program and will provide resources for additional information and support.</p>	<p>At Customer's request.</p>

EXHIBIT C

PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
<p>"How-to" Guide: Electronic, Universal and Excluded Waste</p>	<p>Produce and Distribute a City designed "how-to" guide on proper Recycling, handling and Disposal of Household Hazardous Waste, E-Waste, and U-Waste directly to tenants of Multi-Family Premises. Contractor may arrange for distribution to each Dwelling Unit a flyer, door hanger, or other public education piece by coordinating with the Owner or property manager of the Premises.</p>	<p>One (1) time per year via direct mail or door-to-door.</p>
<p>Christmas Tree Collection Notification</p>	<p>Produce and Distribute a City-designed written notification to each Multi-Family property manager/Owner advertising the availability of holiday tree Collection services. The notification shall inform managers of the schedule, accepted and prohibited materials, Collection method options, and set-out requirements for the program. The notification shall include the Contractor contact information for Multi-Family Customers to contact to discuss schedule and designated Collection location. The format and content of the notification shall be approved by the City Contract Manager.</p>	<p>At least fourteen (14) calendar days prior to event via direct mail, e-mail, or in-person.</p>
<p>Website</p>	<p>Contractor shall prepare a "Multi-Family Customer" section of its website where it will present "how-to" information for participating in Contractor-provided programs including proper Container set-outs, and provide Multi-Family Customers with links to click on for additional resources. All other Multi-Family educational materials specified in this Exhibit shall be posted on this section of Contractor's website in PDF and/or video format. The website shall also publish the current Rates charged to Multi-Family Customers within the City. The website shall also provide property managers of Multi-Family Premises with an opportunity to request "Diversion opportunity assessments", additional Move-in Kits, or additional education materials to provide to tenants.</p>	<p>At least thirty (30) calendar days prior to Commencement Date.</p> <p>Updated no less than quarterly.</p>
<p>Mandatory Recycling and Organics Outreach Activities</p>	<p>Contractor shall disseminate outreach materials containing information to assist City with outreach compliance for various Applicable Laws related to Mandatory Recycling and Organics, including but not limited to AB 341, AB 1826, and SB 1383. .</p>	<p>One (1) time annually</p>

EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Educational Materials for Employees/Tenants	Contractor shall provide Commercial and Multi-Family property managers/Owners with City-produced public education materials, required by SB 1383, for their distribution to all employees, contractors, tenants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Multi-Family property managers/Owners may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new tenants before or within 14 days of occupancy.	One (1) time annually; or more frequently upon Customer request.

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Commercial Education and Outreach Activities - EXAMPLE

All printed materials also to be posted to the Company's website.

Description	Purpose	Distribution/Frequency
New Programs Mailing	Prepare and distribute an initial mailing to all Commercial Customers within the City explaining the program changes in the new Agreement; changes from the existing Collection programs to new programs; and, the Effective Date of the change.	One (1) time at beginning of the Agreement (45-60 days prior to Commencement Date) via direct mail.
Recycling Guide	Contractor shall produce a "Recycling guide" specific to Commercial Customers and update the guide as needed. This guide shall include information on Collection methodologies, set out instructions, contact information, and acceptability and necessary preparation of materials for all Commercial programs described in Exhibit B3. A section of the guide will specifically address proper methods of handling and Disposal of Hazardous Wastes.	One (1) time at beginning of the Agreement (20-30 days prior to Commencement Date) and as needed via direct mail. Distributed during Diversion opportunity assessments.
"How-to" Flyer: Recyclable Materials	Prepare and distribute a "how-to" brochure explaining the Recycling Materials Collection programs for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail. Distributed during Diversion opportunity assessments.
"How-to" Flyer: Organic Materials	Prepare and distribute a flyer describing the Organic Materials Collection services available and how to prepare Organic Materials for Collection for each general business type (restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).	One (1) time at beginning of the Agreement (20-30 days prior to contract start date) via direct mail. Distributed during Diversion opportunity assessments.

**EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN**

Description	Purpose	Distribution/Frequency
<p>Technical Assistance: Diversion Opportunity Waste Assessments</p>	<p>Offer Diversion opportunity assessments at least one (1) time annually to each and every Commercial Customer to promote Recyclable and Organic Materials Collection and replenish Recycling guides and Recycling and Organics posters as needed by each Customer.</p> <p>Additionally, Contractor shall perform complete walk-throughs of each facility/complex and discuss the internal and external layout with Manager; identify areas of generation, Collection, noting areas for improved infrastructure, placement, or educational materials. Contractor shall also identify major components of the waste stream by location and identify special wastes or sourced separated materials potentials. Contractor shall then make recommendations for waste reduction, contamination prevention, and Service Level or frequency modification. Finally, Contractor shall coordinate with Customer service and operations to implement Service Level changes, as needed.</p> <p>Further, Contractor shall prepare and submit reports to City documenting Customers targeted quarterly, the existing Service Levels, recommendations made, and the outcome of technical assistance provided.</p>	<p>Offer one (1) time annually during in-person meetings with each and every Commercial Customer, plus follow-up meetings with individual Customers, as required.</p>
<p>Recycling and Organics Posters</p>	<p>Produce and distribute (during Diversion opportunity assessments) laminated Recycling and Organics posters that provide graphic illustrations of acceptable and prohibited materials within each program.</p>	<p>Distributed during Diversion opportunity assessments.</p>
<p>Quarterly Bill Inserts</p>	<p>Prepare and distribute quarterly bill inserts that creatively inform Commercial Customers about such topics as: cost savings available from source reduction, reuse, and Recycling; tips for overcoming common operational challenges businesses have with Recycling and Organics programs; the environmental benefits of buying Recycled-content products and statistics, trends, and facts about programs performed under this Agreement (i.e. Collected, Tonnage, year over year increase/decrease, markets for material Collected, what each material is Recycled into) as appropriate. Contractor's annual public education plan shall define a theme for each quarterly insert.</p>	<p>One (1) time per quarter via direct mail to each Commercial Customer in City.</p>

EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Program Announcements	On each bill, Contractor shall include a brief statement to Commercial Customers providing service-related announcements such as messages about new services, the on-call clean-up and Bulky Item pick-up services, proper handling of Household Hazardous Waste, etc.	Included in Customer bill.
Corrective Action Notices	Produce a Commercial and Multi-Family Customer oriented corrective action notice for use in instances where the Customer includes prohibited materials in a Container or fails to properly prepare or set-out Containers.	As needed.
Mandatory Recycling and Organics Outreach Activities	Contractor shall disseminate outreach materials related to the mandatory nature of Recyclable Materials and Organic Materials Collection services, upon request from City Contract Manager. Such outreach shall be designed to assist the City in complying with the outreach requirements of various Applicable Laws related to the mandatory provision of Recyclable Materials and Organic Materials Collection and Diversion services.	One (1) time annually
Educational Materials for Employees/Tenants	Contractor shall provide Commercial and Multi-Family property managers/Owners with City-produced public education materials, required by SB 1383, for their distribution to all employees, contractors, tenants, and Customers of the property or business. The public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. Commercial Customers may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new tenants before or within 14 days of occupancy.	One (1) time annually; or more frequently upon Customer request.

**EXHIBIT C
PUBLIC EDUCATION & OUTREACH PLAN**

Description	Purpose	Distribution/Frequency
Commercial Edible Food Generator Education	<p>Contractor shall provide Customers that are Commercial Edible Food Generators with the following:</p> <ol style="list-style-type: none"> 1. Information about the City's Edible Food Recovery program; 2. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10; 3. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, 4. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste 	One (1) time annually

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Schools - EXAMPLE

All printed materials also to be posted to the Company's website as well as links to teacher resources.

Description	Purpose	Distribution/Frequency
Educational Materials	Contractor shall produce and distribute educational materials designed by the City that are geared towards younger audiences, such as educational videos, activity books, and recycling posters. Contractor shall provide schools with copies of the video upon request for classroom use. The video shall be made accessible through City portions of the Contractor website.	Upon request.
Technical Assistance: Diversion Opportunity Assessment	Offer on-going technical assistance to schools subscribing to Contractor's services, including performing annual waste assessments, calculating Diversion rates, and communicating the results to the City to improve existing school Recycling and Organics programs. The annual waste assessments shall include a specific assessment of Food Waste generated on the school Premises; potential for source reduction and Diversion of Food Waste; and identification of Food Recovery education and programs that may be established, both internally (e.g., lunch share tables) and externally (e.g., partnerships with local Food Recovery Organizations and Services).	Offered to schools Upon Request.
Presentation	Present curriculum to teach children how to Recycle, Compost, and reduce waste at school and at home.	At City Request.
Facility Tours	Promote, coordinate, and conduct educational field trips to the Approved Facilities.	At City Request.

Note: Contractor shall perform these education and outreach services to all schools, public and private, within the City without respect to the Contractor's status as the service provider for a given school or school district.

EXHIBIT C PUBLIC EDUCATION & OUTREACH PLAN

Public Education and Outreach | Special Events

All printed materials also to be posted to the Company's website as well as links to teacher resources.

Description	Purpose	Distribution/Frequency
Event Exhibit	Contractor shall staff an exhibit booth and distribute promotional and educational materials at special events. Contractor shall provide visual displays, copies of educational materials (including all guides, flyers, and brochures produced for this Agreement), and Recycling education activities appropriate to a variety of age groups. Display components will be professionally designed and created and shall be scalable to be appropriate for a variety of booth or display configurations. Materials will include those pertaining to the programs provided under this Agreement as well as general information on "green" and/or sustainable behaviors.	All special events listed in Exhibit B7 of this Agreement. Other events at Customer request.

