

# **CITY COUNCIL REVIEW DRAFT**

**FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF SUNNYVALE**

**AND**

**BAY COUNTIES WASTE SERVICES**

**FOR**

**RECYCLING, ORGANICS, AND SOLID WASTE  
COLLECTION SERVICES**

**February 4, 2020**

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1                                   **DRAFT Franchise Agreement**  
2                                                           **between**  
3                                                           **City of Sunnyvale**  
4                                                           **and**  
5                                   **Bay Counties Waste Services**  
6                                   **for Recycling, Organics, and Solid Waste**  
7                                   **Collection Services**

8       THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into as of [REDACTED], 2020  
9       between the City of Sunnyvale, California, a municipal corporation (hereinafter "City"), and Bay Counties  
10      Waste Services, Inc., a California corporation (hereinafter referred to as the "Contractor").

11                                                           **RECITALS**

12      This Agreement is entered into with reference to the following facts and circumstances:

13      **WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste  
14      Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), has declared  
15      that it is in the public interest to authorize and require local agencies to make adequate provisions for  
16      Solid Waste Collection within their jurisdiction;

17      **WHEREAS**, the State of California has found and declared that the amount of refuse generated in  
18      California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from  
19      landfilling and the need to conserve natural resources, have created an urgent need for State and local  
20      agencies to enact and implement an aggressive integrated waste management program. The State has,  
21      through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs  
22      and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016  
23      (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of  
24      2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible  
25      State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste  
26      reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must  
27      be Disposed; and,

28      **WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2) and City Charter Article XVI,  
29      the City has determined that the public health, safety, and well-being require that an exclusive right be  
30      awarded to a qualified Contractor to provide for the Collection of Organic Materials, Construction and  
31      Demolition Materials, and Solid Waste and that a non-exclusive right be awarded to a qualified Contractor  
32      to provide for the Collection of Recyclable Materials as set forth in this Agreement; and,

33      **WHEREAS**, the City further declares its intent to approve and maintain reasonable rates for the Collection,  
34      Recycling, Processing, Composting, and/or Disposal of Recyclable Materials, Organic Materials,  
35      Construction and Demolition (C&D) Materials, and Solid Waste; and,

36      **WHEREAS**, the City desires, having determined that Contractor, by demonstrated experience, reputation  
37      and capacity is qualified to provide the Collection of Recyclables Materials, Organic Materials,  
38      Construction and Demolition (C&D) Materials, and Solid Waste within the corporate limits of the City and

the Transportation of such material to the Approved Facility(ies), that Contractor be engaged to perform such services on the basis set forth in this Agreement; and,

**WHEREAS**, Contractor will on June 30, 2021 complete a thirty-year City grant of franchise to provide Solid Waste management services under the terms of an agreement awarded on July 24, 1990, and as

1. Assigned to Contractor and amended by a Consent and First Amendment dated as of December 17, 1992, and as
2. Amended by a Second Amendment dated as of January 11, 1994, and as
3. Amended by a Third Amendment dated as of November 9, 1994, and as
4. Amended by a Fourth Amendment dated as of December 19, 1995, and as
5. Amended by Fifth Amendment dated as of April 23, 1996, and a Sixth Amendment dated as of June 19, 1996, and as
6. Extended and Restated a Second time on January 11, 2005, and as
7. Amended by a First Amendment dated as of September 30, 2010; and as,

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

**WHEREAS**, under Sunnyvale Municipal Code Sections 8.16.070 and 8.16.090, respectively, the City may enter into a new franchise of up to thirty years in length and contract for the collection, removal, and disposal of all refuse and applicable (as per Section 1.2) Recyclables and Organic Materials in and from the City and the collection of rates therefor, and the City Council is authorized to enter into such contract with any terms it deems necessary to protect the best interests of the City;

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

## **1.1 GRANT AND ACCEPTANCE OF FRANCHISE**

By the signing of this Agreement and as of the Commencement Date, the City grants to Contractor and Contractor accepts an exclusive franchise within the corporate limits of the City. The franchise granted to Contractor shall be for the Collection of Recyclable Materials, Organic Materials, and Solid Waste and other services described in this Agreement subject to the limitations described in Section 1.2 and except where otherwise precluded by Federal, State, and local laws and regulations. As of the Commencement Date, the award of the franchise, and the provisions of this Agreement supersede all prior arrangements between the Parties related to the scope of services described in the Agreement, whether express or implied, with the exception of provisions of the prior agreement that explicitly survive termination.



## 1.2 LIMITATIONS TO THE FRANCHISE

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

A. **Self-Hauled Materials.** A Commercial business Owner or Resident may Dispose of Recyclable Materials, Organic Materials, and Solid Waste generated in or on their own Premises with their own vehicle.

B. **Donated or Sold Materials.** Any items which are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations.

C. **Recyclable Materials.**

D. **Edible Food.** A Person, such as a Person from a Food Recovery Organization or Food Recovery Service, that removes Edible Food from a Generator and Transports Edible Food for the purpose of human consumption regardless of whether Generator donates, sells, or pays a fee to the Food Recovery Organization or Food Recovery Service for such service.

E. **Materials That Contractor Does Not Collect.** Discarded Materials which the Contractor is not required to separately Collect under this Agreement as of the Effective Date but which subsequently, in the City's reasonable judgment, become economically feasible to Collect on a source-separated basis for Processing or other means of Diversion. In such event, Contractor shall have the exclusive right-of-first refusal to Collect such materials if the Parties mutually agree on an adjustment in Contractor's Payment as provided in Article 8. If the Parties cannot reach such agreement, the City may provide for Collection of such materials in any manner it deems appropriate. In such instance, Contractor may not enforce its exclusive franchise rights in a manner that would prevent the Collection of material that Contractor is unable or unwilling to Collect.

F. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.

G. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Recyclable Materials, Organic Materials, Solid Waste, Construction and Demolition Materials (C&D), and Bulky Items removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service) as an incidental part of the service being performed, rather than as a separately contracted or subcontracted hauling service; or if such contractor is providing a service which is not included in the scope of this Agreement.

H. **In-Place Composting.** Organic Materials Composted or otherwise legally managed at the site where it is generated (e.g., backyard composting, on-site anaerobic digestion).

I. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or butcher shops, grease, or used cooking oil.

J. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash, grit, and screenings.

K. **Excluded Waste.** Excluded Waste regardless of its source.

L. **Materials Generated by State and County Facilities.** Materials generated by State and County facilities located in the City, including but not limited to the Sunnyvale Unified School District, provided that the Generator has arranged services with other Persons or has arranged services with the Contractor through a separate agreement.

If Contractor can produce evidence that other Persons are servicing Collection Containers or are Collecting and Transporting Recyclable Materials, Organic Materials, Solid Waste and/or Construction and Demolition Materials (C&D) in a manner that is not consistent with this Agreement or the City's Code, it shall report the location, the name and phone number of the Person or company to the City's Contract Manager along with Contractor's evidence. In such case, City may notify the Generator and Person providing service of Contractor's rights under this Agreement.

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully included herein and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws and the Contractor may meet and confer with City and may petition for a Contractor Payment adjustment pursuant to Section 8.7.

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

### **1.3 OBLIGATIONS OF PARTIES**

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

A. Use their reasonable commercial efforts to enforce the exclusive nature of the franchise by the Contractor's identification and documentation of violations of the Agreement as provided in Section 1.2, and the City's notification at its discretion of generators and collection companies reasonably believed to be violating the franchise with regard to the terms of this Agreement.

B. Provide timely notice to one another of a perceived failure to perform any obligations under this Agreement and access to information demonstrating the Party's failure to perform.

C. Provide timely access to the City Contract Manager and the Contractor's designated representative and complete and timely responses to requests of the other Party.

D. Provide timely notice of matters which may affect either Party's ability to perform under the Agreement.

## ARTICLE 2. TERM OF AGREEMENT

### 2.1 AGREEMENT TERM

The Term of this Agreement shall commence July 1, 2021 (Commencement Date) and continue in full force for a period of seven (7) years, through and including June 30, 2028, unless the Agreement is terminated pursuant to Section 10.2. Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing services required by this Agreement on the Commencement Date.

*{Specialty: The final agreement will reflect a seven or ten year term, depending on Council award.}*

### 2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

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

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

**C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

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

**D. Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation of the corporation yard and fueling station owned or operated by Contractor or any Subcontractor for use under the terms of this Agreement.

**E. Legal Challenge.** Contractor understands and acknowledges that the award of this Agreement and related decisions may be subject to review and repeal by the City's citizens through a referendum or similar petition, and to various types of legal and environmental challenges (such referenda, similar petition and legal and environmental challenges being referred to collectively as "Legal Challenges"). Accordingly, this Agreement shall not become effective until the City reasonably determines that (1) any Legal Challenges that had been initiated as of the time of such

determination have been resolved in favor of the City's award of this Agreement to Contractor; and (2) the deadline to initiate any additional Legal Challenges has expired; provided, however, that Contractor shall be entitled to rescind this Agreement upon thirty (30) days' prior written notice to the City if such determination is not made by {Insert Date}. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its Mayor, Council, officers, representatives, agents, employees and volunteers, harmless against any and all liability, claims, losses, damages, or expenses including reasonable attorney's fees, arising from any Legal Challenges. In the event of any election regarding a Legal Challenge, City shall meet and confer with Contractor to determine if the City will hold an election on the Legal Challenge. Contractor shall have the option of asking the City not to contest the Legal Challenge. If City decides to conduct an election, Contractor shall reimburse City for its reasonable costs of doing so.

## **ARTICLE 3. SCOPE OF AGREEMENT**

### **3.1 SUMMARY SCOPE OF SERVICES**

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

- A. Collecting Recyclable Materials, Organic Materials, Solid Waste, and Construction and Demolition Materials (C&D) generated by and placed for Collection by Customers pursuant to the requirements of Article 4 and Exhibit B;
- B. Transporting Collected materials to the appropriate Approved Facility(ies) pursuant to requirements of Article 4 and Exhibit B;
- C. Performing all other services required by this Agreement including, but not limited to, Customer billing for specified services not billed by the City, public education, technical assistance, Customer service, record keeping, and reporting pursuant to Articles 4 and 6 and Exhibits C (Public Education & Outreach) and D (Reporting);
- D. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- E. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees (including City fees), and utilities;
- F. Performing or providing all services necessary to fulfill its obligations in full accordance with this Agreement at all times using best industry practice for comparable operations; and,
- G. Complying with all Applicable Laws.

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

### **3.2 USE OF APPROVED FACILITIES**

The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to Transport Discarded Materials to the Approved Facility, or Approved Facilities other than the SMaRT® Station as may be designated by City over the Term for the purposes of Processing and/or Disposing of Discarded Materials Collected in the City. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

Contractor shall observe and comply with all regulations in effect at the Approved Facility(ies) and cooperate with and take direction from the operator thereof with respect to delivery of Discarded Materials. Contractor shall actively work with the Approved Facility(ies) operator(s) throughout the Term of this Agreement to ensure that Contamination remains below the limits established by Applicable Law including, without limitation, SB 1383.

City Contract Manager may, with notice of five (5) Working Days direct Contractor to temporarily use an alternative Approved Facility. Should City-directed Contractor use of an alternative Facility exceed five (5) Working Days, Contractor shall be compensated for any added Transport costs as provided in Article 8.

Should Contractor be unable to use an Approved Facility due to an emergency or sudden and unforeseen closure of the Approved Facility that is outside the control of the Contractor, Contractor shall immediately notify City Contract Manager and seek direction regarding use of an alternative Approved Facility. Contractor shall not deliver Discarded Material to alternative Facility without prior City approval.

In using an Approved Facility, City may require Contractor obtain, or arrange to obtain computerized scale records and to provide City no less than monthly data as provided in Exhibit D. Such reports shall, at a minimum include date of receipt, inbound time, inbound and outbound weights of vehicles, and vehicle identification number. Contractor shall also maintain through the Term computerized scale records and reports providing historical vehicle tare weights for each vehicle and the date and location for each tare weight recorded.

### **3.3 SUBCONTRACTING**

Contractor shall not engage any Subcontractors for Collection or Transportation of Discarded Materials without the prior written consent of City Contract Manager. As of the Effective Date of this Agreement, City has approved Contractor's use of those subcontractors identified in Exhibit G5. Contractor is solely responsible for management and oversight of all Subcontractor activities related to provision of services under this Agreement. Contractor shall be considered to be in breach or default should the activities of any Subcontractor constitute a breach or event of default under this Agreement.

Should Contractor wish to engage other affiliated or related party entities in the provision of services, Contractor shall provide City Contract Manager written notification of its proposed use of an affiliate or related party ninety (90) days prior to intended use, and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. City may approve such request at its sole discretion. Alternatively, City may require that Contractor arrange for City to contract directly with the proposed Subcontractor under the same terms and conditions. Contractor shall require that all Subcontractors file insurance certificates with the City, name City as an additional insured, and comply with all material terms of this Agreement.

City may direct Contractor engage a Subcontractor(s) to provide a specified function related to provision of services under this Agreement. City may recommend potential Subcontractors for Contractor consideration, may review proposal submittals, and may participate in interviews. Final Subcontractor selection shall be at sole discretion of Contractor.

### **3.4 RESPONSIBILITY FOR MATERIALS**

Once Recyclable Materials, Reusable Materials, Organic Materials, Solid Waste and/or Construction and Demolition Materials (C&D) are placed in the Contractor's Containers and at the Collection location, the responsibility for their proper handling shall transfer directly from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can identify the Generator pursuant to Section 5.8.B. Once Recyclable Materials, Organic Materials, Solid Waste and/or C&D Materials are deposited by Contractor at the appropriate Approved Facility, such materials shall become the responsibility of the operator of the Approved Facility with the exception of Excluded Waste pursuant to Section 5.8.C.

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

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

Without amending this Agreement, City may direct Contractor to cease performing one or more of the types of Collection service described in Article 4 and Exhibit B, may direct Contractor to modify the scope of one or more of those services, or may direct Contractor to perform additional Collection service, including pilot programs and innovative services that may entail new Collection methods, different types of services and/or new requirements for Generators. Contractor will promptly and cooperatively comply with City's directions.

If those changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in Contractor's Payment will be made in accordance with Article 8. Contractor will continue to perform the new or changed service while the appropriate adjustment in compensation is being determined.

Contractor acknowledges and agrees that at any time during the Term of this Agreement, and without seeking or obtaining approval of Contractor, City may solicit proposals from, and may contract with other Persons besides the Contractor to Collect any and all types of materials excluded from the scope of this Franchise and/or to provide services not contemplated under this Agreement. In the event that contracting with other Persons for such services will reduce Contractor's compensation under this Agreement, as described in Article 8, the Contractor shall be offered the opportunity to match any other Person's proposed pricing, and retain the added scope of services. However, nothing in this Agreement shall prevent the City from contracting with other Persons in the event that Contractor is unable or unwilling to provide such services at or below the cost proposed by the other Person.

### **3.6 MANAGEMENT RESPONSIBILITY**

A. **Officers and Management.** Contractor understands and acknowledges City expectations for strong company management, proactive coordination with the City, and rapid company response to City requests. Contractor's chief operating officer and general manager shall meet no less than quarterly with City management staff. Contractor's board members shall meet no less than annually with City management staff. As provided in Exhibit D, Contractor shall provide an updated organization chart

on or before the Commencement Date, and shall provide a newly updated organization chart each year thereafter, or as requested by the City Contract Manager.

Contractor's management shall within five (5) Working Days of any City request, provide an initial response that either addresses the request, or specifies the necessary steps and associated timeframe that will be required to provide a full response. In the latter instance, the City representative making the request and Contractor's management staff shall agree on the process to be followed to address the request. City and Contractor's management staff shall contact the City representative making the original request within two (2) days of understanding the need to modify the agreed steps or timeline for responding to the request. Contractor failure to follow this protocol may result in assessment of Liquidated Damages as provided in Section 10.6 and Exhibit F.

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

Contractor shall notify City six (6) months in advance of any change in board membership or officer responsibilities, and three (3) months in advance of any change in the general manager's position.

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

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

## **ARTICLE 4.**

### **SCOPE OF SERVICES**

Contractor shall perform the Recyclable Materials, Organic Materials, Solid Waste, Bulky Item, and Construction and Demolition (C&D) services described in this Article 4. This Article 4 describes the general requirements for the services to be provided. More specific requirements for how each service shall be provided to each Customer Type are described in Exhibit B. Failure to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

#### 4.1 COLLECTION SYSTEM

A. **General.** Contractor shall provide a multi-Container Collection program as described herein for the separate Collection of Recyclable Materials, Organics Materials, Construction and Demolition Materials, and Solid Waste using Containers that comply with the requirements of the Agreement. Contractor shall Collect and Transport all Discarded Materials to the Approved Facility. Collection services are detailed in Exhibit B

1. **Single-Family Customers.** For Single-Family Customers, Contractor shall provide a three-Container system that relies on the use of two Split Carts and one, undivided Cart. Contractor shall provide such Containers in accordance with Exhibit B.

One (1) Split Cart shall be used for the Collection of Solid Waste and Food Scraps. Single-Family Customers shall place Solid Waste in one section of the Split Cart and shall place Food Scraps in the other section of the Split Cart. A separate Split Cart shall be used for the Collection of Dual Stream Recyclable Materials. Single-Family Customers shall place Recyclable containers in one section of the Split Cart and shall place Recyclable fibers in the other section of the Split Cart. Single-Family Customers shall place Yard Trimmings in a third, undivided Cart.

2. **Multi-Family Customers.** Contractor shall provide a Container system that relies on the use of one (1) undivided Container for the Collection of Solid Waste; one (1) undivided Container for the Collection of Recyclable fibers; one (1) undivided Container for the Collection of Recyclable containers; one (1) undivided Container for the Collection of Yard Trimmings (unless exempted by the City); and, one (1) undivided Container for the Collection of Food Scraps. Upon Customer request or City direction, Contractor shall provide Multi-Family Customers with an additional undivided Container for the Collection of Corrugated Cardboard. Contractor shall provide such Containers in accordance with Exhibit B.

3. **Commercial Customers.** Contractor shall provide a four-Container system that relies on the use of one (1) undivided Container for the Collection of Solid Waste; one (1) undivided Container for the Collection of Recyclable Materials (Corrugated Cardboard); one (1) undivided Container for the Collection of Yard Trimmings (unless exempted by the City); and, one (1) undivided Container for the Collection of Food Scraps. Contractor shall provide such Containers in accordance with Exhibit B.

In lieu of providing two separate Containers for the Collection of Food Scraps and Solid Waste, Contractor may provide Commercial Customers with one (1) Split Cart for the Collection of Food Scraps and Solid Waste.

#### 4.2 RECYCLABLE MATERIALS

Contractor shall Collect Recyclable Materials as described in Exhibit B. Contractor shall Transport and deliver all Source Separated Recyclable Materials placed by Customers in Recyclable Material Containers in the City to the Approved Facility(ies).

#### 4.3 ORGANIC MATERIALS

Contractor shall Collect Organic Materials as described in Exhibit B. Contractor shall Transport and deliver Source Separated Organic Materials placed by Customers in Organic Material Containers in the City to the Approved Facility(ies).



Contractor shall allow Customers and Generators to place Food Scraps in clear plastic bags and put the bagged Food Scraps in the Food Scraps Container. Annually, in accordance with Exhibit D, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the plastic bags. If, at any time during the Term of the Agreement, the Approved Facility can no longer accept plastic bags, the City may assess Liquidated Damages as provided in Section 10.6, or deem such failure an event of default under Section 10.1.

#### **4.4 SOLID WASTE**

Contractor shall Collect Solid Waste as described in Exhibit B. Contractor shall Transport and deliver Solid Waste placed by Customers in Solid Waste Containers in the City to the Approved Facility(ies).

#### **4.5 C&D COLLECTION**

Contractor shall Collect C&D materials from all Customers that subscribe to its C&D Collection services and Transport all Collected C&D Material to the Approved Facility, as specified in Exhibit B. Contractor shall charge Customers for C&D Collection services at City-approved Rates set pursuant to Section 8.9.A.

**A. C&D Recycling Requirements.** Contractor shall comply with the following requirements.

1. Comply with City's Construction and Demolition Debris ordinances, regulations and requirements.
2. Collect Organic Materials separately from other C&D and Transport the Organic Materials to an Approved Facility; or, upon City direction, Collect Organic Materials mixed with other C&D and Transport the materials to an Approved Facility.
3. Comply with CalRecycle and California Building Standards Code including Part 11 California Green Building Standards Code (CALGreen) requirements for the Processing and Recycling of C&D including Organic Waste.
4. Achieve minimum Discarded Materials diversion targets as required by California Building Standards Code Part 11 California Green Building Standards Code (CALGreen) requirements.

#### **4.6 BULKY ITEMS AND REUSABLE MATERIALS**

Contractor shall offer Bulky Item and Reusable Materials Collection services for Single Family Customers and Bulky Item Collection services for Multi-Family Customers as described in Exhibit B. Contractor shall Transport all Bulky Items or Reusable Materials Collected under this Agreement to the Approved Reusable Materials Processing Facility. Contractor shall pay all costs associated with Transport and Delivery and Bulky Items and Reusable Materials for Processing. Contractor shall observe and comply with all regulations in effect at the Approved Facility(ies) and cooperate with and take direction from the operator thereof with respect to delivery of Bulky Items and/or Reusable Materials.

*{Specialty: Will be modified as necessary to address your proposed approach to collection of Reusable Materials from Single Family Premises and provision of service (including possibly Reusables) to Multi-Family Customers.}*

**4.7 SPECIAL EVENTS**

- A. General.** Contractor shall provide Recyclable Materials, Food Scraps, and Solid Waste Collection services to up to thirty-five (35) special events, examples of which are identified in the list of events below, at no cost to the event organizer or City. Contractor shall provide the special event services to other events that are sponsored or approved by City upon thirty (30) calendar days advance request by the City Contract Manager. Special event services include:
1. Contractor provides some support for Edible Food Recovery Efforts. Contractor shall support the recovery of Edible Food from the special event in accordance with Section 4.8.4.
  2. Contractor Only Acknowledges Efforts by Others. Contractor acknowledges that efforts to recover Edible Food at the special events may be conducted by others; and, Contractor agrees not to interfere with such activities.
  3. A combination of Items 1 and 2 above.
- B. Event Collection Stations.** Contractor shall provide and set-up event Collection stations for Collection of Recyclable Materials, Food Scraps, and Solid Waste at City-sponsored special events. Each event Collection station shall include a separate Cart or approved special event container, such as ClearStreams, for Recyclable Materials, Food Scraps, and Solid Waste, as appropriate. Contractor shall provide liners/bags for the Carts or approved containers at the Collection stations, and shall line the Carts or approved container as a part of the station set-up. Collection stations shall include adequate signs and labeling provided by Contractor. Such signs and labels shall be approved by the City prior to use.
- C. Collection Station Monitors.** Upon request by City, Contractor shall provide an adequate number of Collection station monitors to meet the needs of each special event. The Collection station monitors shall be present for the duration of each special event. Contractor shall require Collection station monitors to monitor event Collection stations and educate event attendees and vendors about what materials are acceptable in each Collection station Cart or approved container. The Contractor shall be responsible for transporting materials contained in event Collection stations to Drop Boxes, which will subsequently be Collected by the Contractor. Station monitors will also sort materials both at the Collection stations and at the Drop Boxes to ensure that they are properly separated and free of contamination.
- D. Container Quantities, Delivery, and Removal.** Contractor shall provide an adequate number of Carts or approved containers to allow for the convenient disposal of Discarded Materials generated by participants at each event. Contractor shall deliver Carts or approved containers no later than two (2) hours prior to the start of the event. Contractor shall empty Carts or approved containers as needed during the event to prevent overflow of Discarded Materials. Contractor shall remove Cart or approved containers within one (1) hour of the conclusion of event and shall place Carts or approved containers in an area for subsequent Collection by Contractor. Contractor shall Transport Discarded Materials no later than twelve (12) hours following the conclusion of the event or on the next business day.
- E. Public Education Booth** Public education efforts at special events including, but not limited to, staffing a booth or exhibit for the purposes of educating the public about services and programs

offered by Contractor under this Agreement, shall be the responsibility of City; however, City may direct Contractor to assist with such public education efforts during the Term of the Agreement.

**F. Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a one-page report to the City Contract Manager and event organizer, as provided in Exhibit D. The report should include, at a minimum: the number of event collection stations deployed at the event, the number of collection station monitors, the tonnage of each material type (i.e., Recyclable Materials, Food Scraps, and Solid Waste) collected.

**G. Use of Sub-Contractor or Community Organization or Group.** Contractor may, at its sole discretion and expense, coordinate with local youth or community groups, special event service providers, or charitable organizations to provide some or all of the required services. Regardless of Contractor's use of such an organization, Contractor shall be responsible for ensuring that service is provided to the Customer in a professional and timely manner. Contractor shall provide at least one (1) employee on site at each special event to monitor sub-contractor(s), community organization(s), or other groups.

**H. Edible Food Recovery.** City shall be responsible for distributing education materials regarding Edible Food recovery requirements to Commercial Edible Food Generators prior to special events and shall coordinate Edible Food recovery efforts at special events, including, but not limited to requiring Commercial Edible Food Generators to agree via written agreements to recover Edible Food at special events. At least two (2) weeks prior to each special event, City shall notify Contractor of which Commercial Edible Food Generators are participating in Edible Food recovery activities.

Contractor shall support the recovery of Edible Food from special events in accordance with Section 4.8.4, or otherwise assist the City as requested.

**I. Events.** For special events which are identified in list of events below or otherwise hosted or sponsored by the City, Contractor shall provide the above-described special event services at the request of the event organizer, may negotiate the charges for such services consistent with the Approved Rates with the event organizer based on the specific needs of the event, and shall report to City as provided in Exhibit D.

List of Events:

1. Art and Wine Festival typically held the first weekend in June in the downtown area,
2. Music and Market event series on Wednesdays (11 events) and Saturdays (8 events) during summer,
3. DPS Fire Station #2 Pancake Breakfast,
4. Hands on the Arts,
5. State of the City,
6. Family Fall Fest,
7. School Walk-a-thons/ Events,

8. Up to 10 other events to be selected by City each year.

City may change dates and locations of events or substitute new events with fifteen (15) days prior notice to Contractor.

#### **4.8 SB 1383 REQUIREMENTS**

The following SB 1383 requirements assume the use of a “standard” compliance approach pursuant to in accordance with 14 CCR Chapter 12. The distribution of City and Contractor responsibilities for SB 1383 is further described in Exhibit K. Exhibit K also contains definitions and other clarifying detail related to Section 4.8.

During the Term of this Agreement, City may elect to pursue a “performance-based” compliance approach in accordance with 14 CCR Chapter 12 Article 17. In general terms, based on the October 2019 draft of the regulations the performance-based compliance approach will require provision of at least three Containers for Source Separated Collection of Discarded Materials to ninety percent (90%) of Residential Customers and to ninety percent (90%) of Commercial Customers, while reducing some reporting responsibilities for the City and the Contractor. The performance-based compliance approach places significant added responsibility on Processors; Contractor shall coordinate with the Approved Facility(ies) as necessary to ensure Organic Materials and Recyclable Materials are provided in a form that allows for Processing in accordance with 14 CCR Chapter 12 Article 17. Contractor shall also coordinate with the Approved Facility(ies) as necessary to ensure Solid Waste characterization studies can be conducted in accordance with 14 CCR Chapter 12 Article 17. Should the City elect to pursue such a performance-based compliance approach, the City Contract Manager and Contractor shall meet and confer at least six (6) months prior to the implementation of the performance-based approach.

##### **4.8.1 SB 1383 Inspections and Enforcement**

###### **A. Annual Compliance Reviews**

1. **General.** Contractor shall perform Customer compliance reviews described in this Section commencing January 1, 2022, and at least annually thereafter, unless otherwise noted.

2. **Commercial Generator Compliance Reviews.** Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Materials, to determine their compliance with: (i) Generator requirements under the this Agreement; and, (ii) if applicable for the Customer, Self-Hauling requirements per 14 CCR Section 18988.3 and the Sunnyvale Municipal Code, including whether a Commercial Premise is complying through Back-Hauling Organic Materials. The compliance review shall mean a “desk” review of records to determine Customers’ compliance with the above requirements and does not necessarily require on-site observation of service.

3. **Annual Hauler Route Review.** Beginning April 1, 2022 and annually thereafter, the Contractor shall conduct annual Hauler Route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City’s Discarded Materials Collection program and Container Contamination monitoring. Generator compliance Hauler Route reviews may be performed concurrently with the Contamination monitoring Hauler Route reviews, provided that Contractor documents a reasonable sampling, based on direction from City Contract

Manager, of Generators for which compliance with the City's Discarded Materials Collection program during the Hauler Route review was assessed.

**4. Food Recovery Compliance Reviews.** Commencing January 1, 2022 and at least annually thereafter, Contractor shall conduct inspections of Tier One Commercial Edible Food Generators to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its Edible Food Generator compliance reviews to include inspections of Tier Two Commercial Edible Food Generators.

**B. Compliance Review Process**

**1. Number of Reviews.** The Contractor shall conduct Hauler Route reviews and inspections of entities described in this Section at a minimum of once per year or as directed by City Contract Manager to adequately determine the entities' overall compliance with SB 1383, AB 1826, and AB 341. City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.

**2. Non-Compliant Entities.** From January 1, 2022 through December 31, 2023, when compliance reviews are performed by Contractor pursuant to this Section 4.8, Contractor shall provide City-approved educational materials, as described in Section 4.9 and Exhibit C, in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within two (2) Working Days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler Route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided and report such information to the City in accordance with Exhibit D. Beginning January 1, 2024, the Contractor shall document non-compliant Customers and Generators determined through Contractor's compliance reviews pursuant to this Section 4.8, and shall report all Customers and Generators with SB 1383 violations to the City in accordance with Exhibit D. The City shall be responsible for subsequent enforcement action against the Generator or Customer.

**3. Documentation of Inspection Actions.** The Contractor shall generate a written or electronic record and maintain documentation for each inspection, Hauler Route review, and compliance review conducted, including the information described in Exhibit D.

**C. Documentation of Complaints.**

**1. General.** Contractor shall maintain a computer database log of all oral and written SB 1383-related complaints received by Contractor from Customers or other Persons in accordance with Section 4.12 and Article 6.