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**EXHIBIT D:
REPORTING REQUIREMENTS**

EXHIBIT D REPORTING REQUIREMENTS

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations.
2. Evaluate past and expected progress towards achieving the Contractor's Diversion goals and objectives.
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law.
4. Determine needs for adjustment to programs.
5. Evaluate Customer service and Complaints.
6. Determine Customer compliance with AB 341, AB 1826, SB 1383, and any subsequent State-mandated Recycling requirements.

1. Monthly Report Content

Monthly reports shall be submitted by Contractor to the City and shall include the following information pertaining to the most recently-completed calendar month. In addition, each monthly report shall include a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year prior to the submittal of the current monthly report. Contractor shall report the information included in the following subsections.

A. Tonnage Report

1. Tonnage delivered to each Approved Facility by Customer Type, subtotaling and clearly identifying those Tons that are Diverted and those that are Disposed.
2. Units of Used Oil, Used Oil Filters, E-Waste, U-Waste, and Bulky Items Collected by Customer Type.
3. Solid Waste Tonnage Disposed.
4. Recyclable Materials Tonnage Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.
5. Bulky Items and Reusable Materials Tonnage Marketed and Tonnage Disposed from non-Divertible materials and Processing Residue.
6. Monthly Diversion rate by Customer Type and in aggregate for all Customer Types under this Agreement.

B. Diversion Report

Contractor shall report the Diversion level for each month and the cumulative year-to-date Diversion Level, where Diversion level shall be calculated as: $(\text{Discarded Materials Collected} - \text{Solid Waste Collected} - \text{Processing Residue Disposed}) / \text{Discarded Materials Collected}$.

EXHIBIT D REPORTING REQUIREMENTS

C. Revenue Report

Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 7.6.

Provide a list of Customers that are forty five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; and method(s) the Contractor has used to attempt collection of the bad debt including date of such attempt(s).

D. Customer Subscription and Collection Report

1. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Service Level listed separately by Customer Type and Discarded Material type.
2. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop Box and Compactor service by Customer Type. Report should calculate the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
3. List of all Commercial and Multi-Family Customers with Solid Waste service. Such list shall include each such Customer's service address and subscribed Solid Waste, Recyclable Materials, and Organic Materials Service Levels, and other information as required by Section 5.12 of the Agreement. The list should include all information in one line for each Customer illustrating the Service Level for each Material Type and the total Service Level for all Material Types the Customer has subscribed to.
4. Number of Bulky Item/Reusable Materials Collection events by Customer Type.
5. Number of Customers subscribing to each City approved service exemption by Customer Type; including the total number of de minimis waivers, physical space constraint waivers, and Collection frequency waivers granted in the month in accordance with Section 4.10, including the Customer name and address for each waiver
6. The number of waivers reviewed and number of reverification inspections performed by the Contractor pursuant to Section 4.10.2 of this Agreement in the month, if any, including a copy of documentation for each waiver review and reverification inspection.
7. List of Commercial Generators with decreased Service Levels, cancellation of service, and new service.

E. City Services Report

1. City facility Diversion rate report (i.e. volume of service by Service Type received by each City Facility and the percentage of the total Service Levels that are for Diversion services relative to the total).

EXHIBIT D REPORTING REQUIREMENTS

2. Summary report on the programs offered to City as described in Exhibit B5 focused on when each service was provided and any issues/concerns identified.

F. Customer Service Report

1. Number of Customer calls listed separately by Complaints and inquiries (where inquiries include requests for Recycling information, Rate information, etc.). For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.). These Complaints and inquiries shall be documented and reported separately from SB 1383 noncompliance Complaints or other regulatory noncompliance Complaints.
2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format, which compares total missed Collections in the City to total missed Collections in the other agencies served by Contractor's {General Manager/Regional Manager}.
3. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format, which compares total missed Collections in the City during the current report period to total missed Collections in the City in past reporting periods.
4. Number of new service requests for each Customer Type and program.
5. Number of events of Discarded Materials being tagged for Non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste, etc.).
6. Number of Courtesy Pick-Up Collections summarized by the reason for leaving a Courtesy Pick-Up Notices (e.g., inclusion of non-Recyclable or non-Compostable materials, improper set-out, Hazardous Waste, etc.).
7. List of Customers for which Contractor has performed a Courtesy Pick-Up Collection, including the Customer address, and material type for which the Courtesy Pick-Up Collection was performed.
8. Number of hits and unique visitors to the Contractor's website.
9. Instances and amounts of Missed Collection Rebates, and Late Container Delivery Rebates paid in accordance with Section 5.13 of the Agreement.
10. Record of SB 1383 non-compliance Complaints received, including the following information:
 - a. Total number of Complaints received and total number of Complaints investigated.
 - b. Copies of documentation recorded for each Complaint received, which shall at a minimum include the following information: (i) The Complaint as received; (ii) The name and contact information of the complainant, if the Complaint is not submitted anonymously; (iii) The identity of the alleged violator, if known; (iv) A description of the alleged violation; including location(s) and all other relevant facts known to the complainant; (v) Any relevant photographic or documentary evidence submitted to support the allegations in

EXHIBIT D

REPORTING REQUIREMENTS

the Complaint; and, (vi) The identity of any witnesses, if known.

- c. Copies of all Complaint reports submitted to the City, pursuant to Article 6 of this Agreement.
- d. Documentation of any follow-up inspections and/or outreach, if any, conducted upon City request pursuant to Section 4.8.4 of this Agreement, which shall include at a minimum: (i) The date the Contractor investigated the Complaint; (ii) documentation of the findings of the investigation; and (iii) Any photographic or other evidence collected during the investigation.

G. Education and Outreach

1. Status report of Contractor's actual activities completed and budget expended compared to the annual public education plan and budget. For each completed item, document the results including what date the activity was performed, how many Customers were targeted or participated, and what methods were used to accomplish the task, if different from the plan.
2. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 4.6 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
3. A record of the date and to whom the information was disseminated, or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
4. For any mass distribution through mailings or bill inserts, provide a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
5. A copy of all electronic media, including the dates posted or sent of: social media posts, e-mail communications, or other electronic messages. A summary report shall be provided for electronic marketing that itemizes each communication and reports performance metrics for each that are relevant to that type of communication (e.g. open and click-through rates for email marketing, engagement numbers for social media, etc.).
6. Summary of the results of the Diversion opportunity assessments provided to Customers (reporting Multi-Family separate from Commercial) by identifying the number of Diversion opportunity assessments conducted each month in the most-recently completed quarter, and contact information including address, contact names, telephone number of Persons contacted, number of Dwelling Units (for Multi-Family), and the Recyclable Materials, Organic Materials, and Solid Waste Service Level for each complex. Include any Service Level changes resulting from such visits.
7. Summary of the public education materials and activities provided to schools in the month, if any; including results from Diversion opportunity assessments as described in Exhibit C.

EXHIBIT D

REPORTING REQUIREMENTS

8. Dates, times, and group or event names of any site visits, meetings, and events attended in the month.

H. Contamination Monitoring Report

1. The number of route reviews conducted pursuant to Section 4.11 of this Agreement.
2. Description of the Contractor's process for determining the level of contamination or Bin overfilling during route reviews. Contractor shall document the contamination and/or overfilling through use of film or digital photography.
3. A record of each inspection and contamination fee assessed, which shall include, at a minimum:
 - a. Name and address of the Customer;
 - b. The date the contaminated Container was observed;
 - c. The staff who conducted the inspection;
 - d. The total number of violations found and a description of what action was taken for each;
 - e. Copies of all notices to Customers with Prohibited Container Contaminants; and,
 - f. Photographic documentation.
4. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants.
5. Summary report of Courtesy Pick-Up Notices, Non-Collection Notices, and/or Contamination Processing Fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address.
6. A list of all Customers assessed Contamination Processing Fees, pursuant to Section 4.11 of this Agreement, reported separately by Customer Type, and including the Customer name, Customer address, and reason for the assessment of the Contamination Processing Fee; the total number of instances Contamination Processing Fees were assessed in the month; and, the total amount of fees collected in the month.
7. Results of the waste characterization studies conducted pursuant to Section 4.11.2 of this Agreement.
8. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.

I. Pilot and New Programs Report

For each pilot and/or new program, provide activity related and narrative reports on goals, milestones, and accomplishments. Describe problems encountered, actions taken, and any recommendations to facilitate progress. Describe vehicles, personnel, and equipment utilized for each program.

EXHIBIT D REPORTING REQUIREMENTS

2. Annual Report Content

The annual report shall be the final monthly report, including annual totals, summary pages, and a compilation of any materials required by the monthly reports, plus the following additional information.

A. Summary Assessment

Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this Agreement, particularly the Contractor's Diversion goals. Provide recommendations and plans to improve, and highlight significant accomplishments and problems. Results shall be compared to other similar size communities served by the Contractor in the State.

B. Collection and Processing Report

1. The total Tonnage amount of Discarded Materials, listed separately by Discarded Material type, removed from homeless encampments and illegal disposal sites as part of an abatement activity, listing each Collection event separately by date, location, and Tonnage Collected, pursuant to Section 4.10.3.B of the Agreement.
2. A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a landfill, pursuant to Section 4.10.3.C of the Agreement.
3. Written notification that the Approved Organic Waste Processing Facility(ies) has and will continue to have the capabilities to Process and recover the Compostable Plastics, in accordance with Section 4.2.C.2 of the Agreement.

C. Education and Outreach Report

1. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
2. The annual public education plan required by Section 4.6 of the Agreement for the upcoming then-current calendar year. For example, Contractor submittal of a 2021 annual report in February 2022 shall include Contractor submittal of the annual public education plan for calendar year 2022.

D. Commercial Edible Food Generator Report

1. Commercial Customer list including contact information requested by the City Contract Manager and designation of each Commercial Customer as either "Tier 1", "Tier 2", or "Non-Covered" Edible Food Generator.

E. Vehicle Inventory

EXHIBIT D REPORTING REQUIREMENTS

1. A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.
2. The total amount of RNG procured by the Contractor for use in Contractor vehicles, in diesel gallon equivalents (DGE), including copies of any receipts, invoices, or other similar documentation evidencing procurement. In addition to the amount procured, Contractor shall include the total amount actually used in Contractor vehicles in the calendar year, if these values are different.
3. The name, physical location, and contact information of each entity, operation, or facility from whom the Contractor procured RNG for Collection vehicles.

F. Recyclables and Organics Markets

Contractor shall provide a report describing its marketing of Recyclable Materials. The marketing report shall include: 1) quantities of each accepted Recyclable Material marketed during the prior year; 2) actual prior year and estimated coming year per unit or per-ton market values for each; and, 3) brokers, markets, and end uses for each.

G. AB 341 and AB 1826 Compliance

Provide a listing of Commercial Customers subscribing to four (4) or more cubic yards of Solid Waste service per week who do not currently subscribe to Recyclable Materials Collection service from Contractor, and a listing of Commercial Customers subscribing to four (4) or more cubic yards of Solid Waste service per week who do not currently subscribe to Organic Materials Collection service from Contractor.

3. Additional Reports

A. Upon Incident Reporting. City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the City. The Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the City Contract Manager, which shall not to exceed ten (10) days.

B. AB 901 Reporting. At the City's option, City may require that Contractor provide the City copies of Contractor's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within ten (10) Business Days of the request.

C. Customized Reports. The City reserves the right to request Contractor to prepare and provide customized reports from records Contractor is required to maintain; or require a specified format or submission system, such as the use of a web-based software platform.

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**EXHIBIT E:
RATE ADJUSTMENT METHODOLOGY**

EXHIBIT E

RATE ADJUSTMENT METHODOLOGY

1. GENERAL

Subject to the Terms herein, the City shall adjust all Rates on an annual basis. Contractor shall submit its application for a Rate adjustment to the City Contract Manager on or before February 1 of each Rate Period where Rates shall be adjusted using the index-based methodology described in Exhibit E1. Contractor shall submit its application on or before December 1 for any Rate Period where Rates shall be adjusted using the cost-based methodology described in Exhibit E2. Contractor's Rate application shall document all calculations and include all supporting schedules, documentation of per-Ton charges for Approved Facilities, documentation of changes in governmental fees at Approved Facilities (if applicable), and any other documentation or evidence determined by the City Contract Manager to be reasonably necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance to the requirements of this Exhibit E.

The City Council shall make a good faith effort to approve Rates by July 1 of each year, and such Rates shall be effective on each July 1. If Rates are not effective by July 1 due to a delay caused solely by City, City shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of said delay that is solely caused by City (subject to the City's approval of how the retroactive adjustment is billed) or the City may compensate the Contractor for lost Gross Receipts. In the case of a delayed Rate adjustment, the Contractor may bill the Customer during the next billing cycle to recoup the deferred Rate increase. If Rates are not effective by July 1 as a result of Contractor's delay in submitting the Rate application in a complete and accurate form, then prior Rates remain in effect until such adjustment is made and Contractor shall not be entitled to a retroactive adjustment for lost Gross Rate Revenues.

2. DEFINITIONS

Certain terms which are specific to this Exhibit (including Exhibits E1 and E2) are defined below:

- A. **"Annual Percentage Change"** means the annual percentage change in any of the indices defined above calculated as described in the following paragraph.

The Annual Percentage Change for a cost index shall be calculated as the Average Index Value for the most recently available 12-month period of the then-current Rate Period minus the Average Index Value for the corresponding 12-month period of the most-recently completed Rate Period and the result of which shall be divided by the Average Index Value for the same 12-month period of the most recently completed Rate Period.

For example, if the Contractor is calculating the Total Calculated Costs in January 2024 to be effective for Rate Period Three (July 2024 through June 2025), the Annual Percentage Change for the CPI-U would be calculated as follows:

EXHIBIT E RATE ADJUSTMENT METHODOLOGY

[(Average CPI-U for January 2023 through December 2023) minus
(Average CPI-U for January 2022 through December 2022)] divided by
(Average CPI-U for January 2022 through December 2022)

The calculated Annual Percentage Change shall be carried to three places to the right of the decimal and rounded to the nearest thousandths.

- B. **“Average Index Value”** means the sum of the monthly index values during the most recently available 12-month period divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values divided by 6 (in the case of indices published bi-monthly), or the sum of all index values divided by the count of index values (in the case of indices published approximately twice per month) .
- C. **“CPI-U”** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Diego Carlsbad Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- D. **“Disposal Cost”** means the cost of Disposing of Solid Waste at the Designated Disposal Facility where the per-Ton tipping fee (cost) is specified by the City.
- E. **“ECI”** means the Employment Cost Index, Total Compensation, Private Industry, Service-Providing Industries, seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- F. **“Fuel Index”** means the per-term price for Sale of Natural Gas for Motor-Vehicle Fuel, Schedule G-NGV, compiled and published by the San Diego Gas & Electric Company as reported in its “Historical Tariffs, *Gas Historical Tariffs*” publication (<https://www.sdge.com/rates-and-regulations/historical-tariffs>). The December 10, 2019 Fuel Index is \$13.59023 per term, which reflects the sum of the monthly Customer charge, procurement charge and transportation charge, for natural gas service for compression on Customer’s Premises as reported by San Diego Gas & Electric Company.
- G. **“Motor Vehicle Maintenance and Repair Index”** or **“MVI”** means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, not seasonally adjusted U.S. city average, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.
- I. **“Total Calculated Costs”** means the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Calculated Costs do not reflect or in any way guarantee the Gross Rate Revenues that are to be generated by Rates or retained by the Contractor. Note that for determining Rates for Rate Period Two, the total Proposed costs for Rate Period One ((July 1, 2022 to June 30, 2023) shall be used for the calculations.

Table 1 provides additional information about the four indices defined above.

EXHIBIT E RATE ADJUSTMENT METHODOLOGY

TABLE 1*

	CPI-U	Fuel Index	Motor Vehicle Maintenance and Repair	ECI
Description	Consumer Price Index - All Urban Consumers	Sale of Natural Gas for Motor Vehicles	Consumer Price Index – All Urban Consumers, Motor Vehicle Maintenance and Repair	Employment Cost Index - Total Compensation for Private Industry Workers in Service-Providing Industries.
Series ID		G-NGV	CUUR0000SETD	CIS201S0000000001
Adjusted	Not seasonally adjusted	N/A	Not seasonally adjusted	Seasonally adjusted
Area	San Diego	N/A	U.S. City average	N/A
Item	All items	N/A	Motor vehicle maintenance and repair	Total compensation
Base Period	1967=100	N/A	1982-84=100	Dec. 2005=100
Periodicity	Bi-monthly	Approximately twice per Month	Monthly	Quarterly

* All indices published by the U.S. Bureau of Labor Statistics with the exception of the Fuel Index, which is published by San Diego Gas & Electric Company.

3. COST OF RATE ADJUSTMENT PROCESS

The City may incur costs, including consulting and legal fees, when determining adjustments to the Rates in accordance with this Exhibit and may require the Contractor to pay for such costs within sixty (60) calendar days of receipt of the City's invoice for such costs. The Contractor may recover such costs through the Rates by treating the costs as an allowable Pass-Through Cost. Regardless of Contractor's payment of costs associated with said review, the City shall retain full and unimpeded discretion in selection of its agents to ensure, at a minimum, that no conflict of interest arises in the review of Contractor's request. The City retains the right to select its agents on the basis of their qualifications and experience and without regard to cost.

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EXHIBIT E1:
MULTI-INDEX RATE ADJUSTMENT METHODOLOGY

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The purpose of this attachment is to describe and illustrate the method by which the City will calculate the annual adjustment to Rates to reflect changes in various cost indices and changes to Processing and Disposal Costs based on Tonnages of materials Collected and changes in tipping fees. This index-based adjustment process shall be used to determine Rates for all Rate Periods beginning with Rate Period Two (July 1, 2023 through June 30, 2024) with the exception that in place of the index adjustment to set Rates, the methodology described in Exhibit E2 shall be used in Rate Periods Four and Eight, subject to the provisions of Section 8.2 of the Agreement.

The index-based adjustment involves application of indices to various costs that comprise the Total Proposed Annual Costs for Rate Period One (and to Total Calculated Costs for future Rate Periods) to determine the Total Calculated Costs for the coming Rate Period. In addition, Processing and Disposal costs shall be adjusted to reflect actual Tonnage Collected during the most-recently completed Rate Period.

The difference (measured as a percentage) between the Total Calculated Costs for the coming Rate Period and the Total Calculated Costs for the then-current Rate Period is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Period.

The Rate Adjustment Factor calculated pursuant to this Exhibit E1 may not exceed five percent (5%). In the event that the calculation results in a calculated increase exceeding five percent (5%), Contractor may elect to either: i) accept a Customer Rate increase of no more than five percent (5%); or, ii) require that a cost-based Rate adjustment be performed under the procedures described in Exhibit E2. In the event that Contractor requires a cost-based Rate adjustment, Contractor shall pay City's costs of the cost-based Rate adjustment review.