**2. SB 1383-Noncompliance Complaints.** For complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements, Contractor shall document such complaint investigations in accordance with Exhibit D. Contractor shall provide this information in a brief complaint report to the City for each SB 1383-noncompliance complaint

within five (5) Working Days of receipt of such complaint, and a monthly summary report of SB 1383-noncompliance complaints in accordance with Exhibit D.

**3. Investigation of SB1383-Noncompliance Complaints**

a. **Investigation.** Contractor shall assist City in meeting its obligation to investigate complaints by commencing an investigation within thirty (30) days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383. Contractor is required to investigate complaints against Customers and Generators, and not against Edible Food recovery organizations, Edible Food recovery services, and other entities regulated by SB 1383.

Contractor shall investigate the complaint by:

- i. Reviewing the Service Level of the Customer (if the entity is a Customer of the Contractor);
- ii. Reviewing the waiver list, if applicable, to determine if the entity has a valid, City-approved de minimis, space constraint, or Collection frequency waiver;
- iii. Reviewing the Self-Haul registration list, if applicable, to determine if the entity has registered and reviewing the entities reported Self-Haul information;
- iv. Inspecting Premises of the entity identified by the complainant, if warranted; and,
- v. Contacting the entity to gather more information, if warranted;
- vi. Affixing a City-approved notice of complaint on the Customer's Container that includes SB 1383 Generator requirements and, if applicable, provides a City-approved deadline for correction, in accordance with Section 4.12.3.

b. **Reporting.** Within ten (10) days of completing an investigation of an SB 1383-noncompliance complaint, Contractor shall submit to City an investigation complaint report that documents the Customer account in question, the nature of the complaint, the investigation performed, and recommends to City whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation. The City shall make a final determination of the allegations against the entity.

Contractor shall provide to City in its monthly report a list of all Customer complaints that have not been resolved by Contractor within thirty (30) days of receiving such complaints. The Customer complaint list shall include the Customer's account information, including Customer's then-current Service Level, the nature of the complaint, and Contractor's efforts to resolve the complaint. City, or its designee, shall be responsible for investigating such outstanding complaints received by Contractor.

Within three (3) Working Days of the City's or its designee's request, Contractor shall provide City or its designee with Customer account information and other documentation that may be useful in the investigation such as records of the Customer's two most recent change(s) in Service Level and other Customer service records.

#### **4.8.2 SB 1383 Contamination Minimization Program**

- A. General.** Contractor shall assist in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials, by monitoring the contents of Collection Containers, and by refusing to Collect Containers with visible Prohibited Container Contaminants as provided in Section 4.12.3. Route supervisors are responsible for ensuring Contractor compliance with all on-route aspects of the Contamination minimization program specified in this Section 4.8.2.
- B. Hauler Route Reviews; Methodology and Frequency.** Commencing on or before January 1, 2022, the Contractor shall, at its sole expense, conduct Hauler Route reviews for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor; is approved by the City; and is conducted in a manner that results in all Hauler Routes being reviewed annually.

The Contractor shall visually inspect the contents of a reasonably representative number of Containers, as directed and approved by City Contract Manager, per Hauler Route to search for Prohibited Container Contaminants, for each and every Hauler Route. The Containers shall be randomly selected by a method approved by the City Contract Manager.

Contractor shall develop a Hauler Route review methodology that complies with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed Hauler Route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Hauler Route's annual review. Contractor's proposed Hauler Route review methodology shall include its plan for Container inspections, and shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. City shall review, comment on, and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval. If the City notifies the Contractor that the methodology is inadequate to meet the requirements of SB 1383, Contractor shall, at its sole expense, revise the methodology and, after obtaining City approval, conduct additional Hauler Route reviews, increased Container inspections, or implement other changes using the revised procedure.

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

Unless otherwise directed by City, drivers that dismount from Collection vehicles in order to empty Containers shall lift the Container lid and observe the contents of a reasonably representative number of Containers (including Organic Materials Containers, Recyclable Material Containers, and Solid Waste Containers), as directed and approved by City Contract Manager. If Prohibited Container Contaminants appear to be present in excess of standards agreed upon by the Parties, the driver will affix a "Courtesy Notice" to the Container in accordance with Section 4.12.3. The

driver shall record the observation, which shall include photographic evidence, in the on-board computer system.

Unless otherwise directed by City, drivers providing automated Collection service shall observe, via the City-approved hopper video camera and monitoring system, the contents of the Container as it is being emptied into the vehicle. Such video recordings shall be maintained by Contractor and made available to City for review, upon City request. If the driver observes Prohibited Container Contaminants in excess of standards agreed upon by the Parties, the driver shall affix a "Courtesy Notice", and follow the applicable procedures specified in Section 4.12.3.

**C. Identification of Excluded Waste.** If a driver observes Excluded Waste in an uncollected Container, the driver shall affix a Non-Collection notice to the Container, and follow the applicable procedures specified in Section 4.12.3.F

**D. Assessment of Contamination Fees.** No less than ninety (90) days prior to the Commencement Date, Contractor and City shall meet and confer to discuss the use of Contamination Fees for Customers that do not properly sort their Discarded Materials, and to review the requirements of Sections 4.12.3.H-K.

**E. Communications with Customer.** Contractor shall communicate with Customers in accordance with Section 4.12.3. .

**F. Contractor Return for Collection.** Contractor shall return to Customer Premises for Collection of Discarded Materials in accordance with Section 4.12.3.

**G. Disposal of Contaminated Materials.** Contractor may Dispose of Contaminated materials observed in Customer's Organic Materials Container or Recyclable Materials Container in accordance with Section 4.12.3.

**H. Monthly Reporting Requirements.** Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, in accordance with Exhibit D.

#### **4.8.3 SB 1383 Container Requirements**

To ensure compliance with SB 1383 Container color and labeling requirements, and in coordination with any related activities that occur prior to the Commencement Date, Contractor shall confer with the City prior to placing orders for, purchasing, taking delivery of, and/or utilizing any new Containers as provided for in Section 5.6.

**A. Provision of Containers by Contractor and Color Standards**

**1. General**

a. As of the Commencement Date of this Agreement, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Chapter 12 Article 3, or other Applicable Law.

Containers shall be color-coded as follows:



*Specialty: Container color requirements will be based on the final adoption of SB 1383. All future container purchases must align with final SB 1383 requirements.*

#### Single-Family Customer Containers

Material	Container Type	Container Lid Color	Container Body Color
Recyclable Paper	Split-Cart	Dark Blue	Black
Recyclable Containers	Split-Cart	Light Blue	Black
Food Scraps	Split-Cart	Brown	Black
Solid Waste	Split-Cart	Black	Black
Yard Trimmings	Undivided Cart	Green	Green

#### Multi-Family Customer Containers

Multi-Family Customers that have City-approved exemptions from Yard Trimming Collection service, may be provided Carts with green lids and green bodies or Bins with green bodies and black lids for the Collection of Food Scraps.

Material	Container Type	Container Lid Color	Container Body Color
Recyclable Paper	Undivided-Cart	Dark Blue	Dark Blue
Recyclable Containers	Undivided-Cart	Light Blue	Light Blue
Food Scraps	Undivided-Bin	Black	Brown
Food Scraps	Undivided Cart	Brown	Black
Solid Waste	Undivided-Bin	Black	Black
Yard Trimmings	Undivided Cart	Black	Green

#### Commercial Customer Containers

Material	Container Type	Container Lid Color	Container Body Color
Recyclable Cardboard	Undivided-Bin	Black	Dark Blue
Food Scraps	Undivided-Bin	Black	Brown
Food Scraps & Solid Waste	Split Cart	Brown for Food Scraps side; Black for Solid Waste side	Black
Solid Waste	Undivided-Bin	Black	Black
Yard Trimmings	Undivided Cart	Black	Green

#### 2. Recyclable Materials Containers (Split Carts; Undivided Carts; Undivided Bins).

For Split Carts that segregate Recyclables containers from Recyclable fibers, Contractor shall provide Split Containers with the section of the Container designated for the Collection of

- 701           Recyclable fibers with a lid that is dark blue in color and a body that is black in color. The  
702           section of the Container designated for the Collection of Recyclables containers must have a  
703           lid that is a lighter shade of blue than the Recyclable fibers section of the Container and a  
704           body that is black in color. Hardware such as hinges and wheels on the Split Container may be  
705           a different color.
- 706           Undivided Recyclable Materials Carts intended for the Collection of Recyclable fibers must  
707           have a lid and body that is entirely dark blue in color. Hardware such as hinges and wheels on  
708           the Recyclable Bins may be a different color.
- 709           Undivided Recyclable Materials Carts intended for the Collection of Recyclable containers  
710           must have a lid and body that is entirely light blue in color. Hardware such as hinges and  
711           wheels on the Recyclable Bins may be a different color.
- 712           Recyclable Materials (including Corrugated Cardboard) Bins must have a body that is entirely  
713           blue in color, and a lid that is entirely black in color. Hardware such as hinges and wheels on  
714           the Recyclable Bins may be a different color.
- 715           3.    Yard Trimmings Containers (Undivided Carts; Undivided Bins).
- 716           Yard Trimmings Carts must have a lid that is green in color; and a body that is green in color.
- 717           Yard Trimmings Bins must have a lid that is black in color; and a body that is green in color.  
718           Hardware such as hinges and wheels on the Yard Trimmings Containers may be a different  
719           color.
- 720           4.    FoodCycle Containers (Split Carts).
- 721           For Split Carts that segregate Solid Waste and Food Scraps, Contractor shall provide Split  
722           Containers with the sections of the Containers designated for Collection of Solid Waste with  
723           lids that are black in color, and bodies that are black in color. The sections of the Containers  
724           designated for Collection of Food Scraps must have lids that are brown in color, and bodies  
725           that are black in color. Hardware such as hinges and wheels on the Split Container may be a  
726           different color.
- 727           5.    Food Scraps Containers (Undivided Bins). Food Scraps Bins must have a body that is brown in  
728           color, and a lid that is black in color. Hardware such as hinges and wheels on the Food Scraps  
729           Containers may be a different color.
- 730           6.    C&D Bins and Roll-Off Boxes. Bins and Roll-Off Boxes for Collection of C&D may be in any  
731           color, provided that the colors are consistent with the material-specific Container color  
732           requirements, (green Container for Organic Materials, blue Container for Recyclable  
733           Materials, black Container for Solid Waste) and provided that the C&D Container colors are  
734           consistent for all C&D Containers. The C&D Container color shall be reviewed and approved  
735           by the City.
- 736           B.    Labeling Requirements. Upon City direction, Contractor shall provide Customers with Containers  
737           that have SB 1383-compliant labels or in-mold labels consistent with the requirements of this

Section 4.8.3. At least six (6) months prior to Commencement Date, City and Contractor shall meet and confer to finalize Contractor Container labeling requirements.

1. **Labeling Existing Containers.** On or before the Commencement Date, Contractor shall place a label on each Container that has been provided to Customers and any Containers delivered to Customers thereafter. Contractor shall place the label on the body of each Container or Container lid. Container labels shall clearly indicate what materials are allowed to be placed in each Container and what materials are Prohibited Container Contaminants for each Container. Container labels shall include language or graphic images, or both.

Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the Contract Manager for approval.

2. **Imprinted or In-Mold Labels for New Containers.** On or before the Commencement Date, Contractor shall provide Containers with imprinted text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the Contract Manager for approval.

#### 4.8.4 Food Recovery Program

Contractor shall cooperate with, and as directed by City Contract Manager coordinate with the City and third parties in the implementation, expansion, and operation of Edible Food recovery efforts in the City.

Contractor shall conduct inspections of and provide City-developed educational materials to Tier One and Tier Two Commercial Edible Food Generators in accordance with Section 4.8.1 and Exhibit K.

Contractor shall support the recovery of Edible Food from special events in accordance with Section 4.7 and 14 CCR Chapter 12 Section 18991.3. Contractor acknowledges that efforts to recover Edible Food at the special events may be conducted by others; and, Contractor agrees not to interfere with such activities.

Contractor shall submit Edible Food recovery reports to the City as specified in Exhibit D.

#### 4.8.5 SB 1383 Generator Waiver Program Coordination

##### A. Types of Generator Waivers

*{Specialty: The following applies to the extent the City elects to grant one or more of the SB 1383 generator waivers; they are discretionary under SB 1383.}*

1. **General.** The following SB 1383 waivers are defined in 14 CCR Article 12 Section 18984.11, for implementation, individually or collectively, at City discretion. Should the City elect to allow one or more Generator waivers pursuant to SB 1383, Contractor shall coordinate with City as necessary to comply with this Section 4.8.5. Contractor understands and accepts that Contractor's scope of services, and provision of services may be affected by City grant of waivers. Contractor shall cooperate with, and as directed by City Contract Manager

coordinate with the City regarding verification of eligibility for, and issuance of waivers. Waivers issued shall be subject to compliance with SB 1383 requirements or other requirements specified by the City.

2. **De Minimis Waivers (Three-Container Systems).** The City may elect to waive a Commercial Customer's obligation to comply with some or all of the Recyclable Materials and Organic Materials requirements as set forth in this Agreement, pursuant to SB 1383, and in the Sunnyvale Municipal Code if the Commercial Customer provides documentation or the City has evidence demonstrating one of the following de minimis conditions:

a. The Commercial Customer's total Solid Waste Collection service is two (2) cubic yards or more per week, and its Organic Materials or Recyclable fibers comprises less than twenty (20) gallons per week, per applicable Container, of the Commercial Business' total waste; or,

b. The Commercial Customer's total solid waste Collection service is less than two (2) cubic yards per week, and its Organic Materials or Recyclable fibers comprises less than ten (10) gallons per week, per applicable Container, of the Commercial Business' total waste.

3. **Physical Space Waivers.** The City may elect to waive a Commercial Customer's or Property Owner's obligation to comply with some or all of the Recyclable Materials or Organic Materials Collection service requirements as set forth in this Agreement, pursuant to SB 1383, and in the Sunnyvale Municipal Code if the Commercial Customer or Property Owner provides documentation, or the City has evidence from its staff, the Contractor, licensed architect, engineer, or similarly qualified source demonstrating that the Premises lacks adequate space for Recyclable Materials and/or Organic Materials Containers. Should the City elect to grant such physical space waivers, Multi Family Customers that do not have sufficient space to comply with some or all of the Organic Materials Collection service requirements set forth in this Agreement, may be required to Self-Haul Organic Materials to the Approved Facility, subject to Applicable Law.

4. **Collection Frequency Waivers.,** The City may elect to allow the Contractor to provide Collection of Solid Waste once every fourteen (14) days, rather than once per week, for Customers that have been granted a Collection frequency waiver from the City.

B. **Contractor Recordkeeping of Generators Granted Waivers.** Upon Contractor request, no more than four (4) times per year, the City shall provide Contractor an updated listing of waivers approved by the City including the Generators' names, mailing address, service address, and type of waiver. Contractor shall maintain waiver-related records and report on waiver verifications pursuant to Exhibit D.

#### 4.9 PUBLIC EDUCATION AND OUTREACH

Section 4.9 describes the broad roles of the Parties in provision of public education and outreach efforts. Contractor's specific public education and outreach requirements are contained in Exhibit C. Contractor provision of technical assistance to Generators is described in Section 4.10.

- A. **Program Objectives.** The City shall be responsible for overseeing the design, production, distribution, and implementation of a public education and outreach program. The City's public education and outreach strategy shall focus on improving Generator understanding of the benefits of and opportunities for source reduction, Reuse, and material recovery, and supporting compliance with Applicable Laws and regulations, including, but not limited to SB 1383.

In general, City-provided public education and outreach aims to: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, Recycling, and Organic Materials recycling; (ii) instruct Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection, with specific focus on minimizing Contamination of Recyclable Materials and Organic Materials; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily reusable, or Recyclable; (v) encourage Generators to participate in Edible Food recovery efforts and source reduce wasted Edible Food; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with Recycled content materials. The cumulative intended effect of these efforts is to reduce each Generator's reliance on Contractor-provided Solid Waste Collection service and, ultimately, Disposal, and Contractor agrees to support and not undermine or interfere with such efforts.

- B. **Contractor Cooperation and Support for City Educational Efforts.** Contractor shall design and distribute some outreach materials as indicated in Exhibit C and support City in the design and distribution of all other public education and outreach materials, information, and messaging. Contractor shall cooperate and coordinate with and take direction from the City Contract Manager to ensure that public education and outreach to City residents and businesses is consistent in content, format and delivery. Contractor shall obtain prior approval from the City Contract Manager for development and/or distribution of any Contractor-provided public education materials, including, but not limited to: print, radio, television, or social media before publication, distribution, and/or release. City may require Contractor include City identification and contact information on public education materials.

- C. **Content and Production Requirements.** With the exception of items listed as Contractor responsibility in Exhibit C, the City shall be responsible, in its sole discretion, for preparing all public education materials, in accordance with the requirements of 14 CCR Chapter 12 Article 4, and may request that they be reviewed by Contractor prior to production. Contractor shall review and comment on the materials within five (5) Working Days of such request.

- D. **Contractor Website.** In accordance with Section 4.12.1, Contractor shall post all City-approved, service-related information on its web site, and shall review and update such service-related information at least once per quarter or more frequently as directed by City Contract Manager.

#### 4.10 TECHNICAL ASSISTANCE

- A. **General.** Provision of Generator technical assistance is a key element in Contractor's successful implementation of SB 1383 compliance requirements. It is City expectation that Contractor, the Subcontractor(s) hired pursuant to subsection B., and City shall work in close coordination to provide Generator technical assistance which includes in-person site visits and assessments.

Contractor staff shall not provide Generator technical assistance without prior City training, or City-approved training by subcontractor(s) provided under subsection B.

B. **Coordination with City and Third Parties.** No less than one hundred and eighty (180) days prior to the Commencement Date, City and Contractor shall confer regarding use of a third party(ies) for provision of technical assistance in support of AB 1826 and SB 1383 compliance. City may require Contractor use of a City contractor to assist both Parties in providing these services. The City anticipates the City contractor's technical assistance scope of work to include activities such as: advising Contractor and City management and staff on planning and execution of technical assistance activities; and training of Contractor and City staff. The scope of work may also include assistance with SB 1383 compliance reviews as provided in subsection C., Hauler Route reviews, and additional activities or assistance as needed. Contractor's required use of, and coordination with the City's technical assistance contractor shall in no way relieve Contractor of its responsibilities as enumerated in this Agreement.

C. **AB 1826 Compliance.** To ensure Commercial Customer compliance with AB 1826, City may categorize Commercial Customers into three different phases (phase one, phase two, and phase three) to represent varying levels of outreach and inspection to be conducted by City and Contractor. Phase one Commercial Customers are those that generate at least eight (8) cubic yards of Organic Materials per week and are not yet compliant with AB 1826. The City shall be responsible for conducting inspections, outreach, and setting up service for such phase one Commercial Customers. Phase two Commercial Customers are those that generate at least four (4) cubic yards of Organic Materials per week and are not yet compliant with AB 1826. City and Contractor shall be responsible for conducting inspections, outreach, and setting up service for such phase two Commercial Customers. City shall notify Contractor of which phase two Commercial Customers are the responsibility of Contractor. Phase three Commercial Customers are those that generate at least four (4) cubic yards of Solid Waste per week and are not yet compliant with AB 1826. The Contractor shall be responsible for conducting inspections, outreach, and setting up service for all such phase three Commercial Customers.

D. **SB 1383 On-Site Compliance Reviews.** Beginning on the Commencement Date, Contractor shall conduct an SB 1383 assessment for each Multi-Family and Commercial Customer within the City. Contractor shall follow the compliance review protocol provided in Section 4.8.1.B as well as noticing procedures provided in Section 4.12.3. Upon provision of service to each new Multi-Family and Commercial Customer, Contractor shall conduct compliance reviews for SB 1383. The assessment shall identify requirements for the regulated entity under SB 1383 (including, but not limited to, specific requirements for Commercial Edible Food Generators) and assess the current level of compliance with those requirements. All existing Recyclable Materials and Organic Materials reduction programs, developed pursuant to SB 1383, shall be noted and quantified in the assessment documentation and shall be submitted to the City as provided in Exhibit D. The Contractor shall identify opportunities for reduced Disposal of Recyclable Materials and Organic Materials, including source reduction and Edible Food recovery.

Beginning July 1, 2022, and annually thereafter, Contractor shall confer with City Contract Manager, and shall re-visit some or all non-waived Generators required to enroll in Collection service pursuant to the Sunnyvale Municipal Code. The Contractor shall ensure that these Generators are participating in Recyclable Materials and Organic Materials Collection Service. If the Generator is not in compliance or is not participating, the Contractor's representative shall attempt to resolve

any logistical barriers to compliance with City's Collection service requirements and assist the Customers with selecting appropriate Service Levels for Discarded Materials. Contractor shall provide ongoing, on-site training for: (i) Commercial Generators' staff regarding SB 1383 requirements, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and, (ii) Multi-Family Customers' staff, including but not limited to: the property manager, janitorial staff, maintenance, and any other on-site staff members or contractors that handle Discarded Materials.

#### 4.11 BILLING

A. **Billing by City.** City shall prepare, mail and collect bills for Solid Waste Collection services provided by Contractor as a part of the municipal utility billing system. City shall retain all sums it collects, and Contractor has no claim to them. Contractor shall timely comply with City's billing protocol and report to the Utility Division of the City Finance Department both regular and special Customer billable services at the scheduled time, by the means and media and in the manner prescribed in Section 4.12 including additional Containers that Contractor Collects but that are not recorded as part of that Customer's regularly scheduled service accounts.

B. **Billing by Contractor.** Contractor shall prepare, mail, and collect bills for all specialized, on-call Collection services provided by it which are not billed through City's municipal utility billing system, in accordance with Section 4.12.

Contractor shall prepare and issue formal billings for services it provided, including subsequent to issuing written receipts for services paid for in cash.

Contractor shall only bill and collect City approved Rates.

C. **Reports by Contractor of Billings.** Contractor will submit to City three (3) copies of a written report, in a form acceptable to and approved by City, listing by date and amount all bills and cash receipts issued under Section 4.11.B. Contractor will submit the report covering the immediately preceding month on or before the 5th day of each month or within 3 Working Days of City request.

City will receive full credit, against Contractor's Payment due under Article 8 for all services performed and billed by Contractor under authority of the Franchise and this Agreement. The credit is based on invoices billed and the credit risk is for account of Contractor, which is solely responsible for taking necessary steps to collect its bills. City has no liability or responsibility for Customers' nonpayment of Contractor's bills. Contractor may require prepayment from Customers that Contractor bills.

D. **City's Right to Direct Termination of Service to Premises.** City may direct Contractor to suspend or terminate solid waste collection services from any Premises if the Owner or Occupant thereof (or other party responsible for payment of City's utility bills) is delinquent in payment of such bills. City indemnifies and holds Contractor harmless from any liability or costs associated with Contractor's suspending or terminating pursuant to directions of City under this Section. Contractor will promptly implement City directions to suspend or terminate service.

- E. **Contractor Use of Technology in Billing.** Contractor shall take City direction regarding the use of billing-software systems which may be required to operate in compatibility with a City Customer Relationship Management System (CRM), as provided in Section 4.12.2, or other systems for billing.

## **4.12 CUSTOMER SERVICE PROGRAM**

Contractor acknowledges that provision of high quality Customer service in coordination with the City is among the most important Contractor functions specified in this Agreement. Contractor acknowledges that Customer contact with Contractor's employees by telephone, email, website, and such other electronic means as City may direct, is critical in establishing and maintaining good Customer service, relations, and satisfaction. Contractor systems and format for recording and responding to Customer complaints, inquiries, and service orders shall be compatible with City systems and are subject to review and approval of the City Contract Manager.

### **4.12.1 Program Requirements**

- A. **Office.** Contractor shall establish and maintain a business office for purposes of carrying out its obligations under this Agreement.

- B. **Office Hours.** Contractor shall keep its office open to the public from 8 a.m. to 5 p.m. Monday through Friday, and 9:00 a.m. to noon on Saturdays. Contractor may close its office on Sundays and those holidays listed in Section 5.2.

- C. **Availability of Representatives.** Contractor shall make its representatives available during the office hours to communicate with the public and City in person by telephone, and by email. Contractor representatives assisting the public shall be knowledgeable regarding provision of all services and rates.

- D. **Telephone.** Contractor shall throughout the Term of this Agreement use, maintain, and pay all costs associated with operation of a telephone system that logs and stores information related to all calls received. The telephone system shall be made available for Customers to leave a message twenty-four (24) hours per day, and affords Customers direct contact with Contractor representatives during office hours provided in subsection B. The telephone system shall be sufficient, in the sole discretion of City, to handle the volume of calls typically experienced on the busiest days, such as those that occur during implementation of new services. In accordance with Section 6.1, Contractor shall maintain all records related to Customer calls, including, but not limited to, total number of calls received, the number of calls that hang up, the number of calls placed on hold, and the duration of time that calls are placed on hold. Contractor shall track and provide City the aforementioned data on a monthly basis as part of the monthly report as provided in Exhibit D. City may request immediate update of this information, and Contractor shall respond to such request within three (3) Working Days of initial City request.

Contractor shall give City access to these records during Working Hours. If City elects to utilize a Customer Relationship Management System (CRM) or similar system during the Term of this Agreement, Contractor shall be required to utilize the same CRM system to document and maintain Customer records as required under this Section. Contractor and City shall meet no less than six (6) months prior to City's implementation of the CRM system to coordinate with Contractor. City intends to provide Customers with a seamless service experience, preferably through use of a mobile application through which a Customer can place service requests, log complaints, receive service confirmations, obtain billing information, make bill payments, and receive tailored service



and outreach messaging. Contractor shall assist the City in implementing such a system and coordinate on integration or replacement of existing Contractor CRM system(s) as needed.

**B. City-Initiated Service.** City's Utility Division will record and notify Contractor of all service orders received from Customers billed by City, such as for Customers who request "on-call" service.

Service orders include:

1. Starting new service,
2. Changing existing service level,
3. Stopping existing service
4. Changing identity of Customer (authorization, ownership or occupancy)
5. Changing Container size, type or number,
6. Requesting countertop FoodCycle kitchen pail,
7. Changing frequency of pickup,
8. Changing Container location,
9. Subscribing to backyard service for disabled or elderly in accordance with Exhibit B,
10. Subscribing to push-out service at Commercial/ Industrial or Multi-Family Premises,
11. On-Call service, including additional curbside Single Family service; Debris Box Collection service; and, Compactor service.

If Contractor receives service orders via telephone from Commercial/Industrial Customers and their billing is maintained by City, Contractor shall transfer such telephone calls to the Utility Division of the City's Finance Department. If Contractor receives service orders in electronic form or in-person from Commercial/Industrial Customers and their billing is maintained by City, Contractor shall transmit such service orders to City via Contractor's electronic transfer system or another form approved by the City for recording in City's municipal utility billing system.

**C. Contractor-Initiated Service:** On-call/Roll-off. Contractor shall record and implement all service orders that Contractor receives from Customers, whose service accounts are not programmed into City's utility billing system, including roll-off and most "on-call" service requested from Contractor by Customers. Contractor shall submit document provision of such services on a monthly basis in accordance with Exhibit D.

**D. Service Order Documentation and Resolution.** Contractor shall record the status of unresolved service orders in Contractor's computerized customer service system, as described in this subsection (D). Such status notes shall clearly indicate the nature of the service order and the approximate day and time the service order will be resolved.

1013 Contractor shall provide to City a list of all outstanding service orders that have not been completed  
1014 within two (2) weeks of service order receipt by Contractor from City and Customers. The  
1015 outstanding service order list shall include Customer account information, type of service order, and  
1016 date of service order submission for each service order identified. Contractor shall provide this list,  
1017 in a format approved by City, at least three (3) Working Days prior to City and Contractor's monthly  
1018 Franchise Roundtable Meeting at which time Contractor and City will determine how and when  
1019 outstanding service orders will be resolved.

1020 **E. Customer Complaint Documentation and Resolution.** Contractor is responsible for the prompt and  
1021 courteous attention to, and prompt and reasonable resolution of, all Customer complaints relating  
1022 to service and billing for those services billed by Contractor or City.

1023 Contractor shall record in a separate digital log all complaints, noting the name, address and  
1024 telephone number of complaining caller; date and time that the complaint was received;  
1025 identification of employee receiving complaint; description of complaint and characterization of  
1026 complaint type (such as missed pickup, spilled trash, noise, etc.); description of response; and  
1027 description and date of resolution, all in accordance with Section 6.1. Contractor shall make  
1028 available this digital complaint log for inspection by City during Working Hours.

1029 Contractor shall utilize a "Customer is always right" approach, shall not challenge or dispute the  
1030 Customer's assertions or Complaints, and shall at all times prioritize Customer satisfaction.

1031 In addition, Contractor shall compile a summary statistical table and / or graph of the digital  
1032 complaint log and submit the table and / or graph to City as part of the monthly report as provided  
1033 in Exhibit D. Contractor shall retain such logs for the time required in Section 6.1.

1034 Contractor shall respond to all complaints from Customers as provided in this Section 4.12.  
1035 Contractor's timely response to complaints does not excuse Contractor's breach of obligation to  
1036 provide timely service (such as a missed collection). Despite such timely response, City may assess  
1037 liquidated damages related to Contractor's breach of obligation (such as missed collections), as  
1038 provided in Section 10.6 and Exhibit F. Contractor shall make written communication of the  
1039 response of Contractor to the caller within five (5) Working Days of receipt of the complaint.

1040 . Contractor shall digitally track the resolution of complaints in a manner that is approved by the  
1041 City, and that allows the City to inspect the status of Customer complaints during Working Hours.  
1042 Such digital tracking shall indicate the exact time and date Customer complaints are resolved. Upon  
1043 request by City, Contractor shall implement a City-approved real-time digital complaint tracking  
1044 system(s), for example a Collection Vehicle on-board computer unit, which allows City and  
1045 Contractor to determine, in real-time, when Customer complaints have been resolved. Contractor  
1046 shall be compensated as a change in scope, as provided in Section 3.5.

#### 1047 **4.12.3 Missed Collections and Non-Collections**

1048 No less than one hundred and twenty (120) days prior to the Commencement Date, the Parties shall meet  
1049 to discuss development of a standard operating procedure (SOP) to apply to all aspects of Customer non-  
1050 Collection noticing and resolution, and to modeled on that in use for Commercial customers. At least  
1051 ninety (90) days prior to the Commencement Date, Contractor shall submit the draft SOP for City approval,  
1052 to ensure that the SOP is finalized prior to the Commencement Date. Section 4.12.3 provides a general  
1053 framework for development of the SOP.

*{Specialty: Prior to finalizing the agreement, this section will be updated to reflect noticing and resolution approach that shall be determined during discussions between City and Specialty.}*

**A. Missed or Incomplete Collection Complaints.** When handling Customer Complaints related to missed or incomplete Collections, Contractor shall not question or contest the Customer's claim that the Collection was missed or incomplete, even in cases where the route driver recorded the Container(s) in question as already "collected" or "not out." In the event Customer has a pattern of inaccurately reporting missed Collections, including, but not limited to, reporting three (3) missed collections within a calendar year, Contractor may disqualify the Customer from receiving future missed Collection service for the subsequent twelve (12) month period. Contractor shall document Customers that are disqualified from receiving missed Collection service in its monthly report, as described in Exhibit D. At a minimum, the monthly report shall include documentation of the Customer's prior Complaints and resolution thereof; and, call center notes taken during the Complaint calls.

**B. Schedule for Resolution of Missed or Incomplete Complaints.** Contractor shall resolve each and every Customer Complaint of a missed or incomplete Collection by returning to the Customer address and completing the Collection. For all Complaints related to missed collections that are received by 3:00 p.m. on a Working Day, the Contractor shall return to the Customer address and Collect the missed materials on the same Working Day on which the missed Collection was reported. For those Complaints related to missed Collections that are received after 3:00 p.m. on a Working Day, the Contractor shall have until the end of the following Working Day to resolve the Complaint.

Contractor shall not be required to return and complete a Collection in response to a Complaint if the Contractor's driver has left a Non-Collection notice in accordance with this Section 4.12.

**C. Non-Collection, Courtesy Noticing.** Prior to the Commencement Date, Contractor shall develop, and submit to the City Contract Manager the following for review and approval:

- A template Courtesy Notice, for use in instances of improper set-out of Discarded Materials, overloaded Containers, or observed Contamination, which the Contractor, at its sole option, elects to Collect as a courtesy to the Customer.
- A template Non-Collection Notice, for use in instances of acceptable non-Collection of Discarded Materials; and,
- A template SB 1383 Complaint notice, for use in instances of Contractor investigation of SB 1383-related Customer Complaints, as described in Section 4.8.1.

In the event that Contractor encounters circumstances at a Customer Premises which prevents the Contractor from Collecting Discarded Materials which have been placed for Collection, Contractor shall leave a Non-Collection Notice at the Customer Premises clearly explaining Contractor's reason for refusal to Collect the Discarded Materials. Contractor shall not be required to Collect Discarded Materials which are reasonably believed to contain Excluded Waste, pursuant to the requirements of this Section. If Contractor intentionally refuses to Collect Discarded Materials (including Cardboard overages), but does not leave a Non-Collection notice, it shall be considered a missed Collection. Contractor may propose an alternative to a paper Non-Collection Notice left at Customer

1093 Premises (e.g. Customer notification via a phone call or e-mail) subject to City approval. Such an  
1094 alternative must involve timely and pro-active Contractor communication with Customer.

1095 **D. Courtesy Collections for Admitted Late Set-Outs.** In the event that a Customer: (i) reports that their  
1096 Container(s) were placed for Collection after Contractor's Collection vehicle had already passed the  
1097 Premises for regularly scheduled Collection; (ii) does not claim that Contractor missed the  
1098 Collection; and, (iii) requests that the Contractor return and Collect their Containers, Contractor  
1099 shall return to the Customer Premises and provide a courtesy Collection at no charge to the  
1100 Customer. Contractor is not required to provide more than two (2) courtesy Collections for admitted  
1101 late set-outs per Customer per calendar year. For Residential Customers, one (1) courtesy Collection  
1102 represents Collection of up to three (3) Carts (Recyclable Materials, Organic Materials, Solid Waste)  
1103 per incident. Contractor shall complete the courtesy Collection by the end of the following Working  
1104 Day. The provisions of this Section shall only apply if the Customer acknowledges, and Contractor  
1105 documents in writing, that the event did not constitute a missed or incomplete Collection event by  
1106 the Contractor.

1107 **E. Courtesy Collections for Contaminated Containers.** If the Collection vehicle driver observes  
1108 Contamination in excess of standards agreed upon by the Parties, the driver shall affix a Courtesy  
1109 Notice to the emptied Container. The Courtesy Notice shall: (i) inform the Customer of the observed  
1110 presence of Prohibited Container Contaminants; (ii) include the date and time the notice was left;  
1111 (iii) describe the City-approved return trip fee to Customer for Contractor to return and Collect the  
1112 Container after Customer removes the Contamination for Containers that were not emptied; and,  
1113 (iv) describe the Contamination Fee the Contractor may assess after the second Courtesy Notice has  
1114 been issued. Contractor shall not provide more than two (2) courtesy Collections for Contaminated  
1115 Containers per Customer per calendar year. The next day on which that Customer is to receive  
1116 service, following Contractor issuance of a second Courtesy Collection, the driver shall dismount the  
1117 Collection vehicle, lift the lid of the Container, and visually inspect the contents. If the driver  
1118 determines that the Container again contains Prohibited Container Contaminants, driver shall affix  
1119 a Non-Collection Notice to the Container in accordance with this Section and shall not Collect the  
1120 Discarded Materials.

1121 After the issuance of two Courtesy collections, Contractor may refuse to Collect Recyclable  
1122 Materials or Organic Materials Containers which are contaminated in accordance with Exhibit B,  
1123 and shall leave an approved Non-Collection notice informing Customer how to properly separate  
1124 materials. During the first year of the implementation of new Customer-wide Collection service  
1125 program (e.g., Organic Materials Collection), Contractor shall perform at least two (2) Courtesy  
1126 Collections per Rate Year per Customer of contaminated Recyclable Materials, and at least two (2)  
1127 Courtesy Collection per Rate Year per Customer of contaminated Organic Materials Containers, and  
1128 leave an approved Courtesy Notice notifying the Customer of the specific materials that have been  
1129 incorrectly placed, and informing the Customer in which Container the materials should be placed.  
1130 A Courtesy Collection of contaminated Recyclable Materials or Organic Materials may be made with  
1131 a Solid Waste Collection vehicle, provided that the contaminants may safely and lawfully be  
1132 Collected as Solid Waste.

1133 **F. Identification of Excluded Waste.** If a Collection vehicle driver observes Excluded Waste in an  
1134 uncollected Container, the driver shall affix a Non-Collection Notice to the Container in accordance  
1135 with this Section and shall not Collect the Discarded Materials. Driver shall record that observation,  
1136 which shall include photographic evidence, in the on-board computer system and immediately

1137 inform their route supervisor. The route supervisor shall investigate and initiate applicable action  
1138 within one (1) Business Day or sooner if the Hazardous Materials may cause immediate danger.

1139 **G. Non-Collection Notices.** Upon identification of Prohibited Container Contaminants in excess of  
1140 standards agreed upon by the Parties or Excluded Waste, Contractor shall provide a Non-Collection  
1141 Notice to the Generator. The Non-Collection notice shall, at a minimum: (i) inform the Customer of  
1142 the reason(s) for non-Collection; (ii) include the date and time the notice was left; (iii) describe the  
1143 City-approved Contamination Fee to Customer for Contractor to return and Collect the Container  
1144 after Customer removes the Contamination; and, (iv) provide a warning statement that a  
1145 contamination processing fee may be assessed in the future.

1146 The driver shall record the Non-Collection event in the on-board computer system and Contractor's  
1147 Customer service department shall update the Customer's computerized account record to note  
1148 the event.

1149 The notice may be left attached to or adhered to the Generator's Container, or at the Premises'  
1150 door or gate at the time the violation occurs, or subject to City's approval, may be delivered by e-  
1151 mail or text message, so long as a record of such communication is retained by Contractor for City  
1152 review upon request.

1153 Contractor shall submit a sample of its notice to the City for approval prior to implementing use of  
1154 it with Customers.

1155 **H. Assessment of Contamination Fees.** Six (6) months after the Commencement Date, Contractor and  
1156 City shall meet and confer to discuss the use of Contamination Fees for Customers that do not  
1157 properly sort their Discarded Materials. If the City elects to utilize Contamination Fees, Contractor  
1158 shall be required to utilize the following approach for assessment of Contamination Fees. If the  
1159 Contractor observes Prohibited Container Contaminants in a Generator's Organic Materials  
1160 Container or Recyclable Materials Container on more than two (2) consecutive occasions, the  
1161 Contractor may impose a Contamination Fee, in the amount specified by the City, and shall notify  
1162 the City in its monthly report of Customers for which Contamination Fees were assessed. Contractor  
1163 shall leave a Contamination Fee notice on the contaminated Containers, describing the specific  
1164 material(s) of issue, explaining how to correct future set outs, and indicating that the Customer will  
1165 be charged a Contamination Fee on its next bill. The format of the Contamination Fee notice must  
1166 be approved by the City Contract Manager. Contractor shall Collect the contaminated Recyclable  
1167 Materials or Organic Materials as Solid Waste and Transport the material to the Approved Facility.

1168 **I. Communications with Customer.** Whenever a Container at the Premises of a Commercial or a Multi-  
1169 Family Customer is not Collected, Contractor shall contact the Customer on the scheduled Collection  
1170 day to explain why the Container was not Collected. Contractor shall contact such Customers  
1171 through the application of a Container tag, by electronic communication, or phone call, provided  
1172 that if Contractor does not possess an email address or phone number for the Customer, Contractor  
1173 may provide a written communication, which shall include a request for an email address or phone  
1174 number for future notifications. Whenever a Container is not Collected because of excess  
1175 Contamination, a Customer service representative shall contact the Customer to discuss, and  
1176 encourage the Customer to adopt proper Discarded Materials preparation and separation  
1177 procedures.

1178 **J. Contractor Return for Collection.** Upon request from Customer, Contractor shall Collect Containers  
1179 that received Non-Collection notices within one (1) Working Day of Customer's request if the

request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill Customer for the extra Collection service event ("return trip pick-up") at the applicable City-approved Rates only if Contractor successfully notifies Customer of the premium Rate for this service at the time the request is made by Customer.

**K. Disposal of Contaminated Materials.** If the Contractor observes a visible Prohibited Container Contaminant in a Generator's Organic Materials Container or Recyclable Materials Container, Contractor may Dispose of the Container's contents provided Contractor complies with the noticing requirements of this Section 4.12.3.

**L. Record of Non-Collection.** Contractor shall maintain electronic records of all non-collection notices, listing all taggings, the addresses of the parties involved, the date of the notice, the reason for the notice, and the date and manner of resolution of each instance. Contractor shall provide the above detail on a monthly basis as provided in Exhibit D. Contractor shall retain the Non-Collection log for the Term of the Agreement.

#### **4.12.4 Customer Satisfaction Survey**

At City's own expense, City may at any time conduct surveys of customer satisfaction. In such instances, Contractor shall assist City if and as requested. If City identifies areas of inadequate customer service, City may direct Contractor take whatever action is deemed necessary by City to bring service to an acceptable level. The results of surveys will be made available to Contractor upon request.

Contractor shall provide City access to Contractor's customer service department at any time during regular City business hours for purposes including monitoring the quality of customer service or researching customer complaints.

Contractor shall provide a sufficient level of training, as determined by the City, to one (1) or more City employee(s) regarding the use of Contractor information systems as described in this Section.

Contractor shall designate one (1) member of Contractor staff to work directly with such City employee(s). Contractor shall provide such City employee(s) with access to Customer service, call center, and operations information systems in order to validate Contractor performance standards and recommend changes to Customer Service Levels to resolve service issues or otherwise address Customer needs. In the event that recommended Service Level changes are made, the designated City staff will work with Contractor's route manager to make such changes, which shall not be denied by Contractor except for reasons related to Customer, route driver, and/or equipment safety.

Contractor shall also provide access to Customer contact information (including email addresses) for purposes of City-provided public education and outreach activities. In addition, Contractor shall ensure that the City Contract Manager and any other City staff, as requested by the City, have read-only access to all service order and Customer service records, and to all CSR notes entered into Contractor's internal information systems. Such read-only access is intended to provide the City the ability to review notes related to Customer service and/or billing issues.

#### **4.13 TECHNOLOGY INNOVATION**

City expects, and Contractor acknowledges and accepts Contractor playing a proactive and cooperative role in technology innovation related to all aspects of provision of service under this Agreement. This responsibility includes, but is not limited to identifying and recommending City evaluation of new

hardware and software, and new uses of existing hardware and software, as well as flexibility in taking City direction in using or interfacing with City hardware and software. Contractor shall recommend and/or take direction from the City, regarding pilot testing of technology.

#### 4.14 SERVICE EXEMPTIONS

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

### ARTICLE 5. STANDARD OF PERFORMANCE

#### 5.1 GENERAL

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

#### 5.2 OPERATING HOURS AND SCHEDULES

*{Specialty: Collection hours for the Downtown area are subject to City review and modification}*

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

**1. Residential Premises.** Unless otherwise directed by City, Collection from Residential Premises shall only occur between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday.

**2. Commercial Premises.** Unless otherwise directed by City, Collection from Commercial Premises that are two hundred (200) feet or less from Residential Premises shall only occur between the hours of 7:00 a.m. and 8:00 p.m., Monday through Saturday. Unless otherwise directed by City, Collection from Commercial Premises more than two hundred (200) feet from Residential Premises shall only occur between the hours of 6:00 a.m. and 8:00 p.m., Monday through Saturday.

**3. Downtown.** Unless otherwise directed by City, and as further described in Exhibit L Downtown Area Map, Collection from Commercial Premises located within the Downtown boundaries shall only occur between 7:00 a.m. and 8:00 p.m. Monday through Friday. Unless otherwise directed by City, Collection from Residential and mixed-use Premises located within the City Center boundaries shall only occur between 7:00 a.m. and 8:00 p.m. Monday through Friday.

**4. City Facilities.** Unless otherwise directed by City, Contractor shall Collect from City facilities Monday through Friday.

- B. Holiday Collection Schedule.** Contractor, at its sole discretion, may choose not to provide Collection services on a Holiday. In such event, Contractor shall provide Collection services to Customers on the day following the Holiday thereby adjusting subsequent work that week. In such instances, normally scheduled Friday Collection Services shall be performed on Saturday. If the Holiday falls on a Saturday, Contractor shall provide Collection service the following Monday. Customer service days shall be returned to the normal schedule within one (1) week of the Holiday. Regardless of what day the Holiday falls on, Contractor shall provide Collection service that meets the minimum frequency requirement of one (1) time per week. In accordance with Exhibit C, Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at least two (2) weeks prior to the change. Such notice shall be in the form of a written notification mailed by Contractor to affected Customers. Contractor shall also post Holiday Collection notices on its website and social media platforms, and may post such information in local online and print newspaper publications.

### **5.3 COLLECTION STANDARDS**

- A. Care of Private and City Property.** Contractor shall use due care when handling all Discarded Materials Containers. Contractor shall ensure that Containers are not thrown from Collection vehicles, roughly handled, damaged, or broken. City shall refer Customer or City complaints about damage to private property or City property to Contractor. Contractor shall repair all damage to private and public property caused by its employees.

- B. Servicing Containers.** Contractor shall Collect and return each Container to the location where the Occupant placed the Container for Collection. Contractor shall place the Containers upright with lids properly secured. Contractor shall ensure that after providing Collection service its employees close and secure all gates, doors, and enclosures. Contractor shall avoid crossing landscaped areas and climbing or jumping over hedges and fences. For Customers other than Single-Family Residential Customers, Contractor shall, without additional charge to the Customer, pull or push Containers up to ten (10) feet from the location where the Occupant placed the Container for Collection to the Collection vehicle for service.

Contractor, at the request of Customers, may provide special services including: (i) unlocking Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or pushing Containers distances greater than ten (10) feet. Contractor may charge Customers for such extra services at the Customer Rates approved by City for such services.

- C. Collection Regardless of Difficulty.** Contractor shall provide Collection service regardless of the difficulty in providing Collection service or the quantity of Discarded Materials generated by Customers if it is safe for Contractor's personnel to do so. Contractor may, as applicable be required to use smaller Vehicles as provided in Section 5.4.

- D. Entry onto Private Property.** Contractor may enter onto private property to provide alternative location services to the disabled or elderly in accordance with Exhibit B1. Contractor may enter onto private property to provide push out Collection service to Customers who subscribe to push out service in accordance with Exhibit B.

Contractor shall promptly repair any damage caused to private property resulting from actions under its control and/or negligence on the part of Contractor's employees or agents.



1299 Contractor may require Customers on private roads to sign reasonable road damage liability waivers  
1300 prior to operating on such private streets. If Customers on private roads fail to sign such waivers,  
1301 Contractor may, upon approval, which may or may not be conditional, from the City Contract  
1302 Manager require them to receive service at the nearest public right of way.

1303 **E. Proper Container Set Out.** Contractor may educate the public on proper set-out procedures  
1304 designed to maximize the efficiency of Collection (e.g. Carts spaced three (3) feet apart). Such  
1305 education may be provided in the form of City-approved Container tags to be affixed to improperly  
1306 placed Containers and/or City-approved guidelines for proper set out posted on Contractor's  
1307 website. However, Contractor acknowledges that such procedures are not practical in all  
1308 circumstances and failure of the Customer to follow such procedures does not constitute a reason  
1309 for non-Collection if the Discarded Materials may be safely and reasonably serviced. Contractor's  
1310 route drivers shall dismount their Collection vehicles and reposition Containers as necessary to  
1311 provide Collection service. In such instances, Contractor may leave an approved Courtesy Notice, as  
1312 described in this Section. Contractor may not require a Customer to set out the Customer's  
1313 Containers in such a manner that would block vehicle access to Customer's driveway. Contractor  
1314 and Customers may mutually agree to uncommon service locations if necessary for Collection in  
1315 specific areas (e.g. setting out all of the Carts in a court in a line down the middle of the court as  
1316 opposed to Curbside.) Such agreements between Contractor and Customer shall be reported to the  
1317 City as provided in Exhibit D.

1318 In the event that Contractor encounters circumstances at a Customer Premises which allow for safe  
1319 Collection of Discarded Materials, but do not otherwise reflect proper set-out procedures  
1320 (including, but not limited to over-full Containers, spills not caused by the Contractor, Carts placed  
1321 too close together, Carts placed in front of one another, Carts placed too close to parked cars),  
1322 Contractor shall Collect the material and follow the noticing and resolution procedures described in  
1323 Section 4.12.3.

1324 Contractor shall retrieve Containers moved by others that have been reported to Contractor by the  
1325 Customer or City on or before the end of the next day on which Contractor must provide service in  
1326 accordance with Exhibit B.

1327 **F. Multi-Family and Commercial Push Out Service.** Upon Customer request, as specified in Customer's  
1328 service subscription, and as otherwise required under the Sunnyvale Municipal Code, Contractor  
1329 shall provide push out service for Discarded Materials to Multi-Family and Commercial Premises in  
1330 accordance with Exhibits B2 and B3. Contractor shall commence push out Collection service on the  
1331 next regularly scheduled collection service day for said Customer's route following that Customer's  
1332 request for push out service. Push out services are comprised of exiting from the Collection vehicle,  
1333 moving the Customer's Container from its storage place (including enclosures) to the vehicle for  
1334 Collection, and returning the Container to its storage place.

1335 Upon City approval, Contractor may refuse to provide push out service if Customer's roadway  
1336 surface is not conducive to moving heavy Containers and/or placement of Container(s) requires  
1337 drivers to push the Container up an incline greater than three (3) degrees. Contractor shall not  
1338 provide push out service for Solid Waste Containers that are larger than four (4) cubic yards or Food  
1339 Scraps Containers that are larger than one (1) cubic yard.

- 1340 **G. Non-Collection, Courtesy Noticing.** Prior to the Commencement Date and as detailed in Section  
1341 4.12.3, Contractor shall develop and submit template notices to the City Contract Manager for  
1342 review and approval.
- 1343 **H. Contamination.** As detailed in Section 4.12.3, Contractor may refuse to Collect Recyclable Materials  
1344 or Organic Materials Containers which are Contaminated, and shall leave an approved Non-  
1345 Collection Notice informing Customer how to properly separate materials.
- 1346 **I. Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for  
1347 Collection, fuel, and other vehicle fluids while providing services under this Agreement. Contractor  
1348 shall ensure that Collection vehicle drivers utilize vehicle cameras and mirrors to identify instances  
1349 in which Discarded Materials spill onto sidewalks or streets during Collection of Discarded Materials  
1350 Containers. Upon leaving the Approved Facility, Contractor shall ensure no remaining Discarded  
1351 Materials are at risk of spilling from the Collection vehicle. If any materials are spilled or leaked  
1352 during Collection and Transportation, the Contractor shall clean up all spills or leaks before leaving  
1353 the site of the spill but in all events within two (2) Working Hours of Customer's complaint thereof  
1354 or City Contract Manager's direction. Contractor shall ensure that each Collection vehicle carries a  
1355 broom, shovel, and absorbent material at all times for this purpose; Contractor shall train its  
1356 employees in their use.
- 1357 Contractor shall not transfer loads from one vehicle to another on any public street, unless it is  
1358 necessary to do so because of mechanical failure, combustion of material in the truck, or accidental  
1359 damage to a vehicle.
- 1360 **J. Covering Loads, No Leakage.** Contractor shall place tarps on all open Drop Boxes at the pickup  
1361 location before Transporting materials to the Approved Facility and ensure the entire load is  
1362 covered without any gaps or materials sticking out of Box, and is sealed so as to ensure no leakage  
1363 of fluids. Contractor shall pay all fees charged to Contractor by the operator of the Approved Facility  
1364 for improperly covered loads or purchase of a tarp, and those fees shall be considered non-  
1365 allowable costs under Exhibit E.
- 1366 **K. Clean Up.** Drivers shall use on-board cameras and mirrors to spot any Discarded Material falling  
1367 from any Container during Collection, and shall immediately clean up the litter or spillage. Drivers  
1368 shall clean up litter in the immediate vicinity of any Discarded Materials storage area (including the  
1369 areas where Collection Bins and Debris Boxes are delivered for Collection) whether or not  
1370 Contractor has caused the litter as soon as possible, but in all events within two (2) Working Hours  
1371 of Customer's complaint thereof or City Contract Manager's direction. Contractor shall discuss  
1372 instances of repeated spillage not caused by Contractor directly with the Customer responsible and  
1373 will report such instances to City in its monthly report filed in accordance with Exhibit D. City shall  
1374 attempt to rectify such situations with the Customer, including issuance of Customer fines in  
1375 accordance with the Sunnyvale Municipal Code, if Contractor has already attempted to do so  
1376 without success.
- 1377 **L. Clean Up of Illegal Dumping.** Contractor shall respond to all calls and electronic notifications from  
1378 City regarding spilled or illegally dumped Discarded Materials, including Bulky Items, during Working  
1379 Hours and, in emergencies, at night and on weekends. Contractor shall Collect and deliver such  
1380 Discarded Materials to the Approved Facility, provided it does not exceed in volume the amount  
1381 which can be Collected by a two-person crew in a large pick up, truck, or Collection vehicle.

**M. Development and Review of Collection Specifications.** Contractor shall work with the City to develop standard specifications for Collection Container enclosures at Commercial and Multi-Family Premises. These specifications shall be developed to ensure that the Collection Container enclosures are built to provide adequate space for and suitable configuration to allow the Contractor to safely and efficiently service Recyclable Materials, Organic Materials, and Solid Waste Containers. Contractor's Operations Manager or other appropriately qualified staff shall, upon request by the City Contract Manager, provide a review of plans for new Multi-family and Commercial development or project design drawings. Contractor shall provide comments and recommendations resulting from the review in writing within five (5) Working Days of receipt of the documents for review. In each review report, Contractor shall comment on the acceptability of the proposed arrangements in terms of: i) the adequacy of space for Recyclable Materials, Organic Materials, and Solid Waste Containers; ii) the accessibility of the Containers for Collection including whether additional charges (e.g., push/pull, locking, etc.) would apply; iii) ease of use of Containers by tenants; iv) Collection vehicle accessibility to Containers, enclosures or, staging areas; and, v) equipment compatibility of customer-owned containers (e.g., compactors, compactor bins, etc.).

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

#### **5.4 COLLECTION VEHICLE REQUIREMENTS**

**A. General Requirements.** Contractor shall maintain all properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times. Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available during Working Hours on Working Days at least one (1) back up vehicle for each type of Collection vehicle used (including side loaders, front end loaders, roll off, and rear loader) to respond to scheduled and unscheduled maintenance, service requests, Complaints, and emergencies.

Contractor shall register all vehicles used by Contractor in providing Discarded Materials Collection services with the California Department of Motor Vehicles. Contractor will provide copies of proofs of purchase of all vehicles, DMV registrations and vehicles' insurance to the City Contract Manager as provided in Exhibit D. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All vehicles acquired prior to the Commencement Date shall meet On-Road Heavy Duty Vehicle emissions requirements for model year 2020, regardless of the actual model year of Contractor's vehicles, and generally comply with all Federal, State, and local laws and regulations. Vehicles acquired on or after the Commencement Date shall meet all emissions requirements in Applicable Law as of the purchase date. Contractor's vehicles shall utilize Recycled motor oil to the extent practicable.

Collection vehicles used to service Single-Family Premises shall have the capability of carrying and safely transporting empty and full Used Oil Recovery jugs and filters, the capacity to Collect and transport loose Cardboard overages, as well as the capacity to carry household batteries to ensure that Contractor is capable of complying with Exhibit B.

1426 Contractor shall notify City of all Contractor's proposed acquisitions of new Collection vehicles and  
1427 acquire those vehicles only following City Contract Manager approval.

1428 **B. Fleet Planning.** Consistent with the City's climate action plan, Contractor shall proactively take such  
1429 steps as are necessary to transition the vehicle fleet used to provide Collection services under this  
1430 Agreement to reliance on electricity. In the near-term, Contractor shall transition from use of CNG  
1431 (compressed natural gas) to RNG (renewable natural gas) that is SB 1383 compliant. Contractor shall  
1432 quarterly inform City on status of this transition. Contractor shall report to the City no less than  
1433 annually on the status of the transition, as provided in Exhibit D. Parties shall, no less than annually  
1434 confer on the degree which it is technically and economically feasible to transition some or all  
1435 vehicles to electricity.

1436 *{Specialty: The above will be revised as necessary following review of your proposal for fleet*  
1437 *planning.}*

1438 **C. Fuel Use.** Contractor is solely responsible for ensuring safe and efficient use of fuel consistent with  
1439 the requirements of Section 5.4.B.

1440 *{Specialty: The above will be revised following review of your proposal for fuel use.}*

1441 **D. Fueling Station.** Contractor is solely responsible for ensuring safe and efficient operation of the  
1442 fueling station. Contractor shall enter into a subcontract for operations and maintenance of the  
1443 fueling station, as provided in Section 3.3.

1444 *{Specialty: The above will be revised and added to following review of your proposal for the fueling*  
1445 *station.}*

1446 **E. Tare Weights.** No less than thirty (30) calendar days prior to the Commencement Date, Contractor  
1447 shall coordinate with Approved Facility operator to ensure that all vehicles used by Contractor to  
1448 deliver Discarded Materials to the Approved Facility(ies) are weighed to determine unloaded  
1449 ("tare") weights. Contractor shall ensure that for each vehicle, operator electronically records the  
1450 tare weight, identifies vehicle as Contractor-owned, and provides a distinct vehicle identification  
1451 number. As provided in Exhibit D, Contractor shall provide City with an initial report listing the  
1452 vehicle tare weight information. Contractor shall promptly weigh additional or replacement vehicles  
1453 prior to placing them into service. Contractor shall coordinate with the Approved Facility operator  
1454 to recheck tare weights at least annually, or within fourteen (14) calendar days of a City request,  
1455 and shall re-tare vehicles immediately after any major maintenance or service event.

1456 If vehicle receiving and unloading operations are recorded on video cameras at the Approved  
1457 Facility, Contractor shall coordinate with Approved Facility operator to make those videos available  
1458 for City review, and shall provide the name of the driver of any particular load if available.

1459 **F. Vehicle Operation.** Contractor shall operate Collection vehicles in compliance with the California  
1460 Vehicle Code and all applicable safety and local ordinances. Contractor shall not load vehicles in  
1461 excess of the manufacturer's recommendations or limitations imposed by State Department of  
1462 Transportation or local weight restrictions on Collection vehicles.

1463 Contractor shall ensure that Contractor's employees operate Contractor's Collection vehicles in a  
1464 manner that prevents tire skidding damage to the finished pavement surfaces of City streets during

1465 routine stopping and starting to Collect Discarded Materials. Contractor shall use cameras and other  
1466 methods to detect tire skidding and will take disciplinary action against employees responsible for  
1467 skid marks on private pavement or City streets.

1468 **G. Noise.** All Collection operations shall be conducted as quietly as possible. Contractor shall  
1469 incorporate noise control features throughout the entire Collection vehicle and shall conform to  
1470 applicable Federal, State, County, and City noise level regulations, including the requirement that  
1471 the noise level during the stationary compaction process not exceed seventy-five (75) decibels with  
1472 the exception of sixty-five (65) decibels for one-minute duration. All decibel readings shall be based  
1473 on a distance of ten (10) feet from any part of the Vehicle. The City may conduct random checks of  
1474 noise emission levels to ensure compliance with this standard. The City may request Contractor to  
1475 check any piece of equipment for conformance with the noise limits in response to Complaints  
1476 and/or when the City Contract Manager believes it is reasonable to do so.

1477 **H. Appearance and Signage.** Collection vehicles shall present a clean appearance while providing  
1478 service under this Agreement. Contractor shall paint all Collection vehicles uniformly in a color  
1479 approved by City. Contractor shall submit the specifications for all vehicles for City approval prior to  
1480 their use. Contractor's name, local telephone number, and a unique vehicle identification number  
1481 designated by Contractor for each vehicle shall be displayed on all vehicles in at least three (3) inch  
1482 characters on the front, back, and sides of each Collection vehicle. Contractor shall not place the  
1483 City's logo on its Collection vehicles.

1484 Vehicles shall be equipped with sign board holders or other hardware to allow public education  
1485 signage of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides of the  
1486 vehicle. Such public education signage shall be approved by City prior to use and shall be changed  
1487 twice per year, or as directed by City Contract Manager, upon City direction.