In the event that the index-based adjustment as calculated by this Exhibit E1 results in a negative Rate Adjustment Factor, the City reserves the right to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

2. ADJUSTMENT OF TOTAL CALCULATED COSTS

The cost categories of the main components of Total Calculated Costs are presented in detail in Exhibit G2. Adjustments to these components to calculate costs for the coming Rate Period shall be calculated as follows:

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

A. Total Annual Cost of Operations

1. **Labor-Related Costs.** The Labor-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the ECI.

For example, in Rate Period Two when calculating the Labor-Related Costs for Rate Period Three, the Labor-Related Costs of Rate Period Two shall be multiplied by one plus the Annual Percentage change in the ECI.
2. **Vehicle-Related Costs (excluding Fuel).** The Vehicle-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.
3. **Fuel Costs.** The Fuel Cost component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the Fuel Index.
4. **Other Costs.** The Other Costs component of the Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the CPI-U.
5. **Direct Depreciation.** Direct Depreciation is \$2,503,728 per year for Rate Periods Two through Ten, and is not annually adjusted. This adjusted depreciation amount shall remain fixed for Rate Periods Two through Ten. If the Agreement is extended beyond Rate Period Ten, direct depreciation shall be zero in any subsequent Rate Periods unless Parties mutually agree to a different amount.
6. **Allocated Costs (Labor, Vehicle, Fuel, and Other Costs).** The Allocated Costs (Labor, Vehicle, Fuel, and Other Costs) component for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the CPI-U.
7. **Allocated Depreciation and Start-Up Costs.** The Allocated Depreciation and Start-Up Costs shall be \$255,950 per year for Rate Period Two through Ten, and are not annually adjusted. These costs shall be zero for all subsequent Rate Periods unless Parties mutually agree to a different amount.
8. **Total Annual Cost of Operations.** The Total Annual Cost of Operations for the coming Rate Period equals the sum of the costs calculated in subsections (1) through (7) above.

B. Profit

Profit for the coming Rate Period shall be calculated by dividing the Total Annual Cost of Operations for the coming Rate Period (the value calculated in Section 2.A.8 above) by an operating ratio (72.5%) and subtracting from the result the Total Annual Cost of Operations for the coming year.

EXHIBIT E1 INDEX-BASED RATE ADJUSTMENT METHODOLOGY

$$\text{Profit} = \frac{\text{Total Annual Cost of Operations for Coming Rate Period}}{\text{Operating Ratio}} - \text{Total Annual Cost of Operations for Coming Rate Period}$$

C. Pass-Through Costs (Excluded from the Calculation of Profit)

1. **Recyclable Materials Processing Costs.** The Recyclable Materials Processing Costs shall be calculated as follows:

Recyclable Materials Processing Cost = [(Per-Ton Recyclable Materials Processing Cost for the then-current Rate Period - All regulatory fees identified on Form 7 of Exhibit G2, (Contractor's Proposal) and included in the then-current per-Ton cost) x (1 + Annual Percentage Change in the CPI-U) + (Then-current per-Ton regulatory fees)] x (Total Tons of Recyclable Materials Collected for the most-recently completed 12-month period excluding Recyclable Materials Tonnage Collected through Roll-Off).

In the establishment of Rates for Rate Period 2, due to the lack of Tonnage data for a 12-month period, the Tonnage of Recyclable Materials included in Contractor's Proposal shall be used in place of the Total Tons of Recyclable Materials Collected for the most-recently completed 12-month period.

2. **Reserved**

3. **Organic Materials Processing Costs.** The Organic Materials Processing Costs shall be calculated as follows:

Organic Materials Processing Costs = Per-Ton Residential Organic Materials Processing fee at the Designated Residential Organic Materials Processing Facility for the coming Rate Period x (Total Tons of Residential Organic Materials Collected for the most-recently completed 12-month period excluding Organic Materials Tonnage Collected through Roll-Off).

In the establishment of Rates for Rate Period 2, due to the lack of Tonnage data for a 12-month period, the Tonnage of Organic Materials included in Contractor's Proposal shall be used in place of the Total Tons of Organic Materials Collected for the most-recently completed 12-month period.

4. **Reusable Materials Processing Costs.** The Reusable Materials Processing Cost shall be calculated as follows:

Reusable Materials Processing Cost = [(Per-Ton Reusable Materials Processing Cost for the then-current Rate Period - All regulatory fees identified on Form 7 of Exhibit G2, (Contractor's Proposal) and included in the then-current per-Ton cost) x (1 + Annual Percentage Change in the CPI-U) + (Then-current per-Ton regulatory fees)] x (Total Tons of Reusable Materials Collected for the most-recently completed 12-month period excluding Reusable Materials Tonnage Collected through Roll-Off).

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

Off)

In the establishment of Rates for Rate Period 2, due to the lack of Tonnage data for a 12-month period, the Tonnage of Reusable Materials included in Contractor's Proposal shall be used in place of the Total Tons of Reusable Materials Collected for the most-recently completed 12-month period.

5. **Disposal Costs.** The Disposal Costs shall be calculated as follows:

Disposal Costs = Per-Ton Disposal fee at the Designated Disposal Facility (to be specified by the City) for the coming Rate Period x (Total Tons of Solid Waste Collected for the most-recently completed 12-month period excluding Disposal Tonnage Collected through Roll-Off). Disposal Fees for Contractor's use of the Palomar Transfer Station shall be established by the "Agreement Between City of Carlsbad and Palomar Transfer Station, Inc., for Transfer Station and Disposal Services," including any amendments or modifications thereof (the "PTS Agreement"). Disposal Fees established pursuant to the PTS Agreement shall be used in determining Contractor's Disposal Costs in the annual Rate settings under this Agreement, until and unless a different Disposal Facility is designated by the City. If a different Disposal facility is designated by the City during the Term of this Agreement, then Contractor shall be entitled to an immediate Rate adjustment to compensate Contractor for the Disposal Fees paid by Contractor at such other Disposal Facility. The City shall subsequently use the Disposal Fees paid by Contractor at any such other Designated Disposal Facilities in determining Contractor's Disposal Costs under this Agreement.

In the establishment of Rates for Rate Period 2, due to the lack of Tonnage data for a 12-month period, the Tonnage of Solid Waste included in Contractor's Proposal shall be used in place of the Total Tons of Solid Waste Collected for the most-recently completed 12-month period.

6. **Interest Expense.** The Interest Expense amount is \$0 in Rate Period Two through Ten, is not annually adjusted, and shall be zero (0) in any subsequent Rate Period unless Parties mutually agree to a different amount.
7. **Direct Lease Costs.** The Direct Lease Costs amount is initially \$0 per month. Should the Contractor be required to pay additional rent due to any increase in the rent or other payments due to PTS or the City under Contractor's Sublease at PTS, such additional rent and other payments shall be treated as a dollar for dollar increase in the Contractor's Direct Lease Costs. Furthermore, if the City does not extend the term of the "Sublease Agreement for Palomar Transfer Station" between the City and Palomar Transfer Station, Inc., to include the full Term of this Agreement, Contractor shall be entitled to an immediate Rate adjustment to compensate Contractor for the Contractor's costs of relocating its Collection yard to another Collection yard property and all rent and other costs incurred by Contractor for the lease and improvement of such other Collection yard property. The City shall subsequently use the lease costs paid by Contractor at any such other property in determining Contractor's Direct Lease Costs under this Agreement.
8. **Allocated Lease Costs.** The Allocated Lease Costs amount is \$974,200 for Rate Period Two through Ten (including interest costs for Allocated General and Administrative of \$974,200, Allocated

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

Vehicle Maintenance costs of \$0, and Allocated Container Maintenance of \$0) is not annually adjusted, and shall remain unadjusted in any subsequent Rate Period unless Parties mutually agree to a different amount.

9. **Total Pass-Through Costs.** Total Pass-Through Costs for the coming Rate Period are the sum of the amounts in subsections (1) through (8) above.

D. Total Calculated Costs before City Reimbursements

The Total Calculated Costs before City Reimbursements shall be the sum of the Total Annual Cost of Operations, Profit, and Total Pass-Through Costs for the coming Rate Period.

E. City Reimbursements

2. **AB 939/SB 1383 Reimbursement.** The AB 939/SB 1383 reimbursement for the coming Rate Period shall equal the total AB 939/SB 1383 reimbursement paid to the City in the most-recently completed 12-month period multiplied by 1 plus the Annual Percentage Change in the CPI-U, or as otherwise directed by the City.
3. **Stormwater Reimbursement.** The stormwater reimbursement for the coming Rate Period shall equal the total stormwater reimbursement paid to the City in the most-recently completed 12-month period multiplied by 1 plus the Annual Percentage Change in the CPI-U, or as otherwise directed by the City.
4. **Total City Reimbursements.** The Total City Reimbursements for the coming Rate Period shall equal costs calculated in subsection (1) through (3) above; provided, however, that any adjustment in any such fee, whether pursuant to the relevant index or as the result of the decision of City, County of San Diego or State of California shall be pass-through fees (which are excluded from the calculation of profit) and reflected in the Total City Reimbursements.

F. Other Adjustments

From time to time during the Term of the Agreement, it may be necessary to make other adjustments to the compensation calculations. For example, if the City elects to roll-under a negative Rate adjustment to a future year, the dollar value of that negative adjustment shall be reflected as an adjustment. In such case, the adjustment would be a reduction to the Total Calculated Costs.

G. Total Calculated Costs

The Total Calculated Costs for the coming Rate Period shall equal the sum of the Total Annual Cost of Operations, Profit (which includes Franchise Fees), Total Pass-Through Costs, AB 939 / SB 1383 Reimbursements, and Other Adjustments (if applicable), for the coming Rate Period.

EXHIBIT E1 INDEX-BASED RATE ADJUSTMENT METHODOLOGY

3. RATE ADJUSTMENT FACTOR

The Rate Adjustment Factor shall equal the Total Calculated Costs for the coming Rate Period divided by the Total Calculated Costs for the then-current Rate Period, which shall be rounded to the nearest thousandth. Note that when determining the Rate Adjustment Factor for Rate Period Two, the Rate Adjustment Factor shall equal the Total Calculated Costs for Rate Period Two divided by the Total Proposed Costs of \$26,133,581 for Rate Period One, which is reflective of exclusion of Roll Off tonnage processing costs.

4. ADJUSTMENT OF RATES

Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period. The adjustment to each Rate shall be rounded to the nearest cent.

5. EXAMPLES

The following examples illustrates the index-based adjustment method for determining Rates for Rate Period Three. The dollar amounts shown are hypothetical amounts for Total Calculated Costs for Rate Period Two (July 1, 2023 through June 30, 2024) and the adjustment factors are based on assumed changes in the various indices between the Average Index Values for the twelve (12) months ending December 2023 and for the twelve (12) months ending December 2022. Example A depicts a standard index-based adjustment, wherein the calculated Total Annual Cost of Operations increased more than zero percent (0%) and less than five percent (5%) over the prior Rate Period. Example B depicts an index-based adjustment wherein the calculated Total Annual Cost of Operations resulted in a decrease from the prior Rate Period.

A. EXAMPLE A

1. Assumptions for Example Adjustment to Contractor's Compensation:

Most-Recently Completed Rate Period = Rate Period One (July 1, 2022 through June 30, 2023)

Then-current Rate Period = Rate Period Two (July 1, 2023 through June 30, 2024)

Coming Rate Period = Rate Period Three (July 1, 2024 through June 30, 2025)

Recyclable Materials Processing Costs per Ton for the then-current Rate Period = \$60.00 per Ton

Organic Materials Processing Costs per Ton for the then-current Rate Period = \$120.00 per Ton

Reusable Materials Processing Costs per Ton for the then-current Rate Period = \$50.00 per Ton

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

Disposal cost for the coming Rate Period = \$50.00 per Ton

Annual Percentage Change in the CPI-U = 0.040

Annual Percentage Change in the ECI = 0.018

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = 0.075

Franchise Fee Percentage: 8%

Tonnages for the most-recently completed 12-month period:

Recyclable Materials – 19,000 Tons (3,000 Tons attributable to Roll-Off)

Organic Materials – 32,000 Tons (4,500 Tons attributable to Roll-Off)

Solid Waste – 80,000 Tons (6,000 Tons attributable to Roll-Off)

Bulky Items and Reusable Materials – 200 Tons (0 Tons attributable to Roll-Off)

Note: All values presented in this table are hypothetical and used for illustrative purposes only.

EXHIBIT E1 INDEX-BASED RATE ADJUSTMENT METHODOLOGY

TABLE 2
Example A Calculation of Total Calculated Costs for Rate Period Three

	Rate Period Two	Adjustment Index	Adjustment Factor	Rate Period Three
Processing Tip Fee Adjustment (per Ton)				
Recyclable Materials Processing Tip Fee	\$ 60.00	CPI-U	1 + 0.040	\$ 62.40
Organic Materials Processing Tip Fee	\$ 120.00	CPI-U	1 + 0.040	\$ 124.80
Reusable Materials Processing Tip Fee	\$ 50.00	CPI-U	1 + 0.040	\$ 52.00
Annual Cost of Operations				
Labor-related Costs	\$ 5,000,000	ECI	1 + 0.018	\$ 5,090,000
Vehicle-related Costs (excluding fuel)	\$ 1,100,000	MVI	1 + 0.031	\$ 1,134,100
Fuel Costs	\$ 500,000	FUEL	1 + 0.075	\$ 537,500
Other Costs	\$ 400,000	CPI-U	1 + 0.040	\$ 416,000
Direct Depreciation	\$ 2,500,000	N.A.	N.A.	\$ 2,500,000
Allowed Costs (Labor, Vehicle, Fuel, and Other Costs)*	\$ 3,200,000	CPI-U	1 + 0.040	\$ 3,328,000
Allocated Costs (Depreciation and Start-Up)	\$ 15,000	N.A.	N.A.	\$ 15,000
Total Annual Cost of Operations	\$12,715,000		N.A.	\$ 13,020,600
Profit (assuming operating ratio of 0.82)	\$ 2,791,098			\$ 2,858,180
Pass Through Costs				
Recyclable Materials Processing Costs	\$ 900,000	Tip Fee x Tons	16,000 x \$62.40	\$ 998,400
Organic Materials Processing Costs	\$ 3,400,000	Tip Fee x Tons	27,500 x \$124.80	\$ 3,432,000
Reusable Materials Processing Costs	\$ 8,000	Tip Fee x Tons	200 x \$52.00	\$ 10,400
Solid Waste Disposal Costs	\$ 3,550,000	Tip Fee x Tons	74,000 x \$50.00	\$ 3,650,000
Interest Expense	\$ 475,000	N.A.	N.A.	\$ 475,000
Direct Lease Costs	\$ -	N.A.	N.A.	\$ -
Allocated Lease Costs	\$ -	N.A.	N.A.	\$ -
Total Pass-Through Costs	\$ 8,333,000			\$ 8,565,800
Total Calculated Costs before City Fees	\$23,839,098			\$ 24,444,580
City Fees/Payments				
AB 939 Fee / SB 1383 Reimbursement	\$ 2,912,000	CPI-U	1 + 0.040	\$ 3,028,480
Total City Fees/Payments	\$ 2,912,000			\$ 3,028,480
Other Adjustments (as needed from time to time)	N.A.	N.A.	N.A.	N.A.
Total Calculated Costs	\$26,751,098			\$ 27,473,060

*Fuel costs included in allocated costs shall be adjusted using the CPI-U not Fuel Index.

2. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Three

Rate Adjustment Factor = $\$27,473,060 / \$26,751,098 = 1.027$

32-gallon Single-Family Rate for Rate Period Three = $\$26.65 \times 1.027 = \27.37 , which shall be effective July 1, 2024.

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

B. EXAMPLE B

1. Assumptions for Example Adjustment to Contractor's Compensation:

Most-Recently Completed Rate Period = Rate Period One (July 1, 2022 through June 30, 2023)

Then-current Rate Period = Rate Period Two (July 1, 2023 through June 30, 2024)

Coming Rate Period = Rate Period Three (July 1, 2024 through June 30, 2025)

Recyclable Materials Processing Costs per Ton for the then-current Rate Period = \$60.00 per Ton

Organic Materials Processing Costs per Ton for the then-current Rate Period = \$120.00 per Ton

Reusable Materials Processing Costs per Ton for the then-current Rate Period = \$50.00 per Ton

Disposal cost for the coming Rate Period = \$43.00 per Ton

Annual Percentage Change in the CPI-U = -0.040

Annual Percentage Change in the ECI = -0.018

Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index = 0.031

Annual Percentage Change in the Fuel Index = -0.075

Franchise Fee Percentage: 8%

Tonnages for the most-recently completed 12-month period:

Recyclable Materials – 19,000 Tons (3,000 Tons attributable to Roll-Off)

Organic Materials – 32,000 Tons (4,500 Tons attributable to Roll-Off)

Solid Waste – 80,000 Tons (6,000 Tons attributable to Roll-Off)

Bulky Items and Reusable Materials – 200 Tons (0 Tons attributable to Roll-Off)

Note: All values presented in this table are hypothetical and used for illustrative purposes only.

EXHIBIT E1 INDEX-BASED RATE ADJUSTMENT METHODOLOGY

TABLE 3
Example B Calculation of Total Calculated Costs for Rate Period Three

	Rate Period Two	Adjustment Index	Adjustment Factor	Rate Period Three
Processing Tip Fee Adjustment (per Ton)				
Recyclable Materials Processing Tip Fee	\$ 60.00	CPI-U	1 + -0.040	\$ 57.60
Organic Materials Processing Tip Fee	\$ 120.00	CPI-U	1 + -0.040	\$ 115.20
Reusable Materials Processing Tip Fee	\$ 50.00	CPI-U	1 + -0.040	\$ 48.00
Annual Cost of Operations				
Labor-related Costs	\$ 5,000,000	ECI	1 + -0.018	\$ 4,910,000
Vehicle-related Costs (excluding fuel)	\$ 1,100,000	MVI	1 + 0.031	\$ 1,134,100
Fuel Costs	\$ 500,000	FUEL	1 + -0.075	\$ 462,500
Other Costs	\$ 400,000	CPI-U	1 + -0.040	\$ 384,000
Direct Depreciation	\$ 2,500,000	N.A.	N.A.	\$ 2,500,000
Allowed Costs (Labor, Vehicle, Fuel, and Other Costs)*	\$ 3,200,000	CPI-U	1 + -0.040	\$ 3,072,000
Allocated Costs (Depreciation and Start-Up)	\$ 15,000	N.A.	N.A.	\$ 15,000
Total Annual Cost of Operations	\$12,715,000		N.A.	\$ 12,477,600
Profit (assuming operating ratio of 0.82)	\$ 2,791,098			\$ 2,738,985
Pass Through Costs				
Recyclable Materials Processing Costs	\$ 900,000	Tip Fee x Tons	16,000 x \$62.40	\$ 921,600
Organic Materials Processing Costs	\$ 3,400,000	Tip Fee x Tons	27,500 x \$124.80	\$ 3,168,000
Reusable Materials Processing Costs	\$ 8,000	Tip Fee x Tons	200 x \$52.00	\$ 9,600
Solid Waste Disposal Costs	\$ 3,550,000	Tip Fee x Tons	74,000 x \$50.00	\$ 3,650,000
Interest Expense	\$ 475,000	N.A.	N.A.	\$ 475,000
Direct Lease Costs	\$ -	N.A.	N.A.	\$ -
Allocated Lease Costs	\$ -	N.A.	N.A.	\$ -
Total Pass-Through Costs	\$ 8,333,000			\$ 8,224,200
Total Calculated Costs before City Fees	\$23,839,098			\$ 23,440,785
City Fees/Payments				
AB 939 Fee / SB 1383 Reimbursement	\$ 2,912,000	CPI-U	1 + -0.040	\$ 2,795,520
Total City Fees/Payments	\$ 2,912,000			\$ 2,795,520
Other Adjustments (as needed from time to time)	N.A.	N.A.	N.A.	N.A.
Total Calculated Costs	\$26,751,098			\$ 26,236,305