1488 Contractor shall label the back of FoodCycle Collection vehicles in a manner that indicates which  
1489 side is used for the Collection of Food Scraps and which side is used for the Collection of Solid Waste.  
1490 Such FoodCycle Collection vehicle signage must be approved by City prior to use.

1491 Contractor shall label the back of Dual Stream Recyclable Materials Collection vehicles in a manner  
1492 that indicates which side is used for the Collection of Recyclable containers and which side is used  
1493 for the Collection of Recyclable fibers. Such Dual Stream Recyclable Materials Collection vehicle  
1494 signage must be approved by City prior to use.

1495 **I. Cleaning and Painting.** Contractor shall thoroughly wash vehicles used in the Collection of Discarded  
1496 Materials at least once every Working Day and thoroughly steam clean them at least once every  
1497 week. City may inspect Collection vehicles at any time to determine compliance with sanitation  
1498 requirements. Contractor shall make Collection vehicles available to the Santa Clara County Health  
1499 Department for inspection, at any frequency it requests. Contractor shall maintain records of vehicle  
1500 cleaning and painting by department, vehicle and date, for annual submittal to the City as provided  
1501 in Exhibit D.

1502 Contractor shall repaint all vehicles used in Collection of Discarded Materials at least once every  
1503 year, unless (1) the City Contract Manager determines that repainting specific vehicles at that  
1504 frequency is not necessary because the vehicles' appearance is satisfactory, in which event  
1505 Contractor shall repaint them the following year or at such time as City Contract Manager  
1506 determines that repainting is necessary to ensure that the vehicles give the appearance of having

been repainted within twelve (12) months; or, (2) the City Contract Manager determines that repainting specific Collection vehicles at a shorter frequency is necessary to ensure that such vehicles give the appearance of having been repainted within twelve (12) months, in which event, Contractor will repaint them within thirty (30) days' notice from City Contract Manager's direction to repaint.

- J. Inspections and Repairs.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired, operate properly, and perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records with respect to each Collection vehicle of all vehicle maintenance, recorded according to date and mileage and shall make such records available to the City Contract Manager upon request.

Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repairs, which must include the date, mileage, nature of repair, and the signature of a maintenance supervisor that the repair has been properly performed.

- K. Vehicle Inventory.** Contractor shall furnish sufficient equipment to provide all service required under this Agreement, including backup Collection vehicles. Contractor shall furnish the City Contract Manager with a written inventory of all vehicles, including Collection vehicles, used in providing service, and shall update the inventory annually as part of Contractor's annual report submitted to City as provided in Exhibit D. In the inventory, Contractor shall list all Collection vehicles by manufacturer, ID number, date of acquisition, type, capacity, and decibel rating.

- L. Storage.** Contractor shall arrange to store all Collection vehicles and other equipment in safe and secure location(s).

- M. Vehicle Selection.** After consultation with and receipt of approval from City Contract Manager, and consistent with the fuel-related provisions of Sections 5.4.B. and C., Contractor may select the type of Collection vehicles to be used, or change the type of Collection vehicles previously selected, for collection of Discarded Materials for the remainder of the Term. When making recommendations, Contractor shall seriously consider the advice of the City Contract Manager and shall propose Collection vehicles that will help to promote efficiency, maintain a high level of service, reduce costs consistent with the level of service to be provided, and that will be reasonable and necessary in light of the scope of service.

Contractor shall, on an ongoing basis assess the need for use of smaller Collection vehicles, or additional smaller Collection vehicles for Collection in denser areas of the City.

## **5.5 COLLECTION ROUTES**

- A. Route Schedules.** To preserve peace and quiet, Contractor's Collection routes shall be selected in a manner that minimizes damage to City and private streets, and minimizes inconvenience and disturbance to the public.

At least ninety (90) days prior to the Commencement Date, Contractor shall provide for City approval maps defining all Collection routes, including with the days and the times at which Collection shall regularly commence for Customers and for City facilities. City and Contractor shall confer, and agree on the format of such maps prior to their development and submittal.

**B. Route Changes.** Contractor shall submit to the City, in writing, any proposed Route change affecting more than five (5) percent of the accounts on a Route (including maps thereof) not less than sixty (60) days prior to the proposed date of the change. Contractor shall not implement any Route changes without the prior review and approval of the City Contract Manager. Contractor shall notify the City not less than thirty (30) days prior to notifying affected Customers of Route changes. Contractor shall notify Customers, in writing, of planned Route changes not less than thirty (30) days before the proposed date of implementation.

**C. Route Documents.** Contractor shall maintain a routing system and make available to City upon request and at no cost to City, either electronic documents or online information containing at least the following information:

1. Maps, lists and sequence of all stops on all routes
2. Route number, name, address, day and type of collection
3. Streets serviced
4. For accounts billed by Contractor, those addresses without active accounts and the date service terminated
5. Addresses subscribing to one of the special service options and which option it is
6. Detailed service information reported by City (such as location of containers on a corner lot)

Contractor shall periodically check the routes to ensure that drivers are providing service in accordance with Contractor's routing system. Upon receiving City approval to change its routing system, Contractor shall update its Route documents, and provide to City as specified in Exhibit D.

**D. Annual Route Checks.** City and Contractor shall review current routes and routing system no less than annually for changes in total accounts or other factors that may affect routing. Otherwise, Contractor shall be prepared to review routes or routing system within ten (10) days of City Contract Manager request.

**E. Route Audits.** The City reserves the right to conduct audits of Contractor's Collection routes. The Contractor shall cooperate with the City in connection therewith, including permitting City employees or agents, designated by the City Contract Manager, to ride in the Collection vehicles in order to conduct the audits.

## **5.6 CONTAINER REQUIREMENTS**

**A. Containers Provided to Customers.** In accordance with Exhibit B, Contractor shall provide Containers to new Residential Customers requesting service initiation, or existing Residential Customers requesting a change in service by the next regularly scheduled Collection service day for that Customer's route following that Customer's initial request for service. Upon notification of a

1583 requested start or change in service by either a Commercial Customer, or the City Contract Manager  
1584 requesting or changing service on behalf of the Commercial Customer, Contractor shall deliver  
1585 Containers to Commercial Customers by the next Working Day. . Containers shall be shall be  
1586 designed and constructed to be watertight and prevent the leakage of liquids. All Containers shall  
1587 display the Contractor's name, logo, telephone number, website address, capacity (yards or  
1588 gallons), and an identifying inventory or serial number.

1589 Contractor shall notify the City Contract Manager of all Contractor's proposed acquisitions of new  
1590 Containers and shall acquire those Containers only following City approval, which will be deemed  
1591 given in conjunction with City's approval of Contractor's payment request documenting the  
1592 proposed acquisition.

1593 **B. Removal of Containers upon Cancellation.** Upon cancellation of any service by Customers, or upon  
1594 notification of cancellation of service by City Contract Manager, Contractor shall remove all  
1595 Containers previously supplied by Contractor from the Premises of the Customer within seven (7)  
1596 Working Days.

1597 **C. Notices Regarding Collection Requirements.** Within seven (7) days after receiving telephone,  
1598 electronic, or written notice from Customer or the City Contract Manager that a formerly  
1599 unoccupied Multi-Family Residential Premise or a Commercial Premise is occupied, or that a change  
1600 of ownership of an occupied Multi-Family Residential Premise or Commercial Premise has occurred,  
1601 and if the Multi-Family or Commercial Customer (either owner or occupant) has failed to request  
1602 service for Collection of Discarded Materials, Contractor shall give written notice to that Customer  
1603 that weekly Collection service is required by City ordinance. Contractor shall send a copy of that  
1604 written notice to City at the same time it sends the notice to that Customer.

1605 **D. Public Litter Containers.** Contractor shall service Public Litter Containers as provided in Exhibit B.

1606 **E. Container Standards**

1607 1. All new Carts and Bins shall be fitted with a radio frequency identification (RFID) chip or similar  
1608 mechanism as agreed by City Contract Manager that provides the ability to associate the  
1609 Container with a specific Customer address, and that can used for tracking, routing and  
1610 inventory purposes.

1611 2. All Carts shall be manufactured by injection or rotational molding methods and shall meet the  
1612 Cart design, color, and performance requirements provided in Section 4.8.3 and Exhibit J.  
1613 Carts shall have a useful life of ten (10) or more years as evidenced by a manufacturer's  
1614 warranty or other documentation acceptable to the City.

1615 3. All Containers with a capacity of one (1) cubic yard or more shall meet applicable federal  
1616 regulations for Bin safety and be covered with attached lids.

1617 4. Contractor shall differentiate Solid Waste Containers, Recyclable Materials Containers and  
1618 Organic Materials Containers from each other by providing Containers of different colors in  
1619 accordance with Section 4.8.3.

1620 5. Contractor shall obtain the City's approval of Container specifications, colors, and labeling  
1621 before acquisition, painting, and labeling occurs.



- 1622 6. When purchasing plastic Collection Containers, Contractor shall purchase Containers that  
1623 contain a minimum of 30% post-consumer recycled plastic content.
- 1624 7. All such Containers shall be recycled at the end of their useful life.
- 1625 F. **Container Labeling.** All markings on the Containers shall be approved by the City in advance of  
1626 ordering such Containers consistent with Section 4.8.3. On the lid of each Cart, and the body of each  
1627 Bin, Drop Box, and Public Litter Container, Contractor shall label the ultimate destination of such  
1628 materials as follows: "LANDFILL" for Solid Waste; "CONTAINERS" for Recyclable Materials that are  
1629 rigid containers; PAPER for Recyclable Materials that are composed of fibers (including, mixed  
1630 paper); "YARD TRIMMINGS" for Yard Trimmings; and, "FOOD SCRAPS" for Food Scraps. Contractor  
1631 shall imprint Recyclable Materials Containers with the recycling logo. On the body of each Cart, Bin,  
1632 and Drop Box, Contractor shall label the Container capacity (in gallons for Carts, and cubic yards for  
1633 Bins and Drop Boxes). Container body labeling shall be positioned on the side of each Container so  
1634 it is visible to the Customer (or public, in the case of Public Litter Containers) at all times.
- 1635 Containers must be in bright, readily identifiable colors to facilitate Customer's ready recognition of  
1636 Solid Waste, Recyclable Materials, and Organic Materials, in accordance with Exhibit J, and subject  
1637 to City's approval. Subject to City approval, Contractor shall display City's name, website, and  
1638 Contractor's designated telephone number using labels, decals, or other approved method. Upon  
1639 expiration or early termination of this Agreement, Contractor shall transfer access and rights of such  
1640 phone number and website to the City. Contractor shall be prohibited from including Contractor's  
1641 name and/or logo on any Containers utilized in the City.
- 1642 All Containers shall be labeled in accordance with the requirements of SB 1383 and consistent with  
1643 Section 4.8. Recyclable Materials and Organic Materials Container labels must include at least three  
1644 (3) graphic examples of materials that are accepted in the Container, and at least two (2) graphic  
1645 examples of materials that are prohibited from being placed in the Container, clearly displaying that  
1646 the prohibited materials are prohibited (using recognizable symbols). Solid Waste Container labels  
1647 must include at least two (2) graphic examples of materials that are prohibited from being placed  
1648 in the Container, clearly displaying that the prohibited materials are prohibited (using recognizable  
1649 symbols), and a statement that proper separation of Recyclable Materials and Organic Materials is  
1650 mandatory.
- 1651 All Carts shall include a high quality educational information label using in-mold technology, such  
1652 that all labeling shall be integral to the lid, through the use of injection molding, and shall not be  
1653 affixed to any part of the Cart or lid through the use of adhesives. Notwithstanding the provisions  
1654 of this Section, or the requirements of SB 1383, the in-mold lid label shall include: information about  
1655 the Collection program; acceptable materials; prohibited materials; notification forbidding  
1656 Hazardous Waste and describing proper Disposal thereof; notification forbidding scavenging  
1657 (through words and international symbols) and describing the penalties therefore under California  
1658 law or City Resolution; and, the City's name and logo. All Container label artwork shall be approved  
1659 by City prior to installing such labels on Carts, Bins, or Drop Boxes.
- 1660 G. **Repair and Replacement of Containers.** Contractor shall be responsible for repairing or replacing  
1661 Containers that are damaged during Collection operations; when Contractor determines the  
1662 Container is no longer suitable for service; or, when the City or Customer requests replacement of  
1663 a Container that does not properly function, leaks, is damaged, or is otherwise not fit for service.

1664 Contractor shall be responsible for acquiring and providing the replacement Containers. Contractor  
1665 shall repair or replace all damaged or broken Containers within three (3) Working Days of Customer  
1666 or City request, and update the inventory as required in subsection H.

1667 If so many Containers are so severely damaged due to a common design or manufacturing defect  
1668 that the frequency and type of the defect makes prompt repair or replacement not feasible using  
1669 Reasonable Business Efforts, Contractor shall diligently pursue with the manufacturer a remedy to  
1670 cure the defect and will propose to the City Contract Manager, for City's review, comment, and  
1671 approval, a plan that states how and when repair or replacement of such Containers will occur,  
1672 subject to Section 3.6.

1673 Contractor shall provide to Single-Family Customers at least one (1) free Cart replacement per any  
1674 twelve (12) month period for any reason, upon Customer request. If Customer requests more than  
1675 one (1) Cart replacement per any twelve (12) month period, Contractor shall make Carts available  
1676 at the City-approved Contractor Payment for such services. In addition, Single-Family Customers  
1677 may also request one Cart size exchange per Rate Period at no charge. All such Containers shall be  
1678 provided within three (3) Working Days of request. Contractor's failure to comply with the  
1679 Container requirements may result in assessment of Liquidated Damages pursuant to Section 10.6  
1680 and Exhibit F.

1681 **H. Inventory.** Contractor shall maintain a sufficient inventory of Containers to accommodate new  
1682 Customer requests for service, requests for changes in Service Levels (size, type, or number of  
1683 Containers) from current Subscribers, and requests for replacements due to damage to Containers.  
1684 Contractor shall provide City with updated Container inventory as provided in Exhibit D, or as  
1685 otherwise requested.

1686 **I. Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and  
1687 functional condition and present a clean, attractive appearance. Contractor shall repair or replace  
1688 all Containers damaged by Collection operations in accordance with standards specified in Exhibit  
1689 J, unless damage is caused by Customer's gross negligence, in which case, the Customer will be billed  
1690 for repair or replacement of Container at a City-approved Rate for such service. All Containers shall  
1691 be maintained in a functional condition.

1692 Contractor shall steam clean and repaint all Bins at least once each year, or more frequently if  
1693 requested by the City Contract Manager, so as to present a clean, attractive appearance. Contractor  
1694 shall require Collection Route supervisors and Collection vehicle drivers to proactively submit work  
1695 orders for Containers, including Carts and Bins, observed in the field that require maintenance,  
1696 including repair, cleaning, and repainting. In accordance with Exhibit D, Contractor shall include in  
1697 its quarterly report the number and type of work orders proactively created by Route supervisors  
1698 and Collection vehicle drivers.

1699 Contractor shall not be required to steam clean and repaint all Bins at least once per year if: (1) the  
1700 City Contract Manager determines that repainting specific Containers at that frequency is not  
1701 necessary because the Bins' appearance is satisfactory, in which event Contractor will repaint them  
1702 the following year or at such time as the City Contract Manager determines that repainting is  
1703 necessary to ensure that the Bin(s) give the appearance of having been repainted within twelve (12)  
1704 months; or, (2) the City Contract Manager determines that repainting specific Bins at a shorter  
1705 frequency is necessary to ensure that such Bins give the appearance of having been repainted within

1706 twelve (12) months, in which event, Contractor shall repaint such Bins within thirty (30) days' notice  
1707 from City directing repainting.

1708 Contractor shall clean Carts at a frequency sufficient to maintain them in a clean and attractive  
1709 condition.

1710 *{Specialty: the above paragraph (current agreement text) will be modified as needed based on your*  
1711 *cart washing proposal.}*

1712 Contractor shall offer steam cleaning service (or clean Container exchange) to Residential  
1713 Customers requesting such service, and shall charge Customers for such cleaning (or Container  
1714 exchange) at the City-approved Rate for such service. Commercial Customers shall receive one  
1715 steam cleaning per calendar year for Food Scraps Carts at no additional cost.

1716 Within three (3) days (weekend excepted) of Contractor's observation or of City Contract Manager  
1717 direction, Contractor shall remove graffiti from its Containers, unless that graffiti contains obscene  
1718 words or pictures, in which event Contractor shall remove it within forty-eight (48) hours (weekends  
1719 excepted). If requested by City Contract Manager, Contractor shall provide the City Contract  
1720 Manager with written notice of graffiti, including a description thereof within two (2) days after  
1721 Contractor discovers it.

1722 Upon request from the City Contract Manager, Contractor shall provide the City with a list of  
1723 Containers and the date each Container was painted and maintained.

1724 **J. City Ownership of Containers at End of Term.** Upon expiration or early termination of Agreement,  
1725 all Containers purchased and put into service at Customer Premises during the Term of the  
1726 Agreement shall become property of the City at no cost to the City if such Containers are fully  
1727 depreciated. All Containers purchased and put into service at Customer Premises during the Term  
1728 of the Agreement that have not been fully depreciated shall be available to the City, at the City's  
1729 option, at a cost reflecting the net book value.

## 1730 **5.7 PERSONNEL**

1731 **A. General.** Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other  
1732 personnel as may be necessary to provide the services required by this Agreement in a safe and  
1733 efficient manner. Contractor shall designate at least one (1) qualified employee as City's primary  
1734 point of contact with Contractor who is principally responsible for Collection operations and  
1735 resolution of service requests and Complaints. Such individual shall be empowered to negotiate on  
1736 behalf of and bind Contractor with respect to any changes in scope, dispute resolution,  
1737 compensation adjustments, and service related matters which may arise during the term of this  
1738 Agreement.

1739 **B. Route Supervision.** Contractor understands and acknowledges that route supervision is the primary  
1740 operations link between Contractor's drivers, and Contractor and City CSR's, and that strong,  
1741 consistent, and proactive route supervision plays a crucial role in provision of high quality Collection  
1742 service and Customer service, and in successful SB 1383 compliance.

1743 Contractor shall designate at least two (2) qualified full-time employees as route supervisors. Route  
1744 supervisors shall spend a minimum of fifty percent (50%) of their time in the field checking on all

1745 aspects of Collection operations, including responding to Customer requests, inquiries, and  
1746 complaints, and to City inquiries. Contractor shall ensure route supervisors respond to City phone  
1747 and electronic communications, regardless of media, within sixty (60) minutes from when the  
1748 message was sent. Upon City request, Route supervisors shall be available to meet City staff at  
1749 Customer Premises to provide guidance and assistance on Collection services, including, but not  
1750 limited to, right sizing service for Customers. Route supervisors shall attend monthly Franchise  
1751 Roundtable Meetings.

1752 C. **Driver Qualifications.** Contractor shall ensure that all drivers are trained and qualified in the  
1753 operation of solid waste collection vehicles and have in effect a valid license, of the appropriate  
1754 class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II  
1755 California Department of Motor Vehicles employer "Pull Notice Program" to annually monitor its  
1756 drivers for safety.

1757 D. **Uniforms.** Contractor shall require its drivers, and all other employees who come into contact with  
1758 the public to wear clean, standardized uniforms bearing Contractor's name and an identification  
1759 badge or other means of identifying the employee, all as approved by City.

1760 E. **No Gratuities.** Contractor shall not permit its employees to demand, solicit or accept, directly or  
1761 indirectly, any additional compensation or gratuity from members of the public for the collection of  
1762 Solid Waste under this Agreement.

1763 F. **Safety Training.** Contractor shall provide operational and safety training to all of its employees who  
1764 utilize or operate vehicles or equipment for Collection of Solid Waste- or who are otherwise directly  
1765 involved in Collection. Such training shall, at a minimum conform with generally accepted industry  
1766 practices for such training. Contractor shall train its employees involved in Solid Waste Collection to  
1767 identify, and not to collect, Excluded Waste. Contractor shall within sixty (60) days of the  
1768 Commencement Date provide City Contract Manager its safety policy and safety training program,  
1769 the name of its safety officer, and the frequency of its trainings. Contractor shall provide  
1770 comprehensive safety training to its employees described in this subsection no less than quarterly  
1771 and shall provide shorter, targeted safety trainings no less than monthly, or at a frequency  
1772 determined by City. As provided in Exhibit D, Contractor shall document in its quarterly reports its  
1773 conduct of safety trainings during the previous quarter, and document any changes in contact  
1774 information or safety training frequency. Contractor shall provide the most recent version of its  
1775 safety policy and safety training program with its annual report, as provided in Exhibit D. Contract  
1776 Manager or designee may attend training to observe and audit quality and content of training.

1777 G. **Employee Conduct and Courtesy Training.** Contractor shall use its best efforts to assure that all  
1778 employees present a neat appearance and conduct themselves in a courteous manner. Contractor  
1779 shall regularly train its employees (including Collection vehicle drivers, Route supervisors, and  
1780 customer service representatives) in customer courtesy, including interaction with the public,  
1781 prohibit the use of loud or profane language, and instruct collection crews to perform Collection  
1782 work as quietly as possible. Contractor shall provide comprehensive employee conduct and  
1783 courtesy training to its employees described in this subsection no less than annually and shall  
1784 provide shorter, targeted employee conduct and customer service trainings quarterly, or at a  
1785 frequency determined by City. If any employee is found not to be courteous or not to be performing  
1786 services in the manner required by this Agreement, Contractor shall take all necessary corrective  
1787 measures, including transfer, discipline or termination. If City has notified Contractor of a complaint

1788 related to discourteous behavior, upon request of City, Contractor shall reassign the employee to  
1789 duties not entailing contact with the public while Contractor is pursuing its investigation or  
1790 disciplinary process.

1791 H. **Employee Service and Agreement Training.** Contractor shall develop a training program to ensure  
1792 that all staff, including customer service representatives, Collection drivers, Route supervisors, and  
1793 supervisory staff have a full understanding of the services provided under this Agreement, and of  
1794 other Agreement requirements and provision as necessary to successfully fulfill their individual  
1795 responsibilities. Contractor shall provide comprehensive employee service and Agreement training  
1796 to its employees described in this subsection no less than annually and shall provide shorter,  
1797 targeted employee service and Agreement trainings quarterly, or at a frequency determined by City.

1798 Up to twice per year at City direction and prior to launch of new programs, Contractor's customer  
1799 service representatives and City's customer service representatives shall conduct joint customer  
1800 service trainings.

1801 I. **Driver and Route Supervisor Training.** In addition to the training requirements described in  
1802 subsections F, G and H, Contractor shall provide training to its Collection vehicle drivers, including  
1803 relief Collection vehicle drivers, and Route supervisors in Collection routing and proactive Container  
1804 maintenance resolution.

1805 Contractor shall train its Collection vehicle drivers and Route supervisors on Contractor's standard  
1806 route stop sequence for each Route that conforms to Contractor's routing guidelines established in  
1807 accordance with Section 5.5. Contractor shall require all Collection vehicle drivers, including relief  
1808 Collection vehicle drivers, to follow that sequence.

1809 Contractor shall train its Collection vehicle drivers and Route supervisors on proactively identifying  
1810 Containers that require maintenance, including repainting, cleaning, or repair. Such training shall  
1811 include a process for how Collection vehicle drivers and Route supervisors can create and submit  
1812 work orders for Containers, including Carts and Bins, which are in need of maintenance.

1813 Contractor shall revise and/or develop a driver litter abatement training program for City review  
1814 and approval. The program shall, at a minimum address the following best management practices  
1815 for litter abatement:

1816 1. Closing Container lids and right sizing service: Contractor staff will tag overfull containers with  
1817 Courtesy Notices, which will serve as outreach and education to the Customer. Photos of the  
1818 container will be taken by drivers, attached to the Customer's account, and will be available  
1819 to outreach and Customer service staff in order to demonstrate to the Customer where a  
1820 problem exists.

1821 2. Use tags to provide outreach to Customer on importance of bagging lightweight materials  
1822 such as plastic bags, film plastics, foam peanuts, and other materials that can easily become  
1823 litter due to their lightweight nature.

1824 3. Driver training on litter reduction techniques and litter removal best management practices.

1825 4. Affixing signage to the back of Contractor trucks which provides a phone number for residents  
1826 to report material spills. The litter abatement education plan shall be reviewed and approved  
1827 by City prior to use by Contractor.

1828 Contractor shall provide comprehensive driver and Route supervisor training to its employees  
1829 described in this subsection no less than annually and shall provide ongoing targeted driver and  
1830 Route supervisor trainings monthly, or at a frequency determined by City.

1831 J. **Training Materials and Documentation.** Training materials shall be tailored for each  
1832 aforementioned employee group (Collection vehicle drivers, Route supervisors, supervisory staff,  
1833 and customer service representatives) and shall be based on industry best practices and applicable  
1834 Agreement requirements. Contractor shall submit its training program materials for employee  
1835 training described in subsections F through I above to City for review and comment sixty (60) days  
1836 prior to the Commencement of the Term, or the implementation of new services. Contractor shall  
1837 incorporate City comments and obtain City approval prior to implementing the training programs.

1838 Contractor shall conduct trainings described in subsections (H) and (I) annually, prior to the  
1839 implementation of new services, or as requested by City. Contractor shall digitally record the names  
1840 and titles of employees present at all employee trainings. Contractor shall maintain such employee  
1841 attendance records in accordance with Section 6.1 and shall provide such records to City upon  
1842 request. Contractor shall submit employee training records in its annual reports, as provided in  
1843 Exhibit D.

1844 K. **Designated Staff.** Contractor shall designate one (1) qualified customer service representative to be  
1845 the primary contact for City Drop Box services provided in accordance with Section 1 and Section 8  
1846 of Exhibit B4. The City's designated Drop Box contact shall be trained in the locations of City  
1847 facilities, special events, and other locations for seasonal City clean-up services provided in Drop  
1848 Boxes. City staff may contact the designated Drop Box contact directly during the normal office  
1849 hours to schedule City clean-up services in Drop Boxes with twenty-four (24) hours' notice. The  
1850 City's designated Drop Box contact shall coordinate Drop Box requests with the Utility Division of  
1851 the City Finance Department. City staff may also contact the designated Route supervisor to request  
1852 City clean-up services in the event that the designated Drop Box contact is not available.

1853 L. **Roster of Employees.** On January 1 and on July 1 of each year of the Term, Contractor shall furnish  
1854 to City a complete roster of all employees providing -service under this Agreement, as provided in  
1855 Exhibit D. The roster must contain the name, unique employee identification number, job  
1856 classification, wage rate, and such other information as City may require.

## 1857 **5.8 HAZARDOUS WASTE INSPECTION AND HANDLING**

1858 A. **Inspection Program and Training.** Contractor shall develop a load inspection program that includes  
1859 the following components: (i) personnel and training; (ii) load checking activities; (iii) management  
1860 of wastes; and, (iv) record keeping and emergency procedures.

1861 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in: (i)  
1862 the effects of Hazardous Substances on human health and the environment; (ii) identification of  
1863 prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle  
1864 drivers shall inspect Containers before Collection when practical.

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

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

C. **Response to Excluded Waste Identified at Processing or Disposal Facility.** Materials Collected by Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal. In the event that load checkers and/or equipment operators at the Approved Facility identify Excluded Waste in the loads delivered by Contractor, such personnel shall remove these materials for storage in approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange to remove the Excluded Wastes at its cost in accordance with Applicable Laws and regulatory requirements. The Contractor may at its sole expense attempt to identify and recover the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator. Within one (1) Working Day of Generator being successfully identified, Contractor's customer service representative shall contact the Generator and provide information about the public health hazards and subsequent fines associated with Disposal of Excluded Waste.

## **5.9 CONTRACT MANAGEMENT**

City has designated staff, the City Contract Manager, to be responsible for the monitoring and administration of this Agreement. Contractor shall designate an employee to serve as Contractor's Contract Manager(s), to be responsible for working closely with the City Contractor Manager in the monitoring and administration of this Agreement. It is City assumption that Contractor's General Manager will continue to fulfill this role. The Contractor's Contract Manager shall not be involved in the management, operations, administration, marketing, or other activities of Contractor other than under this Agreement.

The Contractor's Contract Manager shall meet and confer with the City Contract Manager to resolve differences of interpretation and implement and execute the requirements of this Agreement in an efficient, effective, manner that is consistent with the stated objectives of this Agreement. Contractor's Contract Manager shall respond to City requests to meet and confer within three (3) Working Days.

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

In the event of dispute between the City Contract Manager and the Contractor regarding the interpretation of or the performance of services under this Agreement, the City Contract Manager's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event a dispute between the City Contract Manager and the Contractor results in such material impact to the Contractor, the provisions of Section 10.9 shall apply. For the purposes of this section, "material impact" is an amount equal to or greater than fifty thousand dollars (\$50,000).

City Contract Manager or their designate shall have the right to observe and review Contractor operations and enter Contractor's Premises for the purposes of such observation and review, including review of Contractor's records, during reasonable hours with reasonable notice. In no event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after receiving such a request. City Contract Manager shall be granted access to Contractor's information systems and Customer service database in accordance with Section 4.11.

## **5.10 ENVIRONMENTALLY-PREFERRABLE PURCHASING**

Contractor shall, prior to the Commencement Date, develop and implement an "Environmentally Preferable Purchasing Policy". The policy shall be subject to review, request for modification, and approval by the City Contract Manager. The policy shall, at a minimum, include provisions for: (1) purchasing materials with the highest available recycled content without materially degrading the performance of the product; (2) purchasing materials that utilize non-toxic, non-polluting alternative chemistry; (3) a twenty percent (20%) price preference, relative to virgin or toxic content products, for purchasing environmentally preferable materials and supplies; and, (4) source reduction and pollution prevention strategies for Contractor's operations. Contractor shall include a summary of their environmentally-preferable purchasing activities in their Annual Report to City (e.g., volume of recycled content paper purchased, source reduction strategies implemented during the year and the quantified results of that strategy, etc.).

## **5.11 LOCAL PURCHASING PREFERENCE**

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

## **5.12 PERFORMANCE IMPROVEMENT OVER TIME**

Contractor shall perform services under this Agreement in a manner which supports the City's environmental goals. This includes, but is not limited to, providing Collection services, education, and outreach to Customers and in the community which promote Source Reduction, reuse, Recycling, Composting, and other methods to reduce Disposal. Contractor is required to recommend opportunities for Customers to reduce their Solid Waste subscription levels and increase the level of Recyclable Materials and Organic Materials service received. City may require Contractor to assist City with additional aspects of SB 1383 compliance beyond those contained in the Agreement as of the Effective Date, as provided in Exhibit K (SB 1383 Roles and Responsibilities) pursuant to Section 4.8, and subject to the provisions of Section 3.5.



1949 Common means of measuring progress towards regulatory compliance, such as the percentage of total  
1950 materials, continue to be of value in measuring community-wide progress towards goals for reduced  
1951 disposal and zero waste. Other related measures, such as pounds per day disposed per resident may  
1952 continue to be useful on a community-wide basis, but like diversion these measures are influenced by a  
1953 broad range of societal factors, including changes in population and demographics, and economic  
1954 strength. Broad measures of diversion are of limited usefulness for measuring changes in compliance with  
1955 the generator-level requirements of SB 1383. Successful implementation of SB 1383 will require broad,  
1956 ongoing changes in Customer behavior, efforts to which Contractor and City staff will both be contributing.  
1957 The following are several measures that can better capture whether necessary progress is occurring in  
1958 implementing SB 1383, and whether it is prudent for the City to shift to a “performance-based” approach  
1959 to SB 1383 compliance:

1960 A. Increasing Participation - Increasing the percentages of Residential Customers and of Commercial  
1961 Customers, and the percentage of total Customers receiving Organics Collection service, up to a  
1962 ceiling of 90% each for Single Family, Multi-Family, Commercial Customers;

1963 B. Increasing Capture Rate - Increasing the average pounds Collected per cubic yard of subscribed  
1964 Organics Materials capacity by Multi-Family Customers and Commercial Customers; and,

1965 C. Decreasing Contamination - Decreasing the weight of Contamination as a percentage of the weight  
1966 of total Recyclable Materials and Organic Materials as set-out for Collection, as measured by the  
1967 waste composition studies.

1968 The Parties will meet and confer no less than annually in conjunction with planning for Contractor  
1969 submittal of Contractor’s Compensation application, to assess overall progress in implementing SB 1383,  
1970 the use of metrics such as those listed above for measuring specific progress, and whether these or other  
1971 metrics should be adapted as incentives.

## 1972 **ARTICLE 6.**

## 1973 **RECORD KEEPING AND REPORTING**

### 1974 **6.1 RECORD KEEPING**

1975 Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational,  
1976 and other records related to its performance as shall be necessary to provide reporting under this  
1977 Agreement, Applicable Law, and to demonstrate compliance with this Agreement. Unless otherwise  
1978 required in this Article, Contractor shall retain all records and data required to be maintained by this  
1979 Agreement for the Term of this Agreement plus four (4) years after its expiration or earlier termination.  
1980 Records and data shall be in chronological and organized form and readily and easily interpreted. Upon  
1981 request, any such records shall be retrieved within ten (10) Working Days of a request by the City Contract  
1982 Manager and made available to the City Contract Manager. Contractor shall maintain adequate record  
1983 security to preserve records from events that can be reasonably anticipated such as a fire, theft (physical  
1984 or electronic), and an earthquake. Electronically-maintained data and records shall be protected and  
1985 backed-up as necessary to ensure no loss of data. To the extent that Contractor utilizes its computer  
1986 systems to comply with record keeping and reporting requirements under this Agreement, Contractor  
1987 shall, on a monthly basis, save all system-generated reports supporting those record keeping and  
1988 reporting requirements in a static format in order to provide an audit trail for all data required.

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

## **6.2 REPORT SUBMITTAL REQUIREMENTS**

Contractor shall submit monthly reports within twenty (20) calendar days after the end of the previous month, quarterly reports within twenty (20) calendar days after the end of the calendar quarter. Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall, at a minimum, include all data and information as described in Exhibit D. Contractor shall submit all reports to the City Contract Manager electronically via e-mail using software acceptable to the City.

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

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

## **6.3 PERFORMANCE REVIEW AND AUDIT**

**A. City Reviews and Audits.** The City may conduct, and Contractor shall cooperate with, performance reviews and/or detailed financial audits at any point during the Term of this Agreement to verify Contractor has fulfilled its financial and operational obligations under this Agreement. The purpose of such review and audit shall be, without limitation, to review Complaints, billings, and fee payments to City, and to determine if Contractor has met the performance standards described in this Agreement (including, without limitation, performance standards established in Exhibit F). City may choose to enlist professional service providers to perform such reviews and audits. Contractor may not influence or control the City's selection of professional service providers. Contractor shall cooperate with the City and its agents during the review and audit process. If any noncompliance with the Agreement is found, the City may direct the Contractor to correct the inadequacies in accordance with Article 10 of this Agreement.

**B. Contractor Audit of Provided Service.** Contractor will audit City's billings to Generators under Section 4.11, including:

- (1) Ensuring that Rates charged accurately match level and frequency of service;
- (2) Adjusting service levels as needed (for example, too much Solid Waste service, and too little Recycling and/or Organics service, etc.);

- 2030 (3) Verifying that use of additional Containers is being recorded and reported to City  
2031 properly;
- 2032 (4) Identifying any addresses at which Discarded Materials are being placed for Collection  
2033 without Generator subscribing to service and establishing a Customer account;
- 2034 (5) Verifying if Rear Yard service is still being provided or needed;
- 2035 (6) Verifying that push-out service is being provided and all services are coded properly for  
2036 push-out;
- 2037 (7) Auditing Recycling services: multi-family carts, split-carts, Commercial/Industrial  
2038 cardboard Bins; verifying that Container exists at address, being serviced, correcting  
2039 Container type and number, and verifying Customer-owned Containers by size;
- 2040 (8) Noting any needed repairs, graffiti, Bins that need cleaning or repainting, and  
2041 unauthorized Solid Waste Containers;
- 2042 (9) Enforcement information, including, but not limited to: compliance with any City-  
2043 approved service waivers, overflowing Containers, messy enclosures, Hazardous Waste,  
2044 odor, disease vectors, severely damaged enclosures, etc.
- 2045 The purpose of the audits is to determine (1) if services and Containers conform to standards and  
2046 (2) that the amount that City is billing each Generator is correct in terms of the level of service (i.e.,  
2047 frequency of Collection, size of Container, location of Container) provided to Generator by  
2048 Contractor. Contractor will audit 1/6th of the customer accounts each month and submit to City a  
2049 written report on that audit by the 15th day of the following month, so that City will receive reports  
2050 on a monthly basis which will cover the entire list of customers twice each year.
- 2051 **C. Performance Hearing.** At the City's sole option, with at least thirty (30) calendar days written  
2052 notification to the Contractor, it may conduct a public hearing at which the Contractor shall be  
2053 present and shall participate, to review the Contractor's performance and quality of service and  
2054 provide for evaluation of technological and regulatory changes. Performance and service quality  
2055 review hearings may be scheduled by the City at its discretion throughout the Term of the  
2056 Agreement.

## ARTICLE 7. CITY FEES

### 2059 7.1 FRANCHISE FEE

2060 The Contractor shall pay a Franchise Fee to City each month. The amount of the Franchise Fee shall be  
2061 equal to \$ [REDACTED] for all services performed under this Agreement and shall be paid in equal monthly  
2062 installments. City shall use the Franchise Fee to offset expenses including staffing costs related to contract  
2063 management, compliance, and monitoring, and to enforce the franchise with respect to any violations by  
2064 third parties, including initiating and/or assisting in prosecuting enforcement actions. Contractor and City  
2065 agree the Franchise Fee is a negotiated amount that is reasonably related to the value of the rights granted  
2066 to Contractor under this Agreement, which include, but are not limited to, the use of City streets. The full  
2067 amount of the Franchise Fee is an operating expense when computing Contractor's Payment, but the

Franchise Fee is subtracted from the Projected Annual Cost of Operations in order to determine profit under Section 8.3.A.5. Accordingly, the Franchise Fee is a cost paid solely by Contractor.

## **7.2 RESERVED**

## **7.3 ADJUSTMENT OF, ADDITION TO FEES**

City may establish other fees or adjust the fees established in this Article from time-to-time during the Term of this Agreement and such adjustments shall be included in the adjustment of Contractor Payments as described in Exhibit E.

## **7.4 PAYMENT SCHEDULE AND LATE FEES**

Contractor will pay the Franchise Fee in the following manner. City will deduct 1/12th of the annual Franchise Fee from the monetary payments otherwise due to Contractor from City under Section 8.3, provided that City is billing substantially all Customers as contemplated by Section 4.11 and that Contractor is providing solid waste collection service.

If Contractor is not providing solid waste collection service although this Franchise and Agreement have not been terminated and City has had to undertake other arrangements for that service pursuant to Article 10, Contractor will pay the Franchise Fee in equal monthly installments of 1/12th of the annual Franchise Fee, in cash, on the first day of each month that it is not providing solid waste collection, services. City may recover those Franchise Fee payments from any performance bond, letter of credit or other performance assurance provided by Contractor under this Agreement.

City Contract Manager may, at any time during the Term, perform an audit of Contractor's billings and payment of fees as provided in Section 6.3.A.

# **ARTICLE 8. CONTRACTOR COMPENSATION**

## **8.1 GENERAL**

The "Contractor's Payment" provided for by this Article is the full, entire and complete compensation due to Contractor from City for furnishing all labor, equipment, materials, and supplies and other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor's Payment includes all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary to perform the services in accordance with this Agreement.

## **8.2 CITY APPROVAL OF CAPITAL EXPENSES**

Contractor will obtain City approval prior to making any capital investment in excess of \$50,000 if that investment has not previously been included in Contractor's Payment.

## **8.3 CONTRACTOR'S PAYMENT**

Contractor's compensation ("Contractor's Payment") will be determined as described below.

A. Determination of Contractor's Payment for each Fiscal Year beginning with July 1, 2022 and continuing with each subsequent Fiscal Year

- 2104 1. General. On or before each January 31 of each calendar year of the Term beginning in 2022,  
2105 Contractor will submit a Request for Calculation of Contractor's Payment covering the  
2106 following year of the Term, in the format provided in Exhibit E1. For example, in January 2022,  
2107 Contractor will submit a request covering Year Two (2) that begins on July 1, 2022. This  
2108 request will be based on the audited financial statement submitted under Section 8.8.F for  
2109 the preceding fiscal year, and organized so as to facilitate the calculations required by this  
2110 Section, and be accompanied by:
- 2111 2. Supporting Documentation. Such supporting schedules as deemed necessary by City; and,
- 2112 a. A statement signed by the President or Vice President, if available (and if neither is  
2113 available by the Administrative Officer) and the Chief Financial Officer of Contractor  
2114 that as of the date of submission, the financial information submitted is complete and  
2115 correct to the best of their knowledge and belief.
- 2116 3. Components of the Contractor's Payment. Contractor's Payment for each Fiscal Year consists  
2117 of:
- 2118 a. The "Projected Cost of Operations" (PAC06) for each Year calculated as set forth in the  
2119 following paragraph Section 8.3.A.4, plus
- 2120 b. Profit (P6) calculated as set forth in the next succeeding paragraph (Section 8.3.A.5).
- 2121 c. Variances from prior Fiscal Year Projections as set forth in the following paragraph  
2122 Section 8.3.A.4
- 2123 4. Projected Cost of Operations". Projected Cost of Operations for each Fiscal Year consists of  
2124 the sum of:
- 2125 a. Projected Labor-Related Costs (P146); Projected Vehicle-Related Costs (PV6); Projected  
2126 Other Costs (P06); and,
- 2127 b. Projected Net Interest Expense and Depreciation Expense (NID6)
- 2128 Each of these projected costs and expenses is corroborated, adjusted and escalated/projected  
2129 as provided in Exhibit E.
- 2130 5. Profit. Profit for each Fiscal Year is calculated as follows:
- 2131 *{Specialty: Insert proposed operating ratio below in Item b.}*
- 2132 a. The Franchise Fee calculation under Section 7.1 is subtracted from the Projected Costs  
2133 of Operations (PAC014), and the difference is the "Net Cost of Operations" ("NC14").
- 2134 b. Profit for each Fiscal Year equals the quotient of Net Cost of Operations divided by  
2135 \_\_\_\_ (0.\_\_\_\_), less the Net Cost of Operations. That is,
- 2136 Profit = (Net Cost of Operations / 0.\_\_\_\_) minus Net Cost of Operations

B. **Variances from Prior Fiscal Year Projections.** Variances from Prior Year Projections are determined as follows:

1. Subject to Item ii below, Contractor will retain any income from actual costs during any fiscal year being less than those projected for that year when establishing Contractor's Payment for that year, except with respect to reconciliation of the following costs:

a. Actual / projected capitalized maintenance costs in Exhibit E, and

b. Actual costs of interest and depreciation described in Exhibit E ("Reconciliation plus Projection of Net Interest and Depreciation Expense").

2. Similarly, except for the preceding two items, Contractor will not be compensated for actual costs during any Fiscal Year being greater than those projected for that fiscal year when establishing Contractor's Payment for that fiscal year. In addition, except for those preceding two items, calculations of Contractor's Payments for future Fiscal Years will not attempt to adjust for past variances of actual costs from those that had been projected. However, City may reduce Contractor's Payments to recoup prior overpayments due to subsequently discovered fraud or misrepresentation in financial data submitted by Contractor to City.

C. **Effective Date.** Assuming Contractor submits its Request for Determination of Contractor's Payment on or before the January 31 that immediately precedes the commencement of the Fiscal Year with respect to which the calculation is to be performed, City will use its best efforts to make the adjustment effective by July 1 of the same year. However, City will not make any retroactive adjustment to compensate for any delay in determining Contractor's Payment that results from the failure of Contractor to respond promptly and completely to requests of City for information related to any of the determinations required by this Section.

#### **8.4 TIME OF PAYMENT**

City will pay Contractor's Payment determined under Section 8.3, reduced by the offsets under Section 8.5, (and adjusted, if appropriate, under Section 8.6) in monthly installments on the 25th day of each month, for service rendered the preceding month.

#### **8.5 OFFSETS TO CONTRACTOR'S PAYMENT**

Contractor's Payment made each month is reduced by the sum of the following:

A. 1/12th of the Franchise Fee due to City under Section 7.1.

B. The billings issued and cash received for services provided by Contractor under Section 4.11.B and billed directly by Contractor during the preceding month.

C. Liquidated Damages, if any, due under Section 10.6 for failure to achieve the performance standards during the preceding month.

#### **8.6 ADJUSTMENTS FOR CHANGES IN SCOPE OF WORK**

If City has directed a change in scope of work under Section 3.5 and either Party believes that the change will increase or decrease the costs of providing service, the Party that believes Contractor's Payment should be adjusted will within 30 calendar days submit to the other Party a proposed adjustment and the

2174 Parties will thereafter meet and discuss the matter. Contractor will promptly provide all relevant  
2175 schedules, supporting documentation and other financial information requested by City to evaluate the  
2176 necessity for an adjustment and the amount thereof. City's Director of Environmental Services will  
2177 participate in key meetings regarding those adjustments.

2178 Pursuant to a recommendation from the Director of Environmental Services, within 90 days of the  
2179 submission of the Proposed Adjustment, City will determine the amount of the adjustment, if any, and  
2180 will thereafter adjust Contractor's Payment accordingly. Any adjustments are effective as of the date the  
2181 change in service is implemented.

2182 If Contractor is dissatisfied with the recommendation of the Director of Environmental Services it may  
2183 appeal that decision to City Manager. If an appeal is to be taken, Contractor will promptly (and in any case  
2184 within 15 days of its receipt of the Director of Environmental Services decision) submit a full written  
2185 statement of the following:

2186 A. Each item with which it disagrees;

2187 B. The reasons for its disagreement;

2188 C. The amount which it believes Contractor's Payment should be adjusted for each of those items.

2189 Contractor will submit copies of all financial and operational data on which it relies. The City Manager will  
2190 meet with Contractor to review the appeal and will issue his or her decision (increasing or decreasing the  
2191 amount of the recommended adjustments) within 30 days after receipt of Contractor's complete appeal.

2192 If Contractor is dissatisfied with the City Manager's decision, it may appeal that decision to the City  
2193 Council. If an appeal is to be taken, Contractor will promptly (and in any case within 15 days of its receipt  
2194 of the City Manager's decision) submit to the City Clerk (with a copy to the City Manager and the City  
2195 Attorney) a full written statement in the same form as prescribed above. The City Council will consider  
2196 the appeal at a public meeting held within 60 days after the filing of Contractor's appeal.

## 2197 **8.7 SPECIAL COMPENSATION ADJUSTMENT REQUEST**

2198 Notwithstanding Section 8.3.B.1, adjustments will take into account the effect of extraordinary,  
2199 uncontrollable changes in the cost of performance. To that end, and in the limited circumstances  
2200 described in this Section 8.7, Contractor's Payment may be adjusted to reflect changes in cost between  
2201 those projected in calculating Contractor's Payment and those actually incurred.

2202 Contractor's Payment will be increased or decreased to the extent that a specific cost, incurred in the prior  
2203 year, over which Contractor could not have exerted control, differs from the projected change in the  
2204 amount of the cost by twice the projected change in the cost and the aggregate of all such increases  
2205 and/or decreases equals or exceeds 5% of Contractor's Payment in the prior year. That adjustment will be  
2206 made in the year following the year in which the difference occurred. The full amount of the difference  
2207 will be accounted for if the 5% threshold is reached.

## 2208 **8.8 MAINTENANCE OF FINANCIAL RECORDS**

2209 A. **General.** In order to effectuate the periodic reviews of Contractor's Payment contemplated by  
2210 Section 8.3 and the occasional reviews of adjustments under Section 8.6 due to changes directed  
2211 by City, which reviews do not necessarily coincide with the periodic reviews under Section 8.3,

- 2212 Contractor must maintain accurate, detailed financial information in a consistent format and to  
2213 make such information available to City in a timely fashion. In order to assure the public of the  
2214 accuracy of the review processes, Contractor's financial records must be confirmed by an audit  
2215 conducted by an independent certified public accountant whose report thereon is forwarded to City  
2216 on a regular basis. This section is intended to effectuate these requirements.
- 2217 B. **Contractor's Accounting Records.** Contractor will maintain in its office accurate and complete  
2218 accounting records containing the underlying financial and operational data relating to, and the  
2219 bases for computation of, all costs associated with providing service under this Agreement.  
2220 Contractor will prepare or cause to be prepared the accounting records on an accrual basis, in  
2221 accordance with Generally Accepted Accounting Principles consistently applied. Contractor will  
2222 adhere throughout the Term to "Generally Accepted Accounting Principles" then in effect,  
2223 published by the American Institute of Certified Public Accountants.
- 2224 Contractor's operating year for both accounting and all other record keeping purposes must be the  
2225 Fiscal Year.
- 2226 C. **Inspection of Records.** City, and auditors and other agents selected by City, may, during regular  
2227 business hours, conduct onsite inspections of the records and accounting systems of Contractor and  
2228 make copies of any documents relevant to this Agreement, including records and accounting  
2229 systems with respect to subscriptions and services billed by City, rear-yard services and roll-off  
2230 services billed by Contractor.
- 2231 D. **Retention of Records.** Contractor will retain all records and data required to be maintained under  
2232 this Agreement through the duration of the Term plus four (4) years, including any extensions, and  
2233 for such further time as may be designated by City to enable it to complete any review or audit  
2234 commenced during that 5-year period.
- 2235 E. **Delivery of Financial Reports to City.** Contractor will deliver to City the financial reports, as required  
2236 in Section 8.3.
- 2237 In addition, Contractor will provide City with financial information in such format, and at such times,  
2238 as City may reasonably require in order to monitor Contractor's financial activities and conduct the  
2239 compensation review processes described in this article.
- 2240 F. **Delivery of Financial Statements, Other Documents, and Auditor's Report.** Within 120 days after  
2241 the close of each fiscal year (i.e., by October 28) Contractor will deliver to City 8 copies of its audited  
2242 financial statements for the preceding fiscal year together with such other documents as may be  
2243 required by City which show in detail the financial condition of Contractor and the results of its  
2244 operations under this Agreement. These statements must have been examined by an independent  
2245 certified public accountant and be accompanied by the accountant's report containing (1) the  
2246 accountant's representation that it has examined Contractor's financial statements in accordance  
2247 with Generally Accepted Auditing Standards and (2) the accountant's unqualified opinion that such  
2248 statements have been prepared in accordance with Generally Accepted Accounting Principles  
2249 consistently applied and fairly reflect the results of operations and Contractor's financial condition.
- 2250 At the same time that Contractor delivers its accountant's representation and opinion, Contractor  
2251 will also deliver:



- 2252 1. Audited consolidated financial statements of Contractor's ultimate parent Company (if any)  
2253 for such fiscal year, together with the related opinion of the independent certified public  
2254 accountant that examined those financial statements.
- 2255 2. A statement Contractor's subsidiaries, Contractor or companies disclosing whether any of  
2256 subcontractors or suppliers are or otherwise affiliates, of Contractor's parent company- or  
2257 City-may prescribe the contents of supplemental schedules to be included with the financial  
2258 statements required.
- 2259 G. **Affiliates.** Contractor will maintain its accounting records on a basis showing the results of  
2260 Contractor's operations under this Agreement separately from operations in other locations, as if  
2261 Contractor were an independent entity providing service only to City. Contractor must not combine,  
2262 consolidate or in any other way incorporate its costs and revenues associated with providing service  
2263 to City with costs and revenues associated with other operations conducted by Contractor in other  
2264 locations, or with those of Affiliates.
- 2265 Whether or not there are contractual or extra-contractual relationships between Contractor and  
2266 Affiliates, if Contractor is owned or controlled by another corporation, then the financial reports  
2267 and auditor's opinions required of such Contractor are also required of such "parent company"  
2268 which constitutes an "Affiliate" for purposes of this Section.
- 2269 H. **Affiliates and Indirect Ownership Interest.** For purposes of determining whether an indirect  
2270 ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal  
2271 Revenue Code of 1986, as in effect on the date of this Agreement, applies; provided, however, that  
2272 (1) "10 percent" is substituted for "50 percent" in Section 318(a)(2)(C) and in Section 318(a)(3)(C)  
2273 thereof; and (ii) Section 318(a)(5)(C) is disregarded. For purposes of determining ownership under  
2274 this paragraph and constructive or indirect ownership under Section 318(a), ownership interests of  
2275 less than 10 percent is disregarded and percentage interests is determined on the basis of the  
2276 percentage of voting interest or value that the ownership interest represents, whichever is greater.
- 2277 I. **Review of Audited Financial Statement.** With its own employees or by means of a consultant, City  
2278 may review the audit plan and work papers of any of the independent certified public accountants  
2279 who give opinions on the audited financial statements that Contractor must furnish pursuant to  
2280 Section 8.8.F. and G. If that review gives rise to any questions, or differences of opinion regarding  
2281 Contractor's compliance with this. Agreement, Contractor and its accountant(s) will meet with City  
2282 and its consultant, if any, to answer those questions and to discuss the differences of opinion.

## 2283 **8.9 RATES AND RATE STRUCTURE**

- 2284 A. **Rate Schedule.** The City shall be solely responsible for setting Customer Rates. If at any time during  
2285 the Term of the Agreement, the Contractor determines the need for a Rate that does not appear  
2286 on the City-approved Rate schedule, Contractor shall immediately notify the City and request  
2287 establishment of such Rate. For example, if a Customer requires Collection of Organic Materials in  
2288 a fifteen (15) cubic yard Compactor five (5) times per week and the City-approved Rate schedule  
2289 does not include this level of service, the Contractor must request that the City approve a Rate for  
2290 this level of service.
- 2291 B. **Rate Structure.** The City may, at any time during the term of this Agreement and in its sole  
2292 discretion, change the relationship of individual Customer Rates in comparison with other Rates. It

is understood that the Contractor accepts the risk for changes in cost of providing services and the service levels requested by Customers.

## ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

### 9.1 INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

A. **General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the sole negligence or willful misconduct of City.

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

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall first obtain City's approval following the notice procedures defined in Section 12.10 of any proposed investigatory or remedial action. Should Contractor fail at any time to promptly take such action, City may undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of Section 7.8. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

2335 Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any  
2336 claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including, but  
2337 not limited to, claims arising under Comprehensive Environmental Response, Compensation and  
2338 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful  
2339 misconduct.

2340 C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold City harmless against  
2341 and from any and all claims, suits, losses, penalties, damages, and liability for damages of every  
2342 name, kind and description, including attorneys' fees and costs incurred, attributable to the  
2343 negligence or willful misconduct of Contractor in handling Excluded Waste.

2344 D. **Related to AB 939, AB 341, AB 1826, and SB 1383.** Contractor's duty to defend and indemnify  
2345 herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939,  
2346 AB 341, AB 1826, and/or SB 1383 are not met by the Contractor with respect to the waste stream  
2347 Collected under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its  
2348 obligations under this Agreement; or, (ii) due to Contractor delays in providing information that  
2349 prevents Contractor or City from submitting reports to regulators in a timely manner.

2350 E. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of  
2351 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution  
2352 (Commonly Proposition 218), which impacts the Rates for the Collection services established in  
2353 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the  
2354 impact of such Change in Law on either Party's ability to perform under this Agreement. Any  
2355 adjustment of Rates is contingent on City's use of such Proposition 218 process as deemed  
2356 necessary or advisable by the City.

2357 If, at any time, a Rate adjustment determined to be appropriate by both City and Contractor to  
2358 compensate Contractor for increases in costs as described in this Agreement cannot be  
2359 implemented for any reason, Contractor shall be granted the option to negotiate with City, in  
2360 good faith, a reduction of services equal to the value of the Rate adjustment that cannot be  
2361 implemented. If City and Contractor are unable to reach agreement about such a reduction in  
2362 services, then Contractor may terminate this Agreement upon one year's prior written notice to  
2363 City, in which case the Contractor and City shall each be entitled to payment of amounts due for  
2364 contract performance through the date of termination but otherwise will have no further  
2365 obligation to one another pursuant to this Agreement after the date of such termination. Should  
2366 a court of competent jurisdiction determine that the Contractor cannot charge and/or increase  
2367 its Rates for charges related to Franchise Fees and governmental fees and charges, Contractor  
2368 shall reduce the Rates it charges Customers a corresponding amount, providing said fees, Rates  
2369 and/or charges disallowed by the court are not related to the cost of providing service hereunder  
2370 and had been incorporated in the Rates charged by Contractor to its Customers.

2371 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the  
2372 Rates established for services provided under this Agreement; rather this Section is provided  
2373 merely to allocate risk of an adverse judicial interpretation between the Parties.

2374 This provision (i.e., Section 9.1) will survive the expiration or earlier termination of this Agreement  
2375 and shall not be construed as a waiver of rights by City to contribution or indemnity from third  
2376 parties.

**9.2 INSURANCE**

**A. Types and Amounts of Coverage.** At Contractor's sole cost and expense, Contractor will procure and maintain in force at all times during the Term the following types and amounts of insurance.

1. Workers' Compensation and Employer's Liability. Contractor will maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor will maintain Employer's Liability insurance in an amount not less than \$1 million per accident or disease.

2. Public Liability. Contractor will maintain comprehensive general liability insurance with a combined single limit of not less than \$5 million per occurrence and \$10 million aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by Contractor's performance of, or its failure to perform, services under this Agreement. Contractor will report to City the occurrence of any personal injury to third parties within 8 Working Hours thereof, and any property damages in the next monthly report submitted in accordance with Section 6.2.

3. Auto Liability. Contractor will maintain automobile liability insurance with a combined single limit of not less than \$5 million per accident for bodily injury and property damage (include coverage for Hired and Non-owned vehicles).

4. Pollution Liability. Contractor will maintain pollution liability insurance with a combined single limit of not less than \$2 million per event.

5. Cyber Liability. Contractor will maintain cyber liability insurance with a combined single limit of not less than \$1 million per event. Contractor's cyber policy must include language related to Contractor data breach. Contractor shall verify by providing City Contract Manager a copy of the Declarations Page for the policy for City review prior to the Commencement Date.

The insurance required by this subsection includes:

- a. Premises Operations;
- b. Independent Contractor's Protective;
- c. Products and Completed Operations;
- d. Personal Injury Liability with Employment Exclusion deleted;
- e. Broad Form Blanket Contractual, including Contractor's Obligation under Section 9.01;
- f. Automobile Liability that includes Owned, Non-Owned, and Hired Motor Vehicles;
- g. Broad Form Property Damage, including Completed Operations.

6. Physical Damage. Contractor will maintain comprehensive (fire, theft and collision) physical damage insurance covering the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than \$1,000.

2412 The insurance policies required by this Section must be issued by an insurance company or  
2413 companies authorized to do business in the State of California with a rating in the most recent  
2414 edition of Best's Insurance Reports of size category XV or larger and a rating classification of A or  
2415 better, except that Workers' Compensation insurance must be provided by a carrier with a size  
2416 category of VIII or larger.

2417 **B. Required Endorsements**

2418 1. The Workers' Compensation policy must contain an endorsement in substantially the  
2419 following form:

2420 "Thirty (30) days prior written notice shall be given to the City of Sunnyvale in the event of  
2421 cancellation reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

2422 City Manager  
2423 City of Sunnyvale  
2424 456 W. Olive Avenue  
2425 Sunnyvale, CA 94086"

2426 2. The Public Liability policy must contain endorsements in substantially the following form:

2427 a. "Thirty (30) days prior written notice shall be given to the City of Sunnyvale in, the event  
2428 of cancellation, reduction of coverage, or non-renewal of this policy. Such notice shall  
2429 be sent to:

2430 City Manager  
2431 City of Sunnyvale  
2432 456 W. Olive Avenue  
2433 Sunnyvale, CA 94086"

2434 b. "The City of Sunnyvale, its officers, employees, agents and volunteers are named  
2435 additional insureds on this policy."

2436 c. "This policy shall be considered primary insurance as respects any other valid and  
2437 collectible insurance maintained by the City of -Sunnyvale, including any self-insured  
2438 retention or program of self-insurance, and any other such insurance shall be  
2439 considered excess insurance only."

2440 d. "Inclusion of the City of Sunnyvale as an insured shall not affect the City's rights as  
2441 respects any claim, demand, suit or judgment brought or recovered against Contractor.  
2442 This policy shall protect Contractor and the City in the same manner as though a  
2443 separate policy had been issued to each, but this shall not operate to increase the  
2444 company's liability as set forth in the policy beyond the amount shown or to which the  
2445 company would have been liable if only one party had been named as an insured."