*Fuel costs included in allocated costs shall be adjusted using the CPI-U not Fuel Index.

2. Example Calculation of the Rate Adjustment Factor and Adjusted Rate for Rate Period Three

Total Calculated Costs = \$26,236,305 < \$26,751,098; Adjusted Total Calculated Costs = \$26,751,098 (Total Calculated Costs from prior Rate Period)

Rate Adjustment Factor = \$26,751,098 / \$26,751,098 = 1.00

EXHIBIT E1

INDEX-BASED RATE ADJUSTMENT METHODOLOGY

32-gallon Single-Family Rate for Rate Period Three = $\$26.65 \times 1.00 = \26.65 , which shall be effective July 1, 2024 (i.e. NO RATE ADJUSTMENT).

Subsequent Rate Period Adjustment. $\$26,751,098 - \$26,236,305 = \$514,792$ cost savings to be applied as an "Other Adjustment" in the subsequent Rate Period adjustment calculations as an offset to Contractor's Total Calculated Costs.

3. OTHER

If an index described in Exhibit E is discontinued, the successor index with which it is replaced shall be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics, the index published by the organization which is most comparable shall be used.

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EXHIBIT E2:
COST-BASED RATE ADJUSTMENT METHODOLOGY

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

1. GENERAL

The Parties shall use the cost-based Rate adjustment method described in this Exhibit in setting the Rates for Rate Periods Four (4) and Eight (8) and the event of a Change in Scope or Change in Law. The cost-based adjustment involves review of the Contractor's actual cost of operations and operational statistics (staffing levels, routes, route hours, Customers and their Service Levels, etc.) to determine the Actual Allowable Total Annual Cost of Operations for the most-recently completed Rate Period and to forecast the Total Contractor's Compensation for the coming Rate Period. The difference (measured as a percentage) between the Total Contractor's Compensation for the coming Rate Period and the Projected Gross Rate Revenues (which is calculated based on most-recent Customer subscription levels at then-current Rates) is the "Rate Adjustment Factor". The Rate Adjustment Factor is applied to the then-current Rates to determine the Rates for the coming Rate Period.

The intent of performing the cost-based adjustment is to examine the actual impact of changes in inflation or deflation, the number of Customers, and the Service Level of Customers.

In the event that the cost-based adjustment calculated in accordance with this Exhibit E2 results in a negative Rate Adjustment Factor, the City reserves the right to "roll-under" the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.

A. Contractor's Rate Application

Contractor's Rate application for any Rate Period where Rates shall be adjusted using the cost-based methodology described in this Exhibit E2 shall include the information described in this Section 1.A. With the exception of the information identified in Subsections 1, and 2 below, all other items listed may be requested by the City Contract Manager at any time during the Term of the Agreement and Contractor shall comply with that request in a timely fashion.

- 1. Financial Statements.** Within one hundred twenty (120) calendar days after the close of the Contractor's fiscal year {Proposers – Enter fiscal year ending date}, Contractor shall deliver to the City one (1) hard copy of the reviewed (or audited) consolidated financial statements of Contractor for the preceding fiscal year. Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement separate from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual financial statements shall be reviewed (or audited), in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in good standing) to practice public

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

accounting in the State as determined by the State Department of Consumer Affairs Board of Accountancy, and that the CPA's opinion on Contractor's annual financial statements shall be unqualified, and shall contain the CPA's conclusions regarding the Contractor's accounting policies and procedures, internal controls, and operating policies. The CPA shall perform an evaluation and, if necessary, shall cite recommendations for improvement.

- 3. Financial Statement Reconciliation.** Contractor shall provide a schedule which clearly and accurately ties the amounts shown in Contractor's Rate application to Contractor's financial statements. Such schedule shall include any and all allocation factors and methodologies used to report cost and operating information for services provided to the City under this Agreement separately from Contractor obligations related to other public or private entities. Such statement of reconciliation shall include:
 - a. General explanation of the various allocation methodologies used for each Rate application line item.
 - b. Specific examples of each type of allocation used showing how an entry is reported in the general ledger and ties to the Rate application.
 - c. Statement indicating whether there have been any changes in allocation methods used since the last Rate application. If any allocation methods have changed clearly identify those changes.

- 4. Operational Information.**
 - a. Routes by Line of Business:
 1. Number of routes per day.
 2. Types of vehicles.
 3. Crew size per route.
 4. Number of full time equivalent (FTE) routes.
 5. Number of accounts and cubic yards scheduled per route.
 6. Total route hours per Line of Business per year.
 7. Average cost per route.

 - b. Personnel:
 1. Organizational chart.
 2. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).
 3. Wages by job classification.
 4. Number of FTE positions for each job classification.
 5. Number of hours per job classification per year.

 - c. Productivity Statistics:
 1. Average Number of accounts per route per day by Line of Business.
 2. Average number of setouts per route per day by Line of Business.

EXHIBIT E2

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3. Average Tons per route per day by vehicle type (i.e. side-loader, front-loader, roll-off).
4. Average cubic yards of Collection scheduled per route.
- d. Vehicles:
 1. List of Collection vehicles including year purchased and mileage.
 2. Average age of mobile equipment with oldest and newest.
- e. Operational Changes:
 1. Number of routes.
 2. Staffing.
 3. Supervision.
 4. Collection services.
5. **Variance Analysis.** Provide the following variance analysis for each Line of Business. For any variances greater than five percent (5%) annually, Contractor shall provide sufficient rationale to support variance:
 - a. Variance analysis comparing current Rate Period to each of the prior Rate Periods of Agreement.
 - b. Variance analysis comparing current Rate Period to each of the future projected Rate Periods.
6. **Projections.** Provide the following projection data:
 - a. Provide support for the basis for projected Gross Receipts and line item expenses, clearly indicate the supporting calculations and assumptions.
 - b. Provide support for the most-recent twelve (12) months of Tonnage data for Rate Period ending October. Clearly indicate the supporting calculations and assumptions.

2. FORECASTING TOTAL CONTRACTOR'S COMPENSATION

The Total Contractor's Compensation for the coming Rate Period shall be forecasted in the manner described in this Section.

A. Forecasting Total Annual Cost of Operations

1. **Determine Actual Allowable Total Annual Cost of Operations.** Contractor's financial statements, books, and records shall be reviewed to determine Contractor's "Actual Allowable Total Annual Cost of Operations" for the most-recently completed Rate Period to perform all the services in the manner required by this Agreement for each of the following cost categories:

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- a. Actual labor-related costs
 - b. Actual vehicle-related costs (excluding fuel and depreciation)
 - c. Actual fuel costs
 - d. Actual other costs (as defined on Form 6E of Exhibit G2)
 - e. Direct depreciation costs (in the amount specified in Exhibit E1)
 - f. Actual allocated costs (labor, vehicle, general and administrative, and other costs)
 - g. Actual allocated costs (depreciation and start-up) (in the amount stated in Exhibit E1)
 - h. Actual procurement reimbursement cost
- 2. Non-Allowable Costs.** The following list of non-allowable costs shall be deducted from the Contractor's actual costs when determining the Actual Allowable Total Annual Cost of Operations.
- a. Labor, equipment, fuel, and start-up costs for personnel, vehicles, and facilities that are not specified in the proposal forms contained in Exhibit G2 and/or which cannot be demonstrated to have been incurred as part of the performance of services under this Agreement.
 - b. Payments to directors and/or Owners of Contractor unless the amount paid is reasonable compensation for services actually rendered. Reasonableness shall be determined based on available market pricing for similar services and shall be in the sole discretion of the City.
 - c. Travel expenses and entertainment (above five thousand dollars (\$5,000) annually in total) expenses, unless authorized in advance by the City.
 - d. Payments to repair damage to public or private property for which Contractor is legally liable.
 - e. Fines or penalties of any nature.
 - f. Liquidated Damages assessed under this Agreement.
 - g. Federal or State income taxes.
 - h. Cash donations or value of in-kind services provided to charitable, political, youth, civic, or other community organizations unless such donation has been previously approved in writing as an allowable expense by the City Contract Manager.
 - i. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased as specified in Exhibit G2.
 - j. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse Parties.