2446 **C. Delivery of Proof of Coverage.** Contractor will furnish the City with certificates of insurance and  
2447 additional insured endorsements for all insurance coverage required hereunder, in form and  
2448 substance satisfactory to City. Certificates must show the type and amount of coverage, effective

2449 dates and dates of expiration of policies and have all required endorsements. If City requests,  
2450 Contractor will promptly deliver to City copies of each policy, together with all endorsements.

2451 Contractor will furnish renewal certificates of insurance and additional insured endorsements  
2452 periodically and at least annually to City to demonstrate maintenance of the required coverage  
2453 throughout the Term.

2454 **D. Other Insurance Requirements**

2455 1. If Contractor delegates any services to a subcontractor, Contractor shall require and verify  
2456 that all subcontractors or other parties hired for this agreement purchase and maintain  
2457 coverage for indemnity and insurance requirements as least as broad as specific in this  
2458 agreement to the extent they apply to the scope of the subcontractor's work the same  
2459 Certificate of Insurance requirements naming as additional insureds all parties to this  
2460 Franchise Agreement. Contractor shall include the following language in their agreement  
2461 with Subcontractors: "Subcontractors hired by Contractor agree to be bound to Contractor  
2462 and City in the same manner and to the same extent as Contractor is bound to City under the  
2463 Franchise Agreement and provide a valid certificate of insurance and the required  
2464 endorsements included in the agreement as proof of compliance prior to commencement of  
2465 any work and to include this same requirement for any subcontractors they hire for this  
2466 work. A copy of the Owner Contract Document Indemnity and insurance provisions will be  
2467 furnished to the Subcontractor upon request." Contractor shall provide proof of such  
2468 Compliance and verification to the City upon request.

2469 2. Contractor will comply with all requirements of the insurers issuing policies. Carrying  
2470 insurance does not relieve Contractor from any obligation under this Agreement. If any claim  
2471 is made by any third person against Contractor or any subcontractor on account of any  
2472 occurrence, related to this Agreement, Contractor will promptly report the facts in writing to  
2473 the insurance carrier and to City.

2474 If Contractor fails to procure and maintain any insurance required by this Agreement, City  
2475 may take out and maintain, at Contractor's expense, such insurance as it may deem proper  
2476 and deduct the cost thereof from any monies due Contractor.

2477 The Public Liability insurance required by Section 9.02.A.2 must be written on an  
2478 "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If it is not  
2479 obtainable, Contractor must arrange for "tail coverage" to protect City from claims filed after  
2480 the expiration or termination of this Agreement relating to incidents that occurred prior to  
2481 such expiration or termination.

2482 **9.3 PERFORMANCE BOND**

2483 Within seven (7) calendar days of the City's notification to Contractor that the City has executed this  
2484 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's  
2485 performance of its obligations under this Agreement and such bond shall be renewed annually if necessary  
2486 so that the performance bond is maintained at all times during the Term. The principal sum of the bond  
2487 shall be \$3,000,000 and shall be annually adjusted by the CPI as provided in Exhibit E. The bond shall be  
2488 executed as surety by a corporation authorized to issue surety bonds in the State of California that has a

rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be in the form attached as Exhibit M.

In lieu of a performance bond, City and Contractor may agree that Contractor will provide for the issuance of an irrevocable stand by letter of credit (the "Letter of Credit") by a bank approved by City in its sole discretion (the "Bank") for the benefit of City. Under the Letter of Credit, City may draw, in one or more drawings, an aggregate amount up to \$2 million (the "Stated Amount") upon the occurrence of (1) an Event of Default defined in Section 10.1, (2) Contractor's failure to timely pay any moneys due City, (3) Contractor's inability to regularly pay its bills as they become due, or (4) Contractor's failure to timely pay any solid waste management facility for recyclables processing, composting or disposal services provided under this Agreement, as evidenced to the satisfaction of City. City and Contractor may agree that Contractor will increase the aggregate amount of the Letter of Credit in conjunction with determination of Contractor's payment in accordance with Section 8.3. Any incremental costs or savings incurred by Contractor to secure the increased aggregate amount will be included in the calculation of Contractor's payment for the next rate year. The expiration date of the Letter of Credit must be no less than the term of this Agreement provided in Section 4.02 (the "Stated Expiration Date"), unless it provides that it will not be terminated, modified or not renewed except after prior written notice by certified mail, return receipt requested, to City 60 days in advance of termination or failure to renew. The Letter of Credit may expire on the date on which the Bank receives a certificate from City saying that the term has expired or this Agreement has been terminated and Contractor owes City no money under this Agreement or that Contractor has substituted an alternative letter of credit or other security document acceptable to City in City's sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of City in its sole discretion, following the notice procedures defined in Section 12.10. The Letter of Credit must be transferable to any successor or assignee of City.

## ARTICLE 10. DEFAULT AND REMEDIES

### 10.1 EVENTS OF DEFAULT

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

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

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

**C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the Workers' Compensation, general liability, cyber liability, auto liability, and pollution liability or indemnification coverage as required by this Agreement.

**D. Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.

**E. Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.

- 2529 **F. Failure to Perform Direct Services.** Contractor ceases to provide Collection or Transportation  
2530 services as required under this Agreement for a period of two (2) consecutive calendar days or  
2531 more, for any reason within the control of Contractor.
- 2532 **G. Failure to Pay or Report.** Contractor fails to make any payments to City required under this  
2533 Agreement including payment of City Fees or Liquidated Damages and/or refuses to provide City  
2534 with required information, reports, and/or records in a timely manner as provided for in the  
2535 Agreement.
- 2536 **H. Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,  
2537 or requirements of this Agreement, or Applicable Law and which is not corrected or remedied  
2538 within the time set in the written notice of the violation or, if Contractor cannot reasonably  
2539 correct or remedy the breach within the time set forth in such notice, if Contractor should fail to  
2540 commence to correct or remedy such violation within the time set forth in such notice and  
2541 diligently effect such correction or remedy thereafter.
- 2542 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City  
2543 by Contractor in connection with or as an inducement to entering into this Agreement, or any  
2544 future amendment to this Agreement, which proves to be false or misleading in any material  
2545 respect as of the time such representation or disclosure is made, whether or not any such  
2546 representation or disclosure appears as part of this Agreement; and, any Contractor-provided  
2547 report containing a misstatement, misrepresentation, data manipulation, or an omission of fact  
2548 or content explicitly defined by the Agreement, excepting non-numerical typographical and  
2549 grammatical errors.
- 2550 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's  
2551 operating equipment, including without limits its equipment, maintenance or office facilities,  
2552 Approved Facility(ies), or any part thereof.
- 2553 **K. Suspension or Termination of Service.** There is any termination or suspension of the transaction  
2554 of business by Contractor related to this Agreement, including without limit, due to labor unrest  
2555 including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action  
2556 lasting more than two (2) calendar days.
- 2557 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal  
2558 activity related directly or indirectly to performance of this Agreement or any other agreement  
2559 held with the City.
- 2560 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the  
2561 expressed written approval of the City pursuant to Section 12.6, and following the notice  
2562 procedures defined in Section 12.10.
- 2563 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a  
2564 proposal for new services or changes to services or fails to implement a change in service as  
2565 requested by the City as specified in Section 3.5.
- 2566 **O. Failure to Complete Implementation Plan.** Contractor fails to complete the tasks identified in  
2567 Contractor's Implementation Plan as specified in Exhibit G4.



**P. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under this Agreement.

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

## **10.2 RIGHT TO TERMINATE UPON EVENT OF DEFAULT**

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

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

Contractor shall be given thirty (30) calendar days from written notification by City to cure any other default (which is not required to be cured within ten (10) Business Days); however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period.

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

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

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

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

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

**D. Termination.** In the event that Contractor should default and subject to the right of the Contractor to cure, in the performance of any provisions of this contract, and the default is not cured for any default within in ten (10) calendar days if the default creates a potential public health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the City, then the City may, at its option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine whether this Agreement should be terminated. In the event City decides to terminate this Agreement, the City shall serve twenty (20) calendar days written notice of its intention to terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the City may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

2607 Contractor shall not be entitled to any further revenues from Collection operations authorized  
2608 hereunder from and after the date of termination.

2609 **E. Other Available Remedies.** City's election of one (1) or more remedies described herein shall not  
2610 limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

#### 2611 **10.4 POSSESSION OF RECORDS UPON TERMINATION**

2612 In the event of termination for an event of default, the Contractor shall furnish City Contract Manager  
2613 with immediate access to all of its business records, including without limitation, proprietary Contractor  
2614 computer systems, related to its Customers, Collection routes, and billing of accounts for Collection  
2615 services.

#### 2616 **10.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

2617 City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's  
2618 records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the  
2619 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall  
2620 be in addition to any and all other legal and equitable rights and remedies which City may have.

2621 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service; the  
2622 lead time required to effect alternative service; and, the rights granted by City to the Contractor, the  
2623 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive  
2624 relief (including but not limited to specific performance).

#### 2625 **10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

2626 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is impractical,  
2627 if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City  
2628 as a result of a breach by Contractor of its obligations under this Agreement. The factors relating  
2629 to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)  
2630 substantial damage results to members of the public who are denied services or denied quality or  
2631 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of  
2632 the benefits of the Agreement to individual members of the general public for whose benefit this  
2633 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of  
2634 measurement in precise monetary terms; (iii) that exclusive services might be available at  
2635 substantially lower costs than alternative services and the monetary loss resulting from denial of  
2636 services or denial of quality or reliable services is impossible to calculate in precise monetary  
2637 terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at  
2638 best, a means of future correction and not remedies which make the public whole for past  
2639 breaches.

2640 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties  
2641 further acknowledge that consistent, reliable Collection services are of utmost importance to City  
2642 and that City has considered and relied on Contractor's representations as to its quality of service  
2643 commitment in awarding the Agreement to it. The Parties recognize that some quantified  
2644 standards of performance are necessary and appropriate to ensure consistent and reliable service  
2645 and performance. The Parties further recognize that if Contractor fails to achieve the performance  
2646 standards, or fails to submit required documents in a timely manner, City and its residents and  
2647 businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to

ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established in Exhibit F of this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

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

Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. Contractor may, within ten (10) Business Days after receipt of notice, request a meeting with City. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City Contract Manager will provide Contractor with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies. The City Contract Manager shall provide Contractor with a written explanation of his or her determination on each incident prior to authorizing City's Finance Department to deduct liquidated damages from payments subsequently due to Contractor.

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

## **10.7 EXCUSE FROM PERFORMANCE**

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a third party over whom Contractor has no control, the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of Delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing Collection services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subsidiary, the Contractor shall not be excused from performance. In such case, Contractor shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but the Contractor shall not be required to adhere strictly to

the specific requirements of this Agreement regarding routes, Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar days elapse between pickups for Residential and Commercial Customers. Any labor action initiated by Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action.

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

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

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

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

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

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

#### **10.9 DISPUTE RESOLUTION**

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

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

2733 B. **Mediation.** In the event that disputes which arise under this Agreement cannot be resolved  
2734 satisfactorily between the Parties in accordance with Section 10.9.A, the City and Contractor  
2735 agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually  
2736 agreed upon independent third party.

2737 C. **Period of Time.** Insofar as allowed by Applicable Law, the period of time otherwise applicable for  
2738 filing claims against the City under Applicable Law shall be tolled during the period of time for  
2739 which meet and confer or mediation procedures are pending, in accordance with Sections 10.9.A  
2740 and 10.9.B.

2741 D. **Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the dispute(s)  
2742 pursuant to Sections 10.9.A, 10.9.B, and 10.9.C have failed and any necessary claim(s) have been  
2743 denied.

2744 **ARTICLE 11.**  
2745 **REPRESENTATIONS AND WARRANTIES OF**  
2746 **THE PARTIES**

2747 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this  
2748 Article.

2749 **11.1 CONTRACTOR'S CORPORATE STATUS**

2750 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the  
2751 State. It is qualified to transact business in the State and has the power to own its properties and to carry  
2752 on its business as now owned and operated and as required by this Agreement.

2753 **11.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

2754 Contractor has the authority to enter into, and to perform its obligations under this Agreement. The Board  
2755 of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its  
2756 articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The  
2757 Person signing this Agreement on behalf of Contractor represents and warrants that they have authority  
2758 to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2759 **11.3 AGREEMENT WILL NOT CAUSE BREACH**

2760 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or delivery  
2761 of this Agreement or the performance by either Party of their obligations hereunder does not conflict  
2762 with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any judgment,  
2763 order, or decree of any court, administrative agency or other governmental authority, or any agreement  
2764 or instrument to which Contractor or City is a party or by which Contractor or any of its properties or  
2765 assets are bound, or constitutes a default hereunder.

2766 **11.4 NO LITIGATION**

2767 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,  
2768 proceeding or investigation, at law or in equity, before or by any court or governmental authority,  
2769 commission, board, agency or instrumentality decided, pending or threatened against either Party  
2770 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- 2771 A. Materially adversely affect the performance by Party of its obligations hereunder;  
2772 B. Adversely affect the validity or enforceability of this Agreement; or,  
2773 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity  
2774 guaranteeing Contractor's performance under this Agreement.

2775 **11.5 NO ADVERSE JUDICIAL DECISIONS**

2776 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial  
2777 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

2778 **11.6 NO LEGAL PROHIBITION**

2779 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in effect  
2780 on the date that Party signed this Agreement that would prohibit the performance of either their  
2781 obligations under this Agreement and the transactions contemplated hereby.

2782 **11.7 CONTRACTOR'S ABILITY TO PERFORM**

2783 Contractor possesses the business, professional, and technical expertise to perform all services,  
2784 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.  
2785 Contractor possesses the ability to secure equipment, facility, and employee resources required to  
2786 perform its obligations under this Agreement.

2787 **ARTICLE 12.**  
2788 **OTHER AGREEMENTS OF THE PARTIES**

2789 **12.1 RELATIONSHIP OF PARTIES**

2790 The Parties intend that Contractor shall perform the services required by this Agreement as an  
2791 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner  
2792 or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed  
2793 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and  
2794 means of performing services under this Agreement, except as expressly provided herein. Contractor shall  
2795 be solely responsible for the acts and omissions of its officers, employees, Subcontractors and agents.  
2796 Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any rights to  
2797 retirement benefits, workers' compensation benefits, or any other benefits which accrue to City  
2798 employees by virtue of their employment with City.

2799 **12.2 COMPLIANCE WITH LAW**

- 2800 A. Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses  
2801 of the United States, the State, County of Santa Clara, and City and with all applicable regulations  
2802 promulgated by Federal, State, regional or local administrative and regulatory agencies, now in  
2803 force and as they may be enacted, issued or amended during the Term.
- 2804 B. If Contractor is determined, in a final decision by the National Labor Relations Board or a court, to  
2805 have engaged in unfair labor practices in violation of the National Labor Relations Act, as amended,  
2806 29 U.S.C. Section 158, et seq., which have occurred during the Term of this Agreement, City may

2807 terminate the Franchise and this Agreement upon 10 days' notice, without the need for any hearing,  
2808 suit, or legal action.

2809 C. The enumeration of City's right to terminate in the immediately preceding paragraph is not in  
2810 derogation of City's right to treat Contractor's Violation of other laws as an Event of Default under  
2811 Section 11.01, for purposes of Section 11.02.

2812 D. "Violation" means:

2813 1. Any written notice, assessment or determination of non-compliance with Environmental Law,  
2814 or

2815 2. Any written notice, assessment or determination of material non-compliance with others  
2816 applicable law described in the first paragraph of this Section,

2817 from any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assessed,  
2818 levied or attached, where "Regulatory Agency" means any federal, State or local governmental  
2819 agency that regulates collection and transportation of Solid Waste, including California Department  
2820 of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and  
2821 Naturalization Services, or other health and safety department thereof, and the Local Enforcement  
2822 Agency applicable to services under this 'Agreement.

### 2823 **12.3 GOVERNING LAW**

2824 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the  
2825 State of California.

### 2826 **12.4 JURISDICTION**

2827 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the  
2828 courts of Santa Clara County in the State of California, which shall have exclusive jurisdiction over such  
2829 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed  
2830 in Santa Clara County.

### 2831 **12.5 BINDING ON SUCCESSORS**

2832 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and  
2833 permitted assigns of the Parties.

### 2834 **12.6 ASSIGNMENT**

2835 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement  
2836 to any other Person without the prior written consent of the other Party. Any such assignment made  
2837 without the consent of the other Party shall be void and the attempted assignment shall constitute a  
2838 material breach of this Agreement.

2839 For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other  
2840 transfer of substantially all of Contractor's local, regional, and/or corporate assets dedicated to service  
2841 under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more  
2842 of the local, regional, and/or corporate assets, stock, or ownership of Contractor to a Person (other than  
2843 a transfer of shares in Contractor by the owner of such shares to a revocable trust for the benefit of his

2844 family or to another owner of shares in Contractor) except that no cumulative sale, exchange, or transfer  
2845 of shares may exceed twenty (20) percent during the Term of the Agreement (other than a transfer of  
2846 shares in Contractor by the owner of such shares to a revocable trust for the benefit of his family or to  
2847 another owner of shares in Contractor); (iii) any reorganization, consolidation, merger, recapitalization,  
2848 stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other  
2849 transaction to which Contractor or any of its shareholders is a party which results in a change of ownership  
2850 or control of ten (10) percent or more of the value or voting rights in the local, regional, and/or corporate  
2851 stock of Contractor; (iv) divestiture of an Affiliate (e.g., trucking company, materials recovery facility,  
2852 transfer station, etc.) used by Contractor to fulfill its obligations under this Agreement; and, (v) any  
2853 combination of the foregoing (whether or not in related or contemporaneous transactions) which has the  
2854 effect of any such transfer or change of local, regional, and/or corporate ownership and/or control of  
2855 Contractor. For purposes of this Section, the term "proposed assignee" shall refer to the proposed  
2856 transferee(s) or other successor(s) in interest pursuant to the assignment.

2857 Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and  
2858 businesses, and that City has selected Contractor to perform the services specified herein based on: (i)  
2859 Contractor's experience, skill, and reputation for conducting its Recyclable Materials, Organic Materials,  
2860 and Solid Waste management operations in a safe, effective, and responsible fashion, at all times in  
2861 keeping with applicable waste management laws, regulations, and good waste management practices;  
2862 and, (ii) Contractor's financial resources on a local, regional, and/or corporate level to maintain the  
2863 required equipment and to support its indemnity obligations to City under this Agreement. City has relied  
2864 on each of these factors, among others, in choosing Contractor to perform the services to be rendered by  
2865 Contractor under this Agreement.

2866 If Contractor requests City's consideration of and consent to an assignment, City may deny or approve  
2867 such request in its sole and complete discretion. No request by Contractor for consent to an assignment  
2868 need be considered by City unless and until Contractor has met the following requirements. The City may,  
2869 in its sole discretion, waive one (1) or more of these requirements.

2870 A. On the date the Contractor submits a written request for the City's written consent of an  
2871 assignment, Contractor shall pay the City a transfer fee in the amount of one (1) percent of the  
2872 Gross Receipts for the most-recently completed Rate Period.

2873 B. Contractor shall pay City its actual expenses for attorneys', consultants', accountants' fees, staff  
2874 time, and investigation costs necessary to investigate the suitability of any proposed assignee,  
2875 and to review and finalize any documentation required as a condition for approving any such  
2876 assignment. Such payment shall be required regardless of the ultimate determination of the City  
2877 with regard to the approval or denial of the assignment. Upon submittal of Contractor's request  
2878 for assignment to City, Contractor shall submit an initial deposit of one hundred thousand dollars  
2879 (\$100,000) for this purpose.

2880 C. Contractor shall furnish City with reviewed financial statements of the proposed assignee's  
2881 operations for the immediately preceding three (3) operating years.

2882 D. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten  
2883 (10) years of Recyclable Materials, Organic Materials, and Solid Waste management experience  
2884 on a scale equal to or exceeding the scale of operations conducted by Contractor under this  
2885 Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations



or other censure from any Federal, State or local contractor having jurisdiction over its waste management operations due to any significant failure to comply with State, Federal or local waste management laws and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its operations and management practices in accordance with sound waste management practices in full compliance with all Federal, State, and local laws regulating the Collection and Transportation of Recyclable Materials, Organic Materials, Construction and Demolition Materials (C&D), and Solid Waste including Hazardous Waste; and, (v) that any other information required by City demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

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

## **12.7 NO THIRD PARTY BENEFICIARIES**

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

## **12.8 WAIVER**

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

## **12.9 CONDEMNATION**

Contractor acknowledges that this Agreement implements the grant of a franchise pursuant to Article XVI of the Sunnyvale City Charter and Section 8.16.090 of the Sunnyvale Municipal Code. City fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain, in accordance with the procedure described in Section 1605 of City Charter. Contractor agrees that, pursuant to Section 1605 of the City Charter, in fixing the price to be paid, the court must value the property to be acquired at its fair market value, except that no allowance be made for franchise value, good will, going concern, earning power, or increased value of right of way.

## **12.10 APPROVAL AND NOTICE PROCEDURES**

Except as otherwise specified in this Agreement or directed by the City Contract Manager, City approvals may be provided in writing including via email, or verbally followed in writing including via email. Required

2926 notices between the Parties may be provided in writing including via email, or verbally followed in writing  
2927 including via email.

2928 All notices, demands, requests, proposals, approvals requiring written notice as provided in this Section  
2929 12.10, consents, and other communications, which this Agreement requires, authorizes or contemplates,  
2930 shall be in writing and shall either be personally delivered to a representative of the Parties at the address  
2931 below or deposited in the United States mail, first class postage prepaid, addressed as follows:

2932 If to City:

2933 City of Sunnyvale  
2934 Attn: City Manager  
2935 456 West Olive Avenue  
2936 Sunnyvale, California 94086

2937 with a copy to:

2938  
2939 City Attorney  
2940 City of Sunnyvale  
2941 456 West Olive Avenue  
2942 Sunnyvale, California 94086  
2943

2944 If to Contractor:

2945 Bay Counties Waste. Services, Inc.  
2946 3355 Thomas Road  
2947 Santa Clara, CA 95054  
2948 Attention: President  
2949

2950 with a copy to:

2951  
2952 David Cohen, Esq.  
2953 Cohen & Ostler  
2954 525 University Avenue, Suite 410  
2955 Palo Alto, CA 94301

2956 The address to which communications may be delivered may be changed from time to time by a notice  
2957 given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered  
2958 or, if mailed, three (3) calendar days from the date it is deposited in the mail. Either Party may choose to  
2959 provide email notification to the other Party that notice has been deposited in the mail, however such  
2960 email notification shall not constitute official notice.

## 2961 **12.11 REPRESENTATIVES OF THE PARTIES**

2962 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken  
2963 by City except as provided below. The City may delegate, in writing, authority to the City Contract Manager  
2964 and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of

2965 such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if  
2966 they are within the scope of the authority properly delegated to them.

2967 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as  
2968 the representative of the Contractor in all matters related to the Agreement and shall inform City in  
2969 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City  
2970 may rely upon action taken by such designated representative as actions of the Contractor unless they  
2971 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

## **ARTICLE 13.**

### **MISCELLANEOUS AGREEMENTS**

#### **2974 13.1 ENTIRE AGREEMENT**

2975 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof  
2976 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party  
2977 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be  
2978 construed against any Party on the basis of drafting. This Agreement may be amended only by an  
2979 agreement in writing, signed by each of the Parties hereto.

#### **2980 13.2 SECTION HEADINGS**

2981 The article headings and section headings in this Agreement are for convenience of reference only and  
2982 are not intended to be used in the construction of this Agreement nor to alter or affect any of its  
2983 provisions.

#### **2984 13.3 REFERENCES TO LAWS**

2985 All references in this Agreement to laws and regulations shall be understood to include such laws as they  
2986 may be subsequently amended or recodified, unless otherwise specifically provided herein.

#### **2987 13.4 AMENDMENTS**

2988 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

#### **2989 13.5 SEVERABILITY**

2990 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,  
2991 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this  
2992 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained  
2993 herein.

#### **2994 13.6 COUNTERPARTS**

2995 This Agreement may be executed in counterparts, each of which shall be considered an original.

#### **2996 13.7 PREVAILING WAGES**

2997 The parties acknowledge that the services provided by Contractor do not constitute a "public work" and  
2998 are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of  
2999 the regulations promulgated thereunder. However, until and unless otherwise directed by City,  
3000 Contractor will pay its field and shop employees wages and benefits equivalent to the general prevailing

3001 rate of wages applicable to the work to be done, as determined by the, Director of the California  
3002 Department of Industrial Relations. Contractor may provide any combination of wages and benefits so  
3003 long as the hourly cash equivalent of such combination equals the corresponding prevailing wage rate.  
3004 Future determinations of prevailing wages in relevant job classifications will be obtained from the  
3005 Department by City and provided to Contractor from time to time.

3006 City may presume that wage rates paid by Contractor in excess of the prevailing wages determined by the  
3007 Department of Industrial Relations are unreasonable for purposes of determining Contractor's Payment  
3008 to the extent of the excess. Contractor may present evidence demonstrating that those wages are  
3009 reasonable notwithstanding their being in excess of prevailing wage rates.

3010 **13.8 NON-DISCRIMINATION**

3011 Contractor will not discriminate in the provision of service (including with respect to any City employee  
3012 working with Contractor) or the employment of persons engaged in performance of this Agreement  
3013 (including application for that employment) on the basis of the fact or perception of, a person's race,  
3014 color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status,  
3015 age, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

3016 **13.9 EXHIBITS**

3017 Each of the Exhibits identified as Exhibit "A" through "M" is attached hereto and incorporated herein and  
3018 made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and  
3019 the terms of an Exhibit, the terms of this Agreement shall control. In the event of a conflict between  
3020 Exhibit G1 and any other Exhibit(s), such other Exhibit(s) shall control.

3021 IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto in Santa Clara County,  
3022 California on the day and year first above written.

3023

“CITY”

**City of Sunnyvale**

A Municipal Corporation

\_\_\_\_\_  
Larry Klein  
Mayor

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John A. Nagel  
City Attorney

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
David Carnahan  
City Clerk

\_\_\_\_\_  
Date

“CONTRACTOR”

**Bay Counties Waste Services, Inc.**

A California Corporation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Title of Signatory


\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Sunnyvale Business License #

\_\_\_\_\_  
Resolution Number 2020-

\_\_\_\_\_  
Approved by City Council

3024

# **DRAFT 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.

**“AB 2176”** means the Venue and Event Reduction Act of 2004 (an act to amend Section 42911 of, and to add Chapter 12.7 (commencing with Section 42648) to Part 3 of Division 30 of, the Public Resources Code, relating to Recycling), also commonly referred to as “AB 2176,” 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.

**“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 the SMaRT Station, or other facility(ies) as designated by the City.

**“Back-Haul”** means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise specified by 14 CCR Section 18982(a)(66)(A).

**“Bin”** means a Container with capacity of approximately one (1) to six (6) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

**"Bulky Item"** means discarded appliances (including refrigerators and other “white goods”), 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



## EXHIBIT A DEFINITIONS

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.

**“Cardboard”** means corrugated fiberboard consisting of a fluted corrugated sheet and one or two 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. In general, Carts have a capacity of 35, 64 or 96 gallons (or similar volumes). Exhibit B contains additional detail regarding Cart sizes that are available for specific services. “Cart” is inclusive of Split Carts.

**“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.

**“City”** means City of Sunnyvale, a municipal corporation, and all of the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the Term. For purposes of the areas to be served 'by Contractor under this Agreement, "City" also includes unincorporated areas completely surrounded by the City of Sunnyvale, all of which are now provided solid waste collection services by Contractor under this Agreement.

**“City Contract Manager”** means the Environmental Services Department’s Solid Waste Division Manager, or other designee of the Environmental Services Director, who is responsible for the administrative management of this Agreement.

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

**“Collect or Collection (or any variation thereof)”** means the act of collecting 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.

## **EXHIBIT A DEFINITIONS**

**“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.

**“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 may include up to three (3) 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 subject to maximum vehicle weight limitations under Applicable Law.

**“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; or, (2) a violation by Contractor of this Agreement.

**“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.

**“C&D Collection Site(s)”** means properties where construction and demolition work is performed as evidenced by City issuance of a land clearing, building, or demolition permit, or from a non-permitted municipal project or as otherwise stated Municipal Code.

**“Container(s)”** mean Bins, Carts, Compactors, Drop Boxes (or Debris Bins or Debris Dumpster), Split Containers, and Public Litter Containers.

**“Contamination”** means the following: (i) Discarded Materials placed in a Recyclable Materials Container that are not identified as Recyclable Materials; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as Organic Materials; (iii) Discarded Materials placed in the Solid Waste Container that are identified as Recyclable Materials and/or Organic Materials, which are to be separately Collected; and/or (iv) Excluded Waste placed in any Container.

**“Contamination Fee”** means a City-approved Customer fee charged by City or Contractor for Contamination of Containers as provided in Section 4.12.3.H.

**“Contractor”** means Bay Counties Waste Services, 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.

## EXHIBIT A DEFINITIONS

**“Contractor's Payment”** means Contractor's compensation determined in accordance with Article 8 and Exhibit E.

**“Contractor's Proposal”** means the proposal submitted to City by Contractor on \_\_\_\_\_, 20\_\_ for provision of Recyclable Materials, Organic Materials, and Solid Waste Collection and Processing services and certain supplemental written materials, which are included as Exhibit G to this Agreement and are incorporated by reference.

**“Courtesy Collection”** means events wherein the Contractor Collects Discarded Materials which have been improperly placed for Collection, leaves a Courtesy Notice, and does not charge the City-approved Rate associated with the improper set-out. Courtesy Collections are provided up to once per year per Customer.

**“Courtesy Notice”** means a form developed by Contractor and approved by City, and provided at Contractor's cost at least 2" by 6" in size, on which Contractor has provided Contractor's phone number and indicated the ways in which a Customer has failed to comply with proper Discarded Materials set-out procedures, giving reference to the law, or ordinance, or section of this Agreement which has been violated, which is left by Contractor at a Customer's Premises to indicate that their improperly set-out Discarded Materials were Collected as a courtesy (defined above as a Courtesy Collection), but may be subject to non-Collection in the future.

**“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 the City bills and collects payment from or to whom Contractor submits its billing invoice to and collects payment, for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

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

**“Delivery”** of solid waste by a Waste Generator is deemed to occur when solid waste is deposited in a receptacle or at a location that is designated for collection pursuant to City's Municipal Code, or is otherwise discarded.

**“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.

**“Discarded Materials”** means Recyclable Materials, Organic Materials, Solid Waste and Construction and Demolition Materials (C&D) placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

## EXHIBIT A DEFINITIONS

**“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.

**“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, 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.

**“Downtown Area”** means the geographic area described in Exhibit L.

**“Drop Box”, or “Debris Bin” or “Debris Dumpster”** 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.

**“Dual Stream (or Dual-Stream)”** means a Collection method in which the Generators are instructed to keep two like materials separate (such as Recyclable fiber and containers, or keep two different materials separate (such as Food Scraps and Solid Waste) for placement in two sections of a Split Container. Contractor maintains the separation of the two streams during Collection and Delivery to the Approved Facility for separate Processing of each stream. “Dual Stream” also refers separately and collectively to City’s FoodCycle program (separate Collection of Food Scraps and Solid Waste) and Recyclables Collection program (separate Collection of fiber and containers).

**“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, radioactive, sewage, restaurant grease and tallow 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

## EXHIBIT A DEFINITIONS

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

**“Extra Garbage 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.

**“Federal”** means belonging to or pertaining to the Federal government of the United States.

**“Fiscal Year”** means July 1 through June 30.

**“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) discarded paper (including paper containers and cartons) that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and (v) vegetable trimmings, houseplant trimmings and other compostable organic waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Organic Materials.

**“FoodCycle Collection”** means a Dual Stream form of Collection method in which Customers are instructed to keep Food Scraps and Solid Waste separate from each other for placement in two separate sections of a Split Container, and in which the Contractor maintains the separation of the two streams during Collection and Delivery to the Approved Facility for separate Processing of each stream.

## EXHIBIT A DEFINITIONS

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

**“Generator”** means any Person whose act first causes Discarded Materials to become subject to regulation under federal, State, or local regulation.

**“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.

**“Hauler Route”** means the designated itinerary or sequence of stops for each segment of the City’s Collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

**“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.

**“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, Used Oil Filter, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, personal care products, 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.

## EXHIBIT A DEFINITIONS

**“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.

**“Large Event”** “Large event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public.

**“Large Venue”** “Large venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR Chapter 12 and this Agreement, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

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

**“Mixed-Use Premise”** means a building or complex of buildings containing Dwelling Units and non-Residential entities such as businesses.

**“Move-in Kit”** refers to a pre-prepared and standardized collection of useful items to be given by property managers or owners 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 that clearly define the accepted and prohibited materials in the Recycling program.

**“Multi-Family”** means any Residential Premises, other than a Single-Family Premises, with four (4) 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 four (4) or more dwelling units who receive individual service and are billed separately shall not be considered Multi-Family.

**“Non-Collection Notice”** means a form at least 2" by 6" in size, developed by Contractor at Contractor's cost and subject to City review, on which Contractor has provided Contractor's phone number and indicated the reasons for Contractor's refusal to Collect material, giving reference to the law, or ordinance, or section of this Agreement which has been violated, and which gives grounds for Contractor's refusal either in writing or by means of a check system.

**“Occupant”** means the Person who occupies a Premises.

## **EXHIBIT A DEFINITIONS**

**“Organic Material(s)”** means Solid Waste 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 by 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982.

**“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.

**“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.

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

**“Processing”** means to prepare, treat, or convert Recyclable Materials, Reusable Materials or Organics Materials through sorting, cleansing, treating or reconstituting or use of other methods, for the purpose of making such material available for Recycling or reuse and/or marketing as a Recyclable or Organic Material product.

**“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: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable for the City’s Recyclable Materials Container; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable for the City’s Organic Materials Container; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials or Organic Materials to be placed in City’s Recyclable Materials and Organic Materials Containers; and, (iv) Excluded Waste placed in any Container.

**“Public Litter Modules”** means public containers distributed on sidewalks, at bus stops, and in other public places in the City for the Collection of Recyclable Materials, Organic Materials, and/or Solid Waste. Containers may provide separate locations for more than one type of Discarded Material (e.g., Solid Waste and Recyclable Materials).

**“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. 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.

**“Rear Yard”** means a location behind or beside a premise, including side yard.



## EXHIBIT A DEFINITIONS

**“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, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, refrigerated/shelf-stable cartons, 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); steel, tin or bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7), except expanded Polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; dry cell household batteries (with positive ends taped) when placed on the Recycling Cart in a sealed plastic bag and motor oil in a one gallon container with tightly fitting lid and filters sealed in a plastic bag; and, those materials added by City 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.

**“Residential” or “Residential Premises”** means Single Family, duplex, triplex and mobile home park residences, and freestanding or ground level town homes subscribing to Cart service.

**“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.

**“Salvageable Material”** (or “Salvaged Material”) means an object or material that results from salvaging, where salvaging means the controlled separation of Solid Waste material which do not require further processing for Reuse or Recycling prior to Transfer activities, or as otherwise defined by 14 CCR Section 17402(a)(24).

**“SB 1016”** means the Solid Waste Per Capita Measurement Act of 2008 (an act to amend Sections 40183, 40184, 41783, 41820.6, 41821, 41850, 42921, and 42926 of, to amend the headings of Article 4 (commencing with Section 41825) and Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of, to add Sections 40127, 40145, 40150.1, 41780.05, 42921.5, and 42927 to, and to repeal and add Section 41825 of, the Public Resources Code, relating to Solid Waste), also commonly referred to as “SB 1016,” as amended, supplemented, superseded, and replaced from time to time.

**“SB 1383”** means the Short-Lived Climate Pollutants Act of 2016 (an act to add Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and to add Chapter 13.1 [commencing with Section 42652] to Part 3 of Division 30 of the Public Resources Code, relating to methane emissions), also

## EXHIBIT A DEFINITIONS

commonly referred to as "SB 1383," as amended, supplemented, superseded, and replaced from time to time.

**"Self-Hauler" or "Self-Haul"** means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste.

**"Service Opportunity"** shall mean each individual scheduled opportunity the Contractor must 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.

**"Service Assets"** means all of Contractor's land, fixtures, buildings, equipment, vehicles and Containers in use or storage, and other property used or useful in the collection and transportation of Solid Waste, whether: 1) owned outright or pursuant to installment sale agreement or; or, 2) leased, including right to use, possession and occupancy, as the case may be.

**"Service Level"** refers to the size of a Customer's Container and the frequency of Collection service.

**"Single-Family"** 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, or tri-plex Residential structures and mobile home parks, regardless of whether each unit is separately billed for their specific service level.

**"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 Reduction"** means the act of reducing the volume of Discarded Materials generated by Persons and may involve the Reuse of Discarded Materials.

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

## EXHIBIT A DEFINITIONS

**“Specialty Recyclable Material”** means material not specified in this Agreement that can be or will be Collected for purposes of Recycling.

**“Split Cart”** or **“Split-Cart”** means a Cart that is split or divided into two segregated sections for Generator placement of different materials.

**“Split Compartment”** or **“Split Compartment Vehicle”** means a Vehicle with two separate compartments for Collection and Transport of segregated materials.

**“Split Container”** or **“Split-Container”** means a Container that is split or divided into segregated sections, instead of an entire 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 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.

**“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 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health Facility with an on-site food facility and 100 or more beds.
- D. Large Venue.

## EXHIBIT A DEFINITIONS

- E. Large Event.
- F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 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, does not share Containers with other units, and does not require Yard Trimmings Collection service, as determined in writing by the City Contract Manager.

**“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 (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 and oil filters from automobiles and light trucks.

**“Working Days”** are the days Contractor must keep its office open in accordance with Section 4.11.1.B.

**“Working Hours”** are the hours of Collection described in Section 5.2.A.

**“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 twelve (12) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

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## **EXHIBIT B: DIRECT SERVICES**



## **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 SERVICES**



## **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 Customers and Transport all Recyclable Materials to the Approved Facility at no additional charge with Single Family Customer subscription to Solid Waste Collection service.

<b>Containers:</b>	Carts
<b>Container Type:</b>	Split Cart
<b>Container Sizes:</b>	64- and 96-gallons (or comparable sizes approved by the City). Standard Container size is 64-gallon. 96-gallon container shall be made available for no additional charge, upon request by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	One (1) time per week on the same day as Yard Trimmings Materials and FoodCycle Collection services.
<b>Service Location:</b>	Curbside
<b>Acceptable Materials:</b>	Dual-Stream Recyclable Materials (using a Split-Container to separate fibers from containers)
<b>Prohibited Materials:</b>	Solid Waste, Organic Materials, Excluded Waste
<b>Additional Service:</b>	Single-Family Customers shall receive one (1) Recyclable Materials Cart at no additional charge.  Contractor shall allow Single-Family Customers to place unlimited flattened Cardboard (bundled no larger than 30" x 30" x 6") and additional volumes of separated Recyclable Materials contained in paper bags adjacent to the Recyclable Materials Cart for Collection on their regularly-scheduled Collection day at no additional charge to the Customer.
<b>Other Requirements:</b>	Contractor shall accept household batteries in the Recyclable Materials program, provided that those batteries have been placed in a sealed, clear plastic bag and have been placed on top of the Recyclable Materials Container for Collection.  Contractor may refuse to Collect a Recyclable Materials Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

#### **2. FoodCycle Collection**

For the City's FoodCycle Collection program, Contractor shall Collect Food Scraps and Solid Waste placed in Contractor-provided Split Carts one (1) time per week from Single-Family Customers and Transport such discarded materials to the Approved Facility at no additional charge with Single Family Customer subscription to Solid Waste Collection service.

<b>Containers:</b>	Carts
<b>Container Type:</b>	Split Cart

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

<b>Container Sizes:</b>	27-, 43- and 64-gallons (or comparable size approved by the City). <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	One (1) time per week on the same day as Recyclable Materials Collection service.
<b>Service Location:</b>	Curbside.
<b>Acceptable Materials:</b>	Food Scraps and Solid Waste placed for Collection in respective sides of Split Cart.
<b>Prohibited Materials:</b>	<u>Food Scraps Cart section:</u> Yard Trimmings, Recyclable Materials, Solid Waste, Excluded Waste <u>Solid Waste Cart section:</u> Recyclable Materials, Organic Materials, Food Scraps, Excluded Waste
<b>Additional Service:</b>	<p>Single-Family Customers shall receive one (1) FoodCycle Collection standard Split Cart.</p> <p>Single-Family Customers may purchase Extra Garbage Tags for additional Solid Waste. Solid Waste must be placed in a Customer-provided bag, no larger than 35 gallons, with the Extra Garbage Tag affixed and clearly visible, and placed next to their FoodCycle container for Collection. Contractor shall Collect all properly placed bags labeled with Extra Garbage Tags, and Customers shall not be required to schedule such extra service in advance. The weight limit on extra garbage bags in 30 pounds.</p> <p>Extra Garbage Tags will be readily available to Single-Family Customers at Utilities Customer Service Office. The City shall maintain a sufficient inventory of Extra Garbage Tags to accommodate additional Solid Waste.</p>
<b>Other Requirements:</b>	<p>Contractor shall provide to all Single-Family Customers kitchen pails designed to contain Food Scraps prior to placement in the Customer's Food Scraps Cart. Kitchen pail specifications shall be approved by the City prior to ordering and distribution.</p> <p>Contractor may refuse to Collect a FoodCycle Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.</p> <p>Contractor shall allow Customers to place Food Scraps in clear plastic bags and then place the bagged Food Scraps into their Food Scraps side of the Container for Collection. Contractor shall demonstrate that use of plastic bags is allowable pursuant to Section 4.3 of the Agreement. The Collection of Food Scraps placed in plastic bags shall not interfere with Contamination monitoring requirements described in Section 4.8 of this Agreement.</p>

### **3. Yard Trimmings Collection**

Contractor shall Collect Yard Trimmings placed in Contractor-provided Carts one (1) time per week from Single-Family Customers and Transport all Yard Trimmings to the Approved Facility at no additional charge with Single Family Customer subscription to Solid Waste Collection service.

**Containers:** Carts

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

<b>Container Type:</b>	Cart
<b>Container Sizes:</b>	64- or 96-gallon cart (or comparable size approved by the City). <i>{Specialty: Please modify container sizes to match available sizes}</i> Standard Container size is 64-gallon. 96-gallon container shall be made available for no additional charge, upon request by Customer.
<b>Service Frequency:</b>	One (1) time per week on the same day as Recyclable Materials and FoodCycle Collection service.
<b>Service Location:</b>	Curbside.
<b>Acceptable Materials:</b>	Yard Trimmings
<b>Prohibited Materials:</b>	Food Scraps, Recyclable Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Single-Family Customers shall receive one (1) Yard Trimmings Cart standard. Contractor shall allow Single-Family Customers to place bundles of Yard Trimmings, not to exceed four (4) feet in length and one (1) foot in diameter, adjacent to the Yard Trimmings Cart for Collection on their regularly-scheduled Collection day at no additional charge to the Customer. <u>Excess Yard Trimmings:</u> Additional Yard Trimmings may be Collected in 32-gallon Customer-owned Carts that are labeled "Yard Trimmings."  <b>Other Requirements:</b> Yard Trimmings contained in plastic bags shall be considered Solid Waste. Contractor shall Collect such bagged Yard Trimmings with Solid Waste.  Contractor may refuse to Collect a Yard Trimmings Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

#### **4. Used Motor Oil and Filter Collection**

Contractor shall Collect Used Motor Oil and Used Motor Oil Filters placed in Contractor-provided jugs and bags from Single-Family Customers and shall Recycle all Used Motor Oil and Filters Collected pursuant to this Agreement at no additional charge to Single Family Customers.

<b>Containers:</b>	Used Motor Oil jugs/Used Motor Oil Filter bags
<b>Container Sizes:</b>	1-gallon oil jugs; and, 1-gallon plastic bags
<b>Service Frequency:</b>	Up to one (1) time per week on the same day as FoodCycle Collection service.
<b>Service Location:</b>	Curbside (adjacent to Recyclable Materials Cart)
<b>Acceptable Materials:</b>	Used Motor Oil and Used Motor Oil Filters
<b>Prohibited Materials:</b>	Recyclable Materials, Organic Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Not applicable
<b>Other Requirements:</b>	Upon Customer request, Contractor shall provide a Used Motor Oil jug and/or

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

Used Motor Oil plastic filter bag to a Customer on their next regularly scheduled FoodCycle Collection day, at no additional cost to Customer. Upon Collection of Used Motor Oil and/or Used Motor Oil Filter from a Customer, Contractor shall leave a clean and empty Used Motor Oil jug or Used Motor Oil Filter plastic bag adjacent to the Recyclables Cart. If Contractor Collects two (2) Used Motor Oil jugs or Used Motor Oil Filter bags, respectively, Contractor shall leave two (2) empty Used Motor Oil jugs and two (2) empty Used Motor Oil Filter bags.

Contractor shall Recycle the Used Motor Oil and the Used Motor Oil Filter only with Persons who are authorized by the State of California to Recycle such materials. In the event the Used Motor Oil or the Used Motor Oil Filter 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.

In accordance with Exhibit D, Contractor shall notify the City Contract Manager of any contamination which renders the Used Motor Oil and Used Motor Oil Filter unacceptable for Recycling or which requires Disposal as a Hazardous Waste.

Contractor shall keep all Used Motor Oil and Used Motor Oil Filters Collected pursuant to this Agreement segregated from other materials.

Contractor may refuse to Collect Used Motor Oil and/or a Used Motor Oil Filter if it is not contained in an appropriately sized Used Motor Oil jug or Used Motor Oil Filter bag, provided that Contractor leaves a Non-Collection Notice which explains the reason for non-Collection, and also leaves a clean and empty Used Motor Oil jug and Used Motor Oil Filter bag adjacent to the refused Used Motor Oil jug and Used Motor Oil Filter bag set-out. Contractor may refuse to Collect a Used Motor Oil jug which contains liquid other than Used Motor Oil, provided that Contractor leaves a Non-Collection Notice which explains the reason for non-Collection.

#### **5. Used Cooking Oil Collection**

Contractor shall Collect used household cooking oil placed in a Contractor-approved container, such as the original cooking oil container with screw-top lid, from Single-Family Customers. Contractor shall Transport used household cooking oil to the Approved Facility at no additional charge to Single Family Customers.

<b>Containers:</b>	Contractor-approved container
<b>Container Sizes:</b>	Up to two, one gallon containers <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	One (1) time per week on the same day as FoodCycle Collection service.
<b>Service Location:</b>	Curbside (adjacent to Recyclable Materials Cart)
<b>Acceptable Materials:</b>	Used household cooking oil
<b>Prohibited Materials:</b>	Recyclable Materials, Organic Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Not applicable
<b>Other Requirements:</b>	In the event the used household cooking oil Collected pursuant to this Agreement

## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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 household cooking oil unacceptable for Recycling or which requires Disposal as a Hazardous Waste.

Contractor shall keep all used household cooking oil Collected pursuant to this Agreement segregated from other materials.

Contractor may refuse to Collect used household cooking oil if it is not contained in an approved container or contains liquid other than used household cooking oil, provided that Contractor leaves a Non-Collection Notice in accordance with Section 4.12.3 of this Agreement, and follows the applicable procedures specified in that section.

#### **6. On-Call Bulky Item/Reusable Materials Collection**

Upon Customer request, Contractor shall Collect Bulky Items, Reusable Materials, and other materials described herein from Single-Family Customers as provided in Section 4.6. On-call Bulky Item and Reusable Materials Collection services shall be offered to Customers up to two (2) times per year at no additional charge, and within five (5) Working Days of Contractor's receipt of such a Customer request for service. Contractor shall make reasonable efforts to schedule on-call Bulky Item and Reusable Materials Collections on a day that is convenient to the Customer.

*{Specialty: This section will be modified as necessary to provide for reusable materials collection as requested in the RFP.}*

<b>Containers:</b>	Not applicable
<b>Service Level:</b>	Up to two (2) cubic yards of Recyclable Materials, Yard Trimmings, Solid Waste, and E-Waste; AND, up to Two (2) Bulky Items at no additional charge; Unlimited On-call Collection of Bulky Items at per-item Rates approved by the City
<b>Service Frequency:</b>	Up to two (2) appointments per year at no additional charge
<b>Service Location:</b>	Curbside.
<b>Acceptable Materials:</b>	Reusable Materials, Bulky Items, Recyclable Materials, Yard Trimmings, Solid Waste, and E-Waste.
<b>Prohibited Materials:</b>	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.
<b>Additional Service:</b>	Contractor shall provide additional Bulky Item/Reusable Materials Collections to Single-Family Customers, beyond two (2) 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.
<b>Other Requirements:</b>	Contractor shall provide the service to the Customer upon Customer's requested service date that is a regular service day for that Customer, as mutually agreed



## **EXHIBIT B1**

### **SINGLE-FAMILY RESIDENTIAL SERVICES**

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 maintain On-Call Bulky Item and Reusable Materials Collection records in accordance with Exhibit D.

#### **7. Christmas Tree Collection**

The first weekday following December 25, Contractor shall Collect Christmas trees placed at the curb for Collection from Single-Family Customers. Contractor shall provide this service as part of regular Yard Trimmings Collection upon presentation at the curb on Customer's regularly scheduled Collection day. Contractor shall Transport all Collected Christmas trees to the Approved Facility. Christmas trees must be cut into sections no longer than four (4) feet in length, and have decorations, light strings, and stands removed. Christmas trees that contain tinsel, lights, or other decorations, or are attached to a tree stand are not required to be Collected; however, Contractor shall affix a Non-Collection Notice to the tree informing the Customer of the reason(s) for non-collection.

Christmas tree Collection services may be performed at any time of year as part of Customer's Yard Trimmings Collection service.

#### **8. Rear-Yard Collection Service**

Upon City request, Contractor shall allow for Persons that are elderly or 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 to receive Collection services at a location other than Curbside at no extra charge to the Customer if no able-bodied caregiver or family member is in residence.

City will require Customer to obtain a medical certificate from their doctor and submit such medical certificate to Utilities Customer Service Office to determine eligibility for this type of service. Contractor shall commence Collection on the next regularly scheduled collection service day for that Single-Family Customer's route following City's request for service. Contractor shall Collect Discarded Materials from approved Customers at least one time per week, Monday through Friday, at no additional cost.

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. Contractor may enter onto private property to provide service to City-qualified elderly and disabled Customers in accordance with Section 5.3.D. At a minimum, alternative service is comprised of exiting from the Collection vehicle, moving the Single-Family Customer's Container from its storage place to vehicle for Collection, and returning the Container to its original storage place. Contractor shall in no way interfere with the rear-yard household hazardous waste collection program offered to Customers by the County and the City.

## **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 Multi-Family Customer subscription to Solid Waste Collection service, and shall Transport all Recyclable Materials to the Approved Facility.

<b>Containers:</b>	Carts
<b>Container Sizes:</b>	96-gallon (or comparable size Carts approved by the City); and 1-, 2-, 3-, and 4-cubic yard Bins. As requested by Customer <i>{Specialty: Please modify container sizes to match available sizes}</i> Standard Container size is 96-gallon. Larger Container sizes shall be made available for no additional charge, upon request by Customer.
<b>Service Frequency:</b>	One (1) time per week on the same day as Yard Trimmings Materials and Solid Waste Collection services)
<b>Service Location:</b>	Curbside or other Customer-selected or City-designated service location at the Multi-Family Premises
<b>Acceptable Materials:</b>	Dual-Stream Recyclable Materials
<b>Prohibited Materials:</b>	Organic Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Contractor shall allow Multi-Family Customers to place unlimited flattened Cardboard in dedicated cardboard Recycling Bin(s). Charges for cardboard Collection service shall be based on a City-approved Bin rental rate provided quality and quantity standards are met.  Return trip pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the approved return trip fee. Such additional picks-ups can be scheduled equating to up to one (1) day per week total service.
<b>Other Requirements:</b>	During annual site visit to all Multi-Family Premises, as required under Exhibit C, 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 replace Personal Recycling Totes that Multi-Family Customers report lost, stolen, or damaged. Within one (1) week of request by a Multi-Family Customer or the owner or manager of a Multi-Family Residential Premise, Contractor shall provide new Multi-Family Customers moving into Multi-Family Premises with Personal Recycling Totes.  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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

Contractor may refuse to Collect a Recyclable Materials Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

#### **2. Food Scraps Collection**

*{Specialty: Language pending review of proposal for Multi-Family Food Scraps Collection.}*

#### **3. Yard Trimmings Collection**

*{Specialty: Language pending review of proposal for Multi-Family Yard Trimmings Collection.}*

#### **4. Solid Waste Collection**

Contractor shall Collect Solid Waste placed in Contractor- or Customer-provided Containers not less than one (1) time per week from Multi-Family Customers and Transport all Solid Waste to the Approved Facility. Multi-Family Customers shall receive Solid Waste Collection service at the City-approved Rate.

<b>Containers:</b>	Carts, Bins, Drop Boxes, Compactors
<b>Container Sizes:</b>	1-, 2-, 3-, 4- and 6-cubic yard Bins; 2- and 3- cubic yard Bin Compactors; and 8 , 15-, 20-, 30-, 34 35-, and 40-cubic yard Drop Boxes or Compactors as requested by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	Up to three (3) times per week but not less than one (1) time per week, as requested by Customer.
<b>Service Location:</b>	Curbside or other Customer-selected or City-designated service location at the Multi-Family Premises
<b>Acceptable Materials:</b>	Solid Waste
<b>Prohibited Materials:</b>	Recyclable Materials, Organic Materials, Excluded Waste
<b>Additional Service:</b>	Return trip pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the City-approved return trip fee. Such additional picks ups can be scheduled equating to up to three (3) days per week total service. Contractor may increase Solid Waste service levels for Multi-Family Customers that request more than three (3) return trip pickups per year.
<b>Other Requirements:</b>	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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

## **EXHIBIT B2**

### **MULTI-FAMILY RESIDENTIAL SERVICES**

#### **5. Bulky Item/Reusable Materials Collection**

*{Specialty: Multi-Family Bulky Item Collection language pending City review of proposal}*

#### **6. Christmas Tree Collection**

Beginning the first full week following Christmas of each year and continuing for the number of weeks specified by City, Contractor shall provide Christmas tree Collection service to Multi-Family Customers. Such Christmas tree Collection service shall be offered on dates agreed upon by the Contractor and each Multi-Family property owner or manager. Contractor shall offer each Multi-Family property owner or manager, at a minimum, the option to receive Christmas tree Collection service in:

1. Bins or Drop Boxes, which Contractor shall provide for such service;
2. Un-containerized Christmas tree Collection Service Curbside; or,
3. Designated location at the Multi-Family Premises mutually agreed upon between Contractor and the property owner or manager.

In accordance with Exhibit C, Contractor shall mail letters to all Multi-family properties to notify Multi-Family Customers of Christmas Tree Collection service and shall work with Multi-Family Premises Owners that need assistance in determining the best location for their Multi-Family Occupants to place the Christmas trees for Collection.

Contractor shall Transport all Collected and properly prepared Christmas trees to the Approved Facility. Christmas trees must be cut into sections no greater than four (4) feet in length. Christmas trees shall not be Collected if they have tinsel, lights, or other decorations, or are attached to a tree stand; however, Contractor shall affix a non-Collection notice to the 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 Christmas tree that has been corrected and set out again.

Christmas tree Collection services performed during the timeframe specified by the City shall be provided at no additional cost to the City or the Customer.

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**EXHIBIT B3:  
COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION  
AND DEMOLITION SERVICES**





## **EXHIBIT B3**

### **COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION AND DEMOLITION 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 Facility.

- Containers:** Carts, Bins, Drop Boxes  
Commercial Customers may provide their own Containers if such Containers are compatible with Contractor Collection equipment and practices.
- Container Sizes:** 35-, 64-, and 96-gallon (or comparable size Carts approved by the City); 3-, and 6- cubic yard Bins; 7-, 20-, 30-, and 40- cubic yard Drop Boxes; As requested by Customer.  
*{Specialty: Please modify container sizes to match available sizes}*
- 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 ten (10) feet from the nearest point that a Collection Vehicle can access from a paved surface.
- Acceptable Materials:** Recyclable Materials, Corrugated Cardboard
- Prohibited Materials:** Organic Materials, Solid Waste, Excluded Waste
- Additional Service:** Up to forty (40) cubic yard equivalent per week of Recyclable Materials Collection capacity at the Service Level of the Customer's choosing shall be provided to Commercial Customers at the City-approved rate. Return trip pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the approved return trip fee. 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 City-selected Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency, Contractor shall not be required to make contact with Commercial Customers that are exempted from Recyclable Materials services by the City.

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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

Contractor may refuse to Collect a Recyclable Materials Container that does not meet proper standards for set-out or that contains Contamination in excess of

## **EXHIBIT B3**

### **COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION AND DEMOLITION SERVICES**

standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

#### **2. Food Scraps Collection**

Contractor shall Collect Food Scraps placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Food Scraps to the Approved Facility.

<b>Containers:</b>	Carts, Bins Commercial Customers may provide their own Containers if such Containers are compatible with Contractor Collection equipment and practices.
<b>Container Sizes:</b>	35-, (or comparable size Carts approved by the City); 1-, 2-, 3-cubic yard Bins; as requested by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer.
<b>Service Location:</b>	Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than ten (10) feet from the nearest point that a Collection Vehicle can access from a paved surface. Collection crews are not required to push Food Scraps Bins that are greater than one (1) cubic yard in size.
<b>Acceptable Materials:</b>	Food Scraps
<b>Prohibited Materials:</b>	Recyclable Materials, Solid Waste, Yard Trimmings, Excluded Waste
<b>Additional Service:</b>	Up to fifteen (15) cubic yards per week of Organic Materials Collection capacity at the Service Level of the Customer's choosing shall be provided to Commercial Customers at the City-approved rate. Return trip pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the approved return trip fee. Such additional picks-ups can be scheduled equating to up to five (5) days per week of total service
<b>Other Requirements:</b>	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 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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).  Contractor may refuse to Collect a FoodCycle Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3

## **EXHIBIT B3**

### **COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION AND DEMOLITION SERVICES**

of this Agreement.

#### **3. Yard Trimmings Collection**

Contractor shall Collect Yard Trimmings placed in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and Transport all Yard Trimmings to the Approved Facility unless the Customer has received a City-approved waiver due to collection of Yard Trimmings by landscaping contractors that remove material the off-site.

- Containers:** Carts, Bins  
Commercial Customers may provide their own Containers if such Containers are compatible with Contractor Collection equipment and Collection practices.
- Container Sizes:** 64-, and 96-gallon (or comparable size Carts approved by the City);  
1-, 2-, 3-, and 4-cubic yard Bins; and,  
As requested by Customer.  
*{Specialty: Please modify container sizes to match available sizes}*
- Service Frequency:** Up to five (5) 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 ten (10) feet from the nearest point that a Collection Vehicle can access from a paved surface.
- Acceptable Materials:** Yard Trimmings
- Prohibited Materials:** Food Scraps, Recyclable Materials, Solid Waste, Excluded Waste
- Additional Service:** Up to ninety-six (96) gallons per week of Yard Trimmings Materials Collection capacity at the Service Level of the Customer's choosing shall be provided to Commercial Customers at the City-approved rate. Contractor shall provide Organic Materials Collection at Service Levels greater than ninety-six (96) gallons per week to Commercial Customers upon request, using additional ninety-six (96) gallon Carts, or Bins as requested, and may charge the appropriate Rate approved by the City. Return trip pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the approved return trip fee. Such additional picks-ups can be scheduled equating to up to five (5) days per week total service
- Other Requirements:** Yard Trimmings contained in plastic bags shall be considered Solid Waste. Contractor shall Collect such bagged Yard Trimmings with Solid Waste.  
  
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 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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container

## **EXHIBIT B3**

### **COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION AND DEMOLITION SERVICES**

location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

Contractor may refuse to Collect a Yard Trimmings Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

#### **4. 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 Approved Facility.

<b>Containers:</b>	Carts, Bins, Drop Boxes, Compactors.
<b>Container Sizes:</b>	64-, and 96-gallon (or comparable size Carts approved by the City); 1-, 2-, 3-, 4 and 6- cubic yard Bins; 2-, cubic yard Bin Compactors, and, 7-, 20-, 30-, and 40- cubic yard Drop Boxes; or 12-, 15-, 16-, 20-, 25-, 30-, 35-, and 40-cubic yard Drop Box Compactors  As requested by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer.
<b>Service Location:</b>	Curbside or other Customer-selected service location at the Commercial Premises; additional charges may apply if the service location is greater than ten (10) feet from the nearest point that a Collection Vehicle can access from a paved surface.
<b>Acceptable Materials:</b>	Solid Waste
<b>Prohibited Materials:</b>	Recyclable Materials, Organic Materials, Excluded Waste
<b>Additional Service:</b>	Return trip pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, will be available at the approved return trip fee. Such additional picks-ups can be scheduled equating to up to five (5) days per week total service
<b>Other Requirements:</b>	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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

#### **5. Commercial Container Sharing**

In special circumstances, for Customers with significant space limitations and in the absence of other alternatives for Container size and/or service frequency, City Contract Manager may permit Commercial

## **EXHIBIT B3**

### **COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION AND DEMOLITION SERVICES**

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, however 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, Commercial Customers that are permitted to share Discarded Materials Containers must submit a "tenant use agreement" to the City Contract Manager documenting their agreement to, and compliance with applicable Commercial Container sharing requirements of the Municipal Code 19.38.030. In accordance with Exhibit D, Contractor shall on a quarterly basis describe trends and/or concerns related to Commercial Customer Container sharing service.

#### **6. Construction & Demolition Material Collection**

- A. **General.** Contractor shall Collect C&D from Customers that directly subscribe to its Collection services. Contractor shall charge Customers for C&D Collection services at City-Approved Rates.
- B. **Acceptable Material.** Contractor may Collect C&D from construction, remodeling, repair, or demolition operations. C&D may be mixed materials delivered to an Approved Facility for C&D Recycling; Source Separated C&D materials Collected for Recycling; and/or Source Separated Salvageable Materials Collected for salvage and Reuse. C&D may contain only de minimis amounts of Solid Waste generated at the C&D Collection Sites. Contractor may Transport Source Separated Recyclable Materials, such as cardboard and metals, and Yard Trimmings, from the C&D Collection Sites, if the materials result from the construction, remodeling, repair, or demolition work at the C&D Collection Sites.
- C. **Transport and Processing.** Contractor shall Deliver C&D to the Approved Facility for Processing on-site and/or for transfer to a third-party for Processing. Contractor shall deliver Source Separated Salvageable Materials to the Approved Facility for Reuse through donation or sale of materials.
- D. **Container Types and Collection Frequency.** Contractor shall offer Customers various size Bins and Roll-Off Boxes for Collection of C&D, subject to review and approval by the City Contract Manager. C&D Containers shall conform to all requirements of Sections 4.8 and 5.6 of this Agreement. Contractor shall Collect C&D Materials within one (1) Working Day of an initial Customer request, and at an ongoing frequency agreed upon with the individual Customer. Contractor shall provide requested Collection of C&D Materials within two (2) Working Days of a Customer request for a one-time Collection.
- E. **Education Information.**

Contractor shall provide Customers with City-approved educational information on best practices for C&D Recycling and Reuse and proper separation of materials for Collection. As directed by City, Contractor shall label or install signs on Bins and Roll-Off Boxes identifying allowable and non-allowable materials for Collection in the C&D Containers. Signs shall be a minimum size of one (1) foot by two (2) feet and lettering on signs shall be a minimum of three (3) inches high. Signs shall be affixed to the front and both sides of each Bin and Roll-Off Box.

## **EXHIBIT B3**

### **COMMERCIAL, INDUSTRIAL, AND CONSTRUCTION AND DEMOLITION SERVICES**

*{Specialty: City may elect to add material separation requirements for C&D Customers in addition to the source separation done at SMarT. The final decision may affect the language above.}*

- F. **Record Keeping and Reporting.** Contractor shall submit C&D Tonnage information and other data pursuant to Exhibit D of the Agreement.

## **EXHIBIT B4: CITY SERVICES**





## EXHIBIT B4 CITY SERVICES

### 1. City Facilities

Contractor shall Collect Recyclable Materials, Yard Trimmings, Food Scraps, and Solid Waste from City facilities (including parks and schools) in the same manner as those services are provided to Commercial Customers. Contractor shall provide designated personnel in accordance with Section 3.6 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 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.

City and Contractor shall cooperate to select strategic locations for the Containers placed at each location, in order to maximize participation while siting Containers to enhance operational efficiency in Collections. Contractor shall Collect full or overflowing Containers within twenty-four (24) hours of notification by City Contract Manager.

### 2. Recyclable Materials Collection

Contractor shall Collect Recyclable Materials placed in Contractor-provided Containers from City facilities, as described in Exhibit B5, and Transport all Recyclable Materials to the Approved Facility.

<b>Containers:</b>	Carts, Bins
<b>Container Sizes:</b>	96-gallon (or comparable size Carts approved by the City); and 1-, 2-, 3-, 4-, 5-, and 6-cubic yard Bins. As requested by Customer <i>{Specialty: Please modify container sizes to match available sizes}</i> Standard Container size is 96-gallon. Larger Container sizes shall be made available for no additional charge, upon request by Customer.
<b>Service Frequency:</b>	One (1) or more times per week depending on location and quantity of Recyclable Materials.
<b>Service Location:</b>	Curbside or other City-designated service location at the City facility Premises
<b>Acceptable Materials:</b>	Dual-Stream Recyclable Materials
<b>Prohibited Materials:</b>	Organic Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Contractor shall allow City Customers to place unlimited flattened Cardboard in dedicated cardboard recycling Bin(s).
<b>Other Requirements:</b>	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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).  Contractor may refuse to Collect a Recyclable Materials Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the

## EXHIBIT B4 CITY SERVICES

applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

**Special Recycling Collection.** Contractor shall provide Containers and Recycling service to City facilities and schools, as identified in Exhibit B5, during special clean-outs or end of school year activities (Clean Slate Program) at no charge. City shall contact schools and City facilities in April or May of each year to notify staff of the Clean Slate Program. Schools and City facilities shall contact Specialty to indicate the number of Containers requested for Recycling and/or Solid Waste service and shall indicate how long such Containers will be needed (not to exceed three (3) weeks).

### 3. Food Scraps Collection

Contractor shall Collect Food Scraps placed in Contractor-provided Containers from City facilities, as described in Exhibit B5, and Transport all Food Scraps to the Approved Facility.

<b>Containers:</b>	Carts, Bins Commercial Customers may provide their own Containers if such Containers are compatible with Contractor Collection equipment and practices.
<b>Container Sizes:</b>	35-, (or comparable size Carts approved by the City); 1-, 2-, 3-cubic yard Bins; as requested by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	One (1) or more times per week depending on location and quantity of Food Scraps.
<b>Service Location:</b>	Curbside or other City-designated service location at the City facility Premises
<b>Acceptable Materials:</b>	Food Scraps
<b>Prohibited Materials:</b>	Recyclable Materials, Solid Waste, Yard Trimmings, Excluded Waste
<b>Other Requirements:</b>	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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).  Contractor may refuse to Collect a Food Scraps Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

### 4. Solid Waste Collection

Contractor shall Collect Solid Waste placed in Contractor-provided Containers from City facilities, as described in Exhibit B5, and Transport all Solid Waste to the Approved Facility.

## EXHIBIT B4 CITY SERVICES

<b>Containers:</b>	Carts, Bins, Drop Boxes, Compactors.
<b>Container Sizes:</b>	64-, and 96-gallon (or comparable size Carts approved by the City); 1-, 2-, 3-, 4 and 6- cubic yard Bins; 2-, cubic yard Bin Compactors, and, 7-, 20-, 30-, and 40- cubic yard Drop Boxes; or 12-, 15-, 16-, 20-, 25-, 30-, 35-, and 40-cubic yard Drop Box Compactors As requested by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	One (1) or more times per week depending on location and quantity of Solid Waste.
<b>Service Location:</b>	Curbside or other City-designated service location at the City facility Premises.
<b>Acceptable Materials:</b>	Solid Waste
<b>Prohibited Materials:</b>	Recyclable Materials, Organic Materials, Excluded Waste
<b>Other Requirements:</b>	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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

### 5. Yard Trimmings Collection at City Facilities, Parks, and Schools

Contractor shall Collect Yard Trimmings placed in Contractor-provided Containers not less than one (1) time per week from City Customers at no additional charge and shall Transport all Yard Trimmings to the Approved Facility.

*{Specialty: This would be a new service; language will be modified as necessary based on your proposal.}*

<b>Containers:</b>	Carts, Bins, Compactors
<b>Container Sizes:</b>	64-, and 96-gallon (or comparable size Carts approved by the City); 1-, 2-, 3-, and 4-cubic yard Bins; and, As requested by Customer. <i>{Specialty: Please modify container sizes to match available sizes}</i>
<b>Service Frequency:</b>	Up to five (5) times per week but not less than one (1) time per week, as requested by City.
<b>Service Location:</b>	Curbside or other City-selected service location at the City Premises; additional charges may apply if the service location is greater than ten (10) feet from the nearest point that a Collection Vehicle can access from a paved surface.
<b>Acceptable Materials:</b>	Yard Trimmings
<b>Prohibited Materials:</b>	Food Scraps, Recyclable Materials, Solid Waste, Excluded Waste
<b>Additional Service:</b>	Up to ninety-six (96) gallons per week of Yard Trimmings Materials Collection capacity at the Service Level of the Customer's choosing shall be provided to City Customers.
<b>Other Requirements:</b>	Yard Trimmings contained in plastic bags shall be considered Solid Waste.

## **EXHIBIT B4 CITY SERVICES**

Contractor shall Collect such bagged Yard Trimmings with Solid Waste.

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). In accordance with Section 5.3.F, a push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle will be provided at no additional charge (push up to 10 feet then return).

Contractor may refuse to Collect a Yard Trimmings Container that does not meet proper standards for set-out or that contains Contamination in excess of standards agreed upon by the Parties, provided that Contractor follows the applicable noticing and resolution procedures in accordance with Section 4.12.3 of this Agreement.

### **6. Public Litter Container Service**

With the exception of Public Litter Containers that are the responsibility of CalTrans or City Parks staff, Contractor shall provide Collection and Transportation service to all Public Litter Containers in place or placed by the City on sidewalks, at bus stops, and other City properties at set forth in Exhibit B5 during the Term of this Agreement. Frequency of Collection shall be designated by the City, at least three (3) times per week per Public Litter Container, and may be more frequent if requested by City. Contractor shall report all instances to City of plastic liners inside the Public Litter Containers that are damaged or missing. Contractor shall pick up litter located in and around Public Litter Containers that are not located in City Parks. In the event that Public Litter Containers are designed and able to separately contain Source Separated Recyclable Materials and/or Source Separated Organic Materials, Contractor shall not commingle such materials with Solid Waste during Collection and Transport.

### **7. Planning Assistance Services**

Within three (3) Working Days of City request, Contractor shall assist City in reviewing plans for proposed developments and Customer-owned or leased Containers and accessories in the City with regard to the type of Discarded Materials Collection infrastructure considerations that plans should provide, including, but not limited, to Collection vehicle accessibility and Discarded Materials service level, and related space considerations.

### **8. On-Call Clean Up Service**

In addition to the services to be provided in accordance with this Exhibit B4, and Article 4 of the Agreement, Contractor shall provide on-call clean-up service, and upon City request, will provide such clean-up capacity in the form of temporary Drop Box service for community events, spring clean-up events, or any other arrangement deemed appropriate by the City Contract Manager.

Contractor shall, in response to a written request from the City Contract Manager, deliver to and Collect Drop Boxes from locations not designated as City facilities, as directed by the City Contract Manager. The City Contract Manager's request to Contractor shall specify the date of delivery and Collection of the Drop Box Containers, the location(s) for delivery, and the number of and size of the Drop Box Containers to be delivered. Contractor shall deliver Drop Boxes within twenty-four (24) hours of City request. Contractor

## **EXHIBIT B4 CITY SERVICES**

shall Collect, empty and return Drop Boxes within twenty-four (24) hours of City request. Contactor shall remove and not return Drop-Boxes within twenty-four (24) hour of City request.

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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 shall collect Recyclable Materials, Food Scraps, Yard Trimmings, and Solid Waste from City facilities (including parks and schools) in the same manner as those services are provided to Commercial Customers. To the extent practical, Contractor shall not be required to enter City facilities to Collect Discarded Materials. City personnel shall be directed to place City facility Discarded Materials Containers outside for Contractor to Collect and Transport to the Approved Facility. Contractor shall provide service to all City facilities, present and future, at no additional cost to the City. The list of City facilities, parks, and schools to receive service is below. Locations and service levels may change. To the extent that Contractor's total weekly cubic yards of City facility service, including through added Food Scraps Collection, exceeds one hundred and ten percent (110%) of the total weekly cubic yards of City facility service shown in this Exhibit B5, Contractor may charge City the applicable authorized Commercial Rate for the additional increment of service.

*{Specialty: Please coordinate with City to complete current service levels at City facilities as listed in tables below.}*

#### 1. City Facilities

FACILITY NAME	ADDRESS	SERVICE LEVEL/FREQUENCY SOLID WASTE	SERVICE LEVEL/FREQUENCY RECYCLING	SERVICE LEVEL/FREQUENCY FOOD SCRAPS	SERVICE LEVEL/FREQUENCY YARD TRIMMINGS
City Hall	456 W. Olive Ave.				
City Hall Annex	650 W. Olive Ave.				
Columbia Neighborhood Center	739 Morse Ave.				
Community Center	550 E. Remington Dr.				
Corporation Yard	221 Commercial Ave.				
Fire Station #1	171 N. Mathilda Ave.				
Fire Station #2	795 E. Arques Ave.				
Fire Station #3	910 Ticonderoga Dr.				
Fire Station #4	996 Wolfe Rd.				
Fire Station #5	1210 Bordeaux				
Fire Station #6	1282 N. Lawrence Station Rd.				
Nova Job Training Office	505 W. Olive Ave., Suites 300, 500, 600, 700				
Public Safety Headquarters	700 All America Way				
Sunken Gardens Golf Course	1010 S. Wolfe Rd.				
Sunnyvale Chamber of Commerce	260 S Sunnyvale Ave.				
Sunnyvale Golf Course	605 Macara Ave.				
Sunnyvale Library	665 W. Olive Ave.				
Sunnyvale SeniorCenter	550 E. Remington Ave.				
Tennis Center	800 Russet Dr.				
Water Pollution Control Plant	1444 Borregas Ave.				

## EXHIBIT B5

### CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

#### 2. Parks

FACILITY NAME	ADDRESS	SERVICE LEVEL/FREQUENCY SOLID WASTE	SERVICE LEVEL/FREQUENCY RECYCLING	SERVICE LEVEL/FREQUENCY FOOD SCRAPS	SERVICE LEVEL/FREQUENCY YARD TRIMMINGS
Baylands Park	999 E. Caribbean Dr.				
Braly Park	704 Daffodil Ct.				
Cannery Park	900 W. California Ave.				
Columbia Park	801 Morse Ave.				
De Anza Park	1150 Lime Dr.				
Encinal Park	445 N. Macara Ave.				
Fair Oaks Park	540 Fair Oaks Ave.				
Fairwood Park	1255 Sandia Ave.				
Lakewood Park	834 Lakechime Dr.				
Las Palmas Park	850 Russet Dr.				
Macara Park	445 Macara Ave.				
Mango Park	1080 Mango Ave.				
Murphy Park	236 N. Sunnyvale Ave.				
Murphy Park/Museum	230 E. California Ave.				
Orchard Gardens Park	238 Garner Dr.				
Ortega Park	636 Harrow Way				
Panama Park	755 Dartshire Way				
Ponderosa Park	811 Henderson Ave.				
Raynor Park	1565 Quail Ave.				
San Antonio Park	1026 Astoria Dr.				
Seven Seas Park	1010 Morse Ave.				
Serra Park	730 The Dalles Ave.				
Swim Center Washington Park	840 W. Washington Ave.				
Washington Park	840 W. Washington Ave.				

## EXHIBIT B5

### CITY FACILITY SERVICE LEVELS, LOCATIONS, AND SPECIAL EVENTS

#### 3. Schools

FACILITY NAME	ADDRESS	SERVICE LEVEL/FREQUENCY SOLID WASTE	SERVICE LEVEL/FREQUENCY RECYCLING	SERVICE LEVEL/FREQUENCY FOOD SCRAPS	SERVICE LEVEL/FREQUENCY YARD TRIMMINGS
Appleseed Montessori School	1302 Warner Ave.				
Braly Elementary School	675 Gail Ave.				
California Young World	1110 Fairwood Ave.				
Caring Hearts	645 W Fremont Ave.				
Challenger School	1185 Hollenbeck Ave.				
Cherry Chase Elementary School	1138 Heatherstone Wy				
Columbia Middle School	707 Morse Ave				
Culturelinks, Inc.	1055 Sunnyvale-Saratoga Rd.				
Cumberland Elementary School	824 Cumberland Dr.				
Early Horizons Preschool	1510 Lewiston Dr.				
Ellis Elementary School	550 E Olive Ave.				
Green Mountain Education	420 S Pastoria				
Hebrew Day School/Bar Yochai	1030 Astoria Dr.				
Jarvis E. Bishop Elementary School	450 N. Sunnyvale Ave.				
King's Academy	562 Britton Ave.				
Kirin Partners LLC	1110 Sunnyvale-Saratoga Rd.				
Lakewood Elementary School	750 Lakechime Dr.				
May Chen	730 E Homestead Rd.				
Peterson Middle School	1380 Rosalia Ave.				
Ponderosa Elementary School	804 Ponderosa Ave.				
Prodigy Child Development Ctr.	1155 E Arques Ave.				
San Miguel Elementary School	777 San Miguel Ave.				
Santa Clara Unified School Dst.	1095 Dunford Wy				
Small World Academy	878 Lakewood Dr.				
Stratford School - Sunnyvale Washington Presc	820 W Mc Kinley Ave.				
Stratford School Sunnyvale De Anza Preschool	1196 Lime Dr.				
Stratford School Sunnyvale Raynor Middle Scho	1500 Partridge Ave.				
Summit Denali Public School	539 E Weddell Dr.				
Sunnyvale Childcare Center Inc.	853 Gary Ave.				
Sunnyvale Middle School	1050 Mango Ave.				
Sunnyvale School District	825 W Iowa Ave.				
Triumphant Learning Center	420 Carroll St.				
Tulip Kids, Inc.	1159 Willow Ave				
Vargas Elementary School	1054 Carson				

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

#### 4. Public Litter Containers

*{Specialty: Public Litter Container table below will be populated for final RFP package.}*

[illegible]

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



## **EXHIBIT C**

### **PUBLIC EDUCATION & OUTREACH PLAN**

#### **1. General Administration**

The City places 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:

1. 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 outreach plan to promote the programs performed by Contractor under this Agreement. Each outreach 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 developed or updated, 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 according to the deadlines identified and products developed. 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 F. Each Business Day that the plan is late shall count as a single event/activity.
2. Upon request from the City Contract Manager, City Contract Manager and Contractor's Contract Manager shall meet up to one (1) time per quarter to discuss services, outreach, and educational campaigns and request changes or adaptations to the annual public education plan.
3. 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 change in their service provider, if applicable, and to highlight new program offerings. Transition and ongoing sector-specific collateral materials shall be developed and distributed. Contractor shall submit all draft public education materials to City Contract Manager for review and approval at least 45 days prior to when they are needed for distribution.
4. When developing outreach, educational and promotional materials, Contractor shall work with the City to understand goals and objectives, ensure coordinated messaging, then begin drafting the content and developing a graphic mock-up. All outreach and educational materials shall be



## **EXHIBIT C**

### **PUBLIC EDUCATION & OUTREACH PLAN**

thematically branded with consistent color, font, look and feel; produced in, at a minimum, English, Spanish and Mandarin, as directed by City, when appropriate; and photo-oriented to appeal to varied language and literacy levels. Materials shall also be made available in digital form, and shall be printed double-sided on 100% recycled and recyclable paper. Prior to finalizing any collateral materials, and no fewer than four (4) weeks prior to the deadline for distribution, the draft shall be provided to the City for a final review. The draft shall then be sent for printing and distribution.

5. Contractor shall develop and utilize Non-Collection Notices and Courtesy Notices in clear instances of Customer non-compliance, as provided in Section 4.12.3. Contractor shall develop and maintain a system of keeping records of and following up with Customers who receive Non-Collection Notices and Courtesy Notices during Collection of materials.
6. Contractor shall develop and maintain 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.

#### **2. Public Education and Outreach Team**

To best achieve the highest possible level of public education and awareness, Contractor has proposed to employ  full-time equivalent staff members *{Specialty: Insert number of proposed public education staff}* to coordinate and implement all public education and outreach activities as well as technical assistance in the field 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;
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.

## **EXHIBIT C**

### **PUBLIC EDUCATION & OUTREACH PLAN**

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 Agency Contract Manager.

#### **3. Annual Budget**

In addition to staffing expenses, Contractor shall spend no less than \$\_\_\_\_\_ for the public education and outreach services described in this Exhibit C. *{Specialty: Please propose an annual budget. Final amount to be determined during negotiations, following the selection of the final service package.}*

#### **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 Type faces unique Discarded Materials management opportunities and challenges; therefore, Contractor shall use the City's 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

*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 Advertisements	Prepare and distribute newspaper advertisements that identify holiday collection schedules for Thanksgiving, Christmas and New Years as well as a Spring/Fall advertisement that explains all upcoming events during that time period.	One (1) ad in November for Thanksgiving schedule and two (2) ads in December for Christmas/ New Year's schedule. One ad in spring and one ad in fall for the Spring/Fall events.
Truck-Side Advertising	Contractor shall, on a quarterly basis and based on City-developed campaign, implement a City-wide truck-side advertising campaign to educate the public about Contractor's programs under this Agreement. Each campaign should be coordinated, in terms of both message and timing, with City. Contractor shall produce and install truck-side signage for each side of each vehicle it operates in performing services under this Agreement.	Quarterly.
SB 1383 Container Notice	At least two (2) weeks prior to providing Customers with SB 1383-compliant Containers, Contractor shall send affected Customers City-approved notices describing when and why the Container swap out will happen. Such notices shall include information about new SB 183 compliant labels, if applicable and as described under Exhibit K.	As needed.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

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

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

Activity	Description	Distribution/Frequency
HOA Visits	Visit homeowner associations to promote and explain the Recycling programs included in this Agreement.	At City Contract Manager or Customer request.
Corrective Action Notices	Produce a Single-Family Customer oriented Non-Collection Notice, and Courtesy Notice for use in instances where the Customer includes prohibited materials in a Container or fails to properly prepare or set-out Containers. Content to be discussed with City prior to production and reviewed after development and before printing.	As needed.
Holiday Collection Schedule Notification postcard	Provide written notification to all Single-Family Customers advertising holiday collection schedule changes. 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 continue to provide 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 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

#### 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
SB 1383 and Ongoing Technical Assistance: Diversion Opportunity Assessments	<p>Starting in August 2021, each Multi-Family Premises will be sent a letter from the Contractor informing them of the requirements of SB 1383 and be given a timeline for implementation. Contractor will begin contacting and meeting with each and every Multi-Family Premises starting in October of 2021 to ensure all complexes have begun the process of implementing Organic Material Collection prior to February 2022. The content of the letter shall be reviewed by City prior to being sent.</p> <p>Offer Diversion opportunity assessments at least one (1) time annually to each and every Multi-Family complex and 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>During initial in-person meeting to assist with SB 1383 Organic Material Collection implementation and then annually thereafter as needed, 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. During the visits, outreach material will be made available to Manager. Finally, Contractor shall coordinate with customer service and operations to implement service level changes, as needed.</p> <p>Further, Contractor shall enter data in the City's customer tracking database on a monthly basis that documents Customers targeted monthly, the existing service levels, recommendations made, and the outcome of technical assistance provided.</p>	<p>Contact by letter, then in person each and every Multi-Family complex to inform and assist with Organic Material Collection implantation at least once. Provide outreach material specific to SB 1383.</p> <p>Thereafter, offer in-person meetings to each and every Multi-Family complex conducted one (1) time per year, plus follow-up meetings with individual property manager, as needed. Outreach materials for food scraps, recycling and yard trimmings collection will be given to Manager at these annual site visit.</p>

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
Move-In Kits	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, a move in/move out guide and an In-Home Recycling tote that clearly define the accepted and prohibited materials in the Recycling program. Move-In Kit materials will be developed by the City and digital copies provided to Contractor to print. In-Home Recycling tote will be developed and purchased by Contractor with content approved by City.	Distributed during Diversion opportunity assessments.
Workshops at HOA meetings	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.	At Customer's request.
Christmas Tree Collection Notification and collection coordination with Multi-Family property managers	Provide written notification to each Multi-Family property manager/owner advertising the availability of Christmas tree Collection services. The notification shall inform managers of the schedule, accepted and prohibited materials, Collection method options (Drop Boxes, loose piles) and set-out requirements for the program. Work with Multi-Family property managers to determine appropriate set-out location for collection.	At least fourteen (14) calendar days prior to event via direct mail, e-mail, or in-person.
Website	Contractor shall continue to provide 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 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" or additional Move-in Kits.	At least thirty (30) calendar days prior to Commencement Date.  Updated no less than quarterly.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

#### Public Education and Outreach | Commercial Education and Outreach Activities

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

Description	Purpose	Distribution/Frequency
Recycling Guide	Distribute a “Recycling guide” specific to Commercial Customers. This guide will be produced by the City and 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 addresses proper methods of handling and Disposal of Hazardous Wastes. Digital copies made available to Contractor for printing.	Distributed during Diversion opportunity assessments.
“How-to” Flyer: Recyclable Materials	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). Flyer will be developed by City and digital copies provided to Contractor for printing.	Distributed during Diversion opportunity assessments.
“How-to” Flyer: Organic Materials	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). Flyer will be developed by City and digital copies provided to Contractor for printing.	Distributed during Diversion opportunity assessments.

## EXHIBIT C

### PUBLIC EDUCATION & OUTREACH PLAN

Description	Purpose	Distribution/Frequency
SB 1383 and Ongoing Technical Assistance: Diversion Opportunity Waste Assessments	<p>Starting in August 2021, each business that meets the SB 1383 requirements (2cy threshold) will be sent a letter from the Contractor informing them of the requirements of SB 1383 and be given a timeline for implementation of organics collection program. Contractor will begin contacting and meeting with each and every business starting in October of 2021 to ensure all required sites have begun the process of implementing Organic Material Collection prior to February 2022. The content of the letter shall be reviewed by City prior to being sent.</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>During initial in-person meeting to assist with SB 1383 Organic Material Collection implementation and then annually thereafter as needed, 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 enter data in the City's customer tracking database on a monthly basis documenting Customers targeted monthly, the existing service levels, recommendations made, and the outcome of technical assistance provided.</p>	<p>Contact by letter, then in person each and every business to inform and assist with Organic Material Collection implantation. Meet up to two times before February 22 and if not compliant, issue non-compliance notice on or after February 22, 2022.</p> <p>Annually thereafter, offer one (1) time during in-person meetings with each and every Commercial Customer, plus follow-up meetings with individual Customers, as required.</p>
Recycling and Organics Posters	Distribute (during Diversion opportunity assessments) laminated Recycling and Organics posters that provide graphic illustrations of acceptable and prohibited materials within each program. Posters will be developed by City and digital copies provided to Contractor to print and laminate.	Distributed during Diversion opportunity assessments.



**EXHIBIT C**  
**PUBLIC EDUCATION & OUTREACH PLAN**

Description	Purpose	Distribution/Frequency
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. City to approve all content of notice prior to printing.	As needed.

## 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
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, determining if there is adequate space for additional food scraps, yard trimmings or recycling containers in enclosures, recommending size and frequency of service for new containers to schools and communicating the results to the City to improve existing school Recycling and Organics programs.	Offered to schools Upon Request.
Recycling Truck visits during school presentations	Provide a recycling truck at schools during presentations given by City.	At City Request.

## 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 assist City when requested, to staff an exhibit booth and distribute promotional and educational materials at special events.	All special events listed in this Agreement.  Other events at Customer request.
Event Collection Stations	Develop signage for Event Collection Stations that will be inserted into sign holders on top of each container and the front of each container that provides information about what can be recycled. City to approve content before printing.	Used at each event.

## **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.

*{Specialty: Pending; content of monthly, quarterly and annual reports to be finalized prior to release of RFP package.}*

#### **1. Monthly Report Content**

*To be added*

#### **2. Quarterly Report Content**

Quarterly reports shall be presented by Contractor to show the following information for each month in the reported quarter: and include a quarterly average. In addition, each quarterly report shall show the past four (4) quarters average for data comparison (the first three (3) quarters of the Agreement shall only include the available quarterly information).

##### **A. Tonnage Report**

1. Tonnage delivered to each Approved Facility by Customer Type, subtotalling 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.

## **EXHIBIT D**

### **REPORTING REQUIREMENTS**

#### **B. Revenue Report**

Provide a statement detailing Gross Receipts, separately identifying SB 1383 Fee Eligible Revenues, from all operations conducted or permitted pursuant to this Agreement as required by Section 7.8.

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).

#### **C. Customer Report**

1. Number of Customers by Customer 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 a Solid Waste Service Level equating to four (4) cubic yards of service capacity per week or more. 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.
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.

#### **D. 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).
2. Summary report on the programs offered to City as described in Exhibit B4 focused on when each service was provided and any issues/concerns identified.

#### **E. 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.).
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.

## **EXHIBIT D**

### **REPORTING REQUIREMENTS**

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 Collections summarized by the reason for leaving a Courtesy Notice (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 Collection, including the Customer address, and material type for which the Courtesy 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.

#### **F. Education and Outreach Report**

1. Provide a 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. Summarize 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.
3. Dates, times, and group names of meetings and events attended.

#### **G. 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.

#### **H. Edible Food Generator Report**

Contractor shall provide the total number of Generators classified as Tier One and Tier Two Commercial Edible Food Generators located within the City.



## **EXHIBIT D**

### **REPORTING REQUIREMENTS**

1. The number of Generators participating in the Edible Food recovery program, as described in Section \_\_\_\_\_ of the Agreement.

#### **3. Annual Report Content**

The annual report shall be the fourth quarterly report, with annual totals, 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. Highlight significant accomplishments and problems. Results shall be compared to other similar size communities served by the Contractor in the State.

##### **B. Vehicle Inventory**

Provide a listing 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.

##### **C. 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.

##### **D. 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.

**EXHIBIT E:  
DETERMINATION OF PROJECTED ACTUAL COSTS  
OF OPERATIONS**



## **EXHIBIT E**

### **DETERMINATION