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

- k. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.
 - l. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or Rate payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.
 - m. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services.
 - n. Goodwill.
 - o. Unreasonable profit sharing distributions.
 - p. Replacement costs for Containers that need to be replaced because the useful life of such Container was less than the Term.
 - q. Administrative costs greater than the administrative costs presented in Contractor's Proposal (Exhibit G2) adjusted annually by one plus the Annual Percentage Change in the CPI-U.
 - r. Bad debt write-offs in excess of two percent (2%) of annual Rate revenues.
3. **Forecast Total Annual Cost of Operations.** Forecasted Total Annual Cost of Operations for the coming Rate Period shall be calculated based on Actual Allowed Total Cost of Operations for the most-recently completed Rate Period determined in accordance with Sections 2.A.1 and 2.A.2 above. The forecasts shall be performed in the following manner:
- a. **Forecasted labor-related costs** shall be calculated for the coming Rate Period by the lesser of:
 - (i) multiplying the allowed labor-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the ECI, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the ECI; **OR,**

The Labor-Related Costs component of Total Calculated Costs for the then-current Rate Period is multiplied by one plus the Annual Percentage Change in the ECI.
 - b. **Forecasted vehicle-related costs** (excluding fuel and depreciation costs) shall be

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

calculated for the coming Rate Period by (i) multiplying the allowed vehicle-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.

- c. **Forecasted fuel costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed fuel costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in the Fuel Index, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the Fuel Index.
- d. **Forecasted other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs, both direct and allocated, for the most-recently completed Rate Period by one plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in the CPI-U.
- e. **Forecasted direct depreciation expense** shall be \$2,503,728, the amount specified in Exhibit G2 for vehicles, Containers, and facilities. Direct depreciation expense is a fixed cost and is not subject to inflation.
- f. **Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs** shall be calculated for the coming Rate Period by (i) multiplying the allowed other-related costs for most-recently completed Rate Period by one plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one once more by one plus the Annual Percentage Change in CPI-U.
- g. **Forecasted allocated depreciation and start-up expense** shall be \$255,950, the amount specified in Section 2.A.7 of Exhibit E1 for vehicles, Containers, and facilities.
- h. **Forecasted Total Annual Cost of Operations** for the coming Rate Period shall equal the sum of the following costs, which shall have been calculated in accordance with the procedures in this Exhibit E2:
 - (1) Forecasted labor-related costs
 - (2) Forecasted vehicle-related costs (excluding fuel and depreciation costs)
 - (3) Forecasted fuel costs
 - (4) Forecasted other costs
 - (5) Forecasted direct depreciation expense
 - (6) Forecasted allocated labor-related, vehicle-related, general and administrative, and other costs
 - (7) Forecasted allocated costs for depreciation and start-up

EXHIBIT E2

COST-BASED RATE ADJUSTMENT METHODOLOGY

B. Forecast Profit

Contractor shall be entitled to Profit on Forecasted Total Annual Cost of Operations. Profit shall be calculated using an operating ratio of seventy-two and a half percent (72.5%) as proposed by Contractor and described in Exhibit G2. Profit shall be calculated using the following formula:

Profit = (Forecasted Total Annual Cost of Operations / Operating Ratio) – Forecasted Total Annual Cost of Operations

For example:

1. Assuming an operating ratio of 92%
2. Assuming a Forecasted Total Annual Cost of Operations of \$1,000,000
3. Profit = (\$1,000,000 / 0.92) – \$1,000,000 = \$86,956.52

C. Forecast Pass-Through Costs

Pass-Through Costs for the coming Rate Period shall be forecasted in the following manner:

1. **Forecasted Recyclable Materials Processing costs** shall be calculated in the manner described in Section 2.C.1 of Exhibit E1.
2. **Forecasted Organic Materials Processing costs** shall be calculated in the manner described in Section 2.C.3 of Exhibit E1.
3. **Forecasted Reusable Materials Processing costs** shall be calculated in the manner described in Section 2.C.4 of Exhibit E1.
4. **Forecasted Disposal costs** shall be calculated in the manner described in Section 2.C.6 of Exhibit E1.
5. **Forecasted Interest Expense.** Interest Expense is \$0 per year and shall not be adjusted over the Term of the Agreement.
6. **Forecasted Direct Lease Costs.** Direct Lease Costs are \$0 per year and shall not be adjusted over the Term of the Agreement, except as specified in Exhibit E1 Section C.8.
7. **Forecasted Allocated Lease Costs.** Allocated Lease Costs are \$974,200 per year and shall not be adjusted over the Term of the Agreement.

D. Forecast City Reimbursements

City Fees shall be calculated in the manner described in Section 2.E of Exhibit E1.

EXHIBIT E2 COST-BASED RATE ADJUSTMENT METHODOLOGY

3. PROJECTED GROSS RATE REVENUE

Projected Gross Rate Revenue at then-current Rates shall reflect projected annual Gross Rate Revenues from all Customers based on then-current Rates and then-current Customer Service Levels, inclusive of all Rates and special charges authorized under this Agreement and exclusive of Gross Rate Revenue from Roll-Off Collection. For the purposes of determining Customer Service Levels for on-call services (e.g. Drop Box service provided less than weekly, Bin rentals, etc.) and special charges (e.g. push charges, lock/unlock charges, etc.), the prior 12 months of billing activity for such services and special charges shall be used.

4. RATE ADJUSTMENT FACTOR

The Rate Adjustment Factor shall equal the Forecasted Total Calculated Costs for the coming Rate Period divided by the Projected Gross Rate Revenues calculated in accordance with Section 2 herein. The Rate Adjustment Factor shall be rounded to the nearest thousandth.

5. ADJUSTMENT OF RATES

Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period.

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**EXHIBIT F:
PERFORMANCE STANDARDS AND LIQUIDATED
DAMAGES**

EXHIBIT F PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

City wishes to establish standards of performance under the Agreement in each of the five (5) "Performance Areas" listed below. The City Contract Manager may monitor Contractor's performance in each of those areas based on the "Specific Performance Measures" within that performance area. If the City Contract Manager determines that Contractor has failed to meet the performance standard established for any "Specific Performance Measure", the City may assess Liquidated Damages pursuant to Section 10.6 of the Agreement. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level.

1. Performance Area: Provision of Universal Three-Container {or Four-Container} Service

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to provide Recyclable Material and Organic Material Collection services to every Customer	For each occurrence of failing to provide Customers with the three-Container system, including Recyclable Material and Organic Materials, required by and compliant with Article 4 and Exhibit B.	No acceptable failure level	\$500/Customer

The City shall not assess Liquidated Damages item 1, above, under the following circumstances:

- A. City has granted the Customer a waiver pursuant to Section 4.10 of this Agreement;
- B. Contractor documents that Customer is compliant with Recycling and Organic Waste Self-Hauling requirements pursuant to Municipal Code Sections 6.08.020 and 6.08.024 and 14 CCR Division 7, Article 12, Article 7;
- C. Contractor documents to the City that the Customer is being provided Recyclable Material and/or Organic Material Collection services from a City-permitted, or non-exclusively franchised, Recycler or Discarded Materials service provider;
- D. Contractor documents that Customer is sharing Recyclable Materials and/or Organic Materials Collection services with another Customer in a manner approved by the City; or,
- E. The City has failed to adopt a mandatory Recycling ordinance.

EXHIBIT F PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

2. Performance Area: Service Quality and Reliability

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Missed Collections	Each Service Opportunity where Contractor fails to Collect a Container from a Customer who properly placed said Container for Collection, unless Contractor leaves a Non-Collection Notice specifying the reasons for Non-Collection and available remedies.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$50/Event
2.	Failure to Correct Missed Collections	Each "Missed Collection" as defined above which is not Collected by the end of the Working Day following the receipt of the Customer Complaint about the Missed Collection if the Complaint is received by 3:00 p.m. on a Working Day and by the end of the following Working Day for such Complaints received after 3:00 p.m. on a Working Day.	Less than one (1) per one hundred (100) Missed Collections	\$50/Event
3.	Failure to Issue Customer Rebate	Each failure to provide a Customer the Missed Collection Rebate or Late Container Delivery Rebate in accordance with Section 5.13 of the Agreement.	No acceptable failure level	\$50/Event
4.	Failure to Return Empty Container	Failure to properly return empty Carts or Bins to the Collection location, or to place Carts upright.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$20/Event

EXHIBIT F
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
5.	Failure to Replace Used Oil Recovery Kit	Failure to leave a clean Used Oil Recovery Kit following Collection of a full Used Oil Recovery Kit.	Five (5) or less occurrences per quarter	\$150/Kit/Day
6.	Failure to Clean-Up Spillage	Each failure by Contractor to clean up: (1) any items or materials spilled during the Collection of a Container; or, (2) any fluids spilled or leaked from a Container or Collection vehicle prior to leaving the Collection location.	Less than five (5) per one thousand (1,000) Service Opportunities	\$100/Event
7.	Damage to Property	Each event of damage to either public or private property as a result of Contractor's fault, as reasonably determined by the City, including without limitation damage to Curbs, sidewalks, landscapes, Container enclosures and gates, signs, light fixtures, and overhead wires and cables.	Less than two (2) per one thousand (1,000) Service Opportunities	\$200/Event
8.	Damage to Public Streets	Each event of damage to Public Streets within the City caused by Contractor's fault, as reasonably determined by the City.	No acceptable failure level	Actual cost of repair to City's satisfaction.
9.	Failure to Maintain Equipment	Each event of failure to maintain equipment, vehicles, Carts, Bins and other Containers in a clean, safe, and sanitary manner.	No acceptable failure level	\$100/Item/Day
10.	Failure to Comply with Container Standards	Failure to comply with Container labeling and colors as specified in this Agreement.	No acceptable failure level	\$200/Container/Occurrence

EXHIBIT F
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
11.	Failure to Provide/ Utilize Required Vehicles/Equipment	Failure to provide and utilize required vehicles, and communications equipment as specified in this Agreement.	No acceptable failure level	\$100/Item/Day
12.	Failure to Utilize RNG in Collection Vehicles	Failure to use RNG in all Collection Vehicles, and/or failure to use RNG that meets the standards specified in this Agreement.	No acceptable failure level	\$250/Vehicle/Day
13.	Unlicensed Vehicle Operator	Failure to have a vehicle operator properly licensed.	No acceptable failure level	\$500/Operator/Day
14.	Failure to Display Contractor's Name	Failure to display and maintain visibility of Contractor's name and Customer service phone number on Collection vehicles, Bins and other Containers.	No acceptable failure level	\$100/Instance/Day
15.	Failure to Wear Uniform	Failure to have Contractor Collection personnel in proper uniform.	No acceptable failure level	\$100/Person/Day
16.	Discourteous Behavior	For each occurrence of uncustomary discourteous behavior of Contractor's employees to a Customer.	Less than five (5) per one thousand (1,000) Service Opportunities	\$250/Event
17.	Failure to Complete Route	Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection service Working Day.	No acceptable failure level	\$1,000/Route
18.	Changing Routes	Changing routes without proper notification and approval by the City Contract Manager.	No acceptable failure level	\$500/Route/Day

EXHIBIT F
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
19.	Overweight Vehicles	Loading Collection vehicles in excess of State or local weight restrictions.	No acceptable failure level	\$150/Event
20.	Uncovered Loads	Failure to properly cover materials in Collection vehicles.	No acceptable failure level	\$500/Event
21.	Failure to Cure in Timely manner	Failure to cure non-compliance with the provisions of this Agreement in the manner and time set forth in Section 10.2.	No acceptable failure level	\$150/Incident/Day
22.	Failure to Suspend Contamination Program	Failure to suspend the contamination fee program in the event it exceeds the percent of Gross Receipts allowed in Section 4.11.1.E.	No acceptable failure level	\$50/Contamination Fee Issued After Specified Percentage Threshold is Exceeded
23.	Failure to Perform Other Requirement	Each failure to perform any obligation of the Agreement not specifically stated above.	No acceptable failure level	\$100/Event

EXHIBIT F PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

3. Performance Area: Customer Service

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Commence Service and/or Provide Move-in Kits	Any failure by Contractor to deliver a Container and begin providing Collection to a Customer, at the level of service requested by said Customer, within three (3) calendar days of receiving such request. This may include a new Customer receiving new service or an existing Customer requesting a change in or addition to existing Service Levels. This may also include delivering Used Oil Recovery Kits, Move-in Kits, and other items required upon Customer's request.	Less than one (1) per one hundred (100) Service Requests	\$50/Event
2.	Failure to Exchange Container	Any failure by Contractor to exchange Container within ten (10) Working Days of notification that a change in the size or number of Carts or Bins is required.	No acceptable failure level	\$100/Container/Day
3.	Failure to Replace Container	Any failure by Contractor to replace a damaged or defaced Container within the timeline required in Section 5.6.	No acceptable failure level	\$100/Container/Day
4.	Failure to Resolve Complaint	Any failure or neglect by Contractor to resolve each Complaint within the time set forth in this Agreement.	Less than one (1) per one hundred (100) Complaints	\$100/Event

EXHIBIT F PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
5.	Failure to Answer Phones	Any failure by Contractor to answer a telephone call from a Customer during normal business hours. A call is not deemed answered if the Customer does not speak with a live operator. (A call is deemed answered if the Customer hangs-up or abandons the call following a hold time of less than three (3) minutes.) Any failure to have a Customer service representative answer a phone call within a two (2) minute average for any month and/or for each single caller having to wait more than ten (10) minutes.	Less than five (5) per one thousand (1,000) Calls Received Under this Agreement	\$50/Event
6.	Failure to Maintain Office Hours	Failure to maintain office hours as required by this Agreement.	No acceptable failure level	\$100/Event
7.	Provision of Inaccurate Information	Each event of a Customer Service Representative providing inaccurate information in response to a Customer question or Complaint.	No acceptable failure level	\$50/Event
8.	Unauthorized Hours of Operation	Each occurrence of Contractor Collecting from Customers during unauthorized hours.	Less than two (2) per one thousand (1,000) Service Opportunities	\$50/Event
9.	Failure to Conduct Route Audits and Contamination Monitoring	Failure to conduct route audits and contamination monitoring as required by this Agreement.	No acceptable failure level	\$150/Audit/Day

EXHIBIT F
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Measure	Performance	Definition	Acceptable Performance Level	Liquidated Damage Amount
10	Failure to Issue Contamination Notices		Failure to issue contamination notices as required by this Agreement.	No acceptable failure level	\$500/Route/Day

4. Performance Area: Diversion

Item	Specific Measure	Performance	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Meet the Minimum Diversion Requirements		Failure to meet the minimum Diversion requirements of this Agreement. (Calculated per Calendar Year.)	Less than 0.001%	Shortfall of 0.001% - 2%: \$10,000.00 per calendar year. Shortfall of 2.001% or greater: \$25,000.00 per calendar year.
2.	Failure to Perform Education and Outreach Activities		Each individual failure by Contractor to develop, produce, and distribute public education material or perform community outreach activities in the form and manner required under Exhibit C to this Agreement.	No acceptable failure level	\$500/Activity
3.	Failure to Provide Targeted Technical Assistance		Each individual failure to provide targeted technical assistance to a Commercial or Multi-Family Customer in the manner required under Exhibit C to this Agreement.	No acceptable failure level	\$2,000/Customer
4	Failure of Diversion Coordinator to Specifically Perform		Every occurrence of a Diversion Coordinator being used for purposes other than those specified in this Agreement.	No acceptable failure level	\$1,000/day

EXHIBIT F PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

5. Performance Area: Facilities

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Delivery to Non-Approved Facility	Each individual occurrence of delivering materials to a facility other than the Approved Facility designated for each material type under Article 4 of this Agreement, unless authorized per this Agreement.	No acceptable failure level	\$5,000 first failure. \$25,000 each subsequent failure.
2.	Disposal of Targeted Diversion Materials	Each individual occurrence of delivering Recyclable Materials, Organic Materials, or Reusable Materials set out for Collection by the Customer for Disposal rather than Processing, unless authorized per this Agreement.	No acceptable failure level	\$1,000/Load
3.	Mixing Materials During Collection	Each individual Container that is Collected by Contractor in a vehicle intended or designated for the purpose of Collecting a different material type (e.g. Recyclable Materials Collected in Solid Waste vehicle, Solid Waste Collected in Organic Materials vehicle, etc.).	No acceptable failure level	\$1,000/ Container
4.	Commingling with Non-City Materials	Commingling of materials Collected inside and outside the City during Collection.	No acceptable failure level	\$1,000/Event

EXHIBIT F
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
5.	Delivery to Designated Disposal Facility of Non-City Materials commingled with City Materials	Delivery to the Designated Disposal Facility of any Solid Waste Collected outside of the City boundaries commingled with that Collected as part of this Agreement except for material delivered in Transfer trailers.	No acceptable failure level	\$5,000 first delivery. \$25,000 each subsequent delivery.
6.	Failure to Provide Adequate Capacity	Failure to provide adequate primary and alternate capacity to accept and Process Recyclable Materials, or Organic Materials.	No acceptable failure level	\$1,000/Day
7	Failure to Conduct Route Audits and Contamination Monitoring	Failure to conduct route audits and contamination monitoring as required by this Agreement.	No acceptable failure level	\$150/Audit/Day
8	Failure to Issue Contamination Notices	Failure to issue contamination notices as required by this Agreement.	No acceptable failure level	\$50/occurrence/Day

EXHIBIT F PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

6. Performance Area: Reporting & Records

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Late Report	Each occurrence of a report, as required under Exhibit D to this Agreement, being submitted after the due date, if the City gives Contractor notice of the late report. The City shall give Contractor a new reasonable deadline for the report. If Contractor does not submit the report by the new deadline, Contractor shall owe the City Liquidated Damages retroactive to the original due date. Reports shall be considered late until they are submitted in a complete and accurate format.	No acceptable failure level	\$250/Report/Day
2.	Failure to Maintain or Provide Access to Records	Each occurrence of City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information within the time window specified in this Agreement.	No acceptable failure level	\$500/Event
3.	Misleading/Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or regarding this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance be excused.	No acceptable failure level	\$250/Event

EXHIBIT F
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
4.	Failure to Correct Submittal of Inaccurate Data in a Timely Manner	Failure to correct submittal of inaccurate data within three (3) Business Days (or such other time period as may be agreed to in writing between City and Contractor) of notification by City.	No acceptable failure level	\$500/Day
5.	Failure to Maintain and/or Provide Access to Information Systems	Each day that Contractor fails to provide access to Contractor's information systems as required in Section 4.9 to the City Contract Manager.	No acceptable failure level	\$500/Day

Except for repeat occurrences, the City shall provide Contractor with written notice and a three (3) Business Day opportunity to cure any alleged breach of this Agreement before Liquidated Damages will be assessed.

By placing designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

Contractor
 Initial Here: SS

City
 Initial Here: MH

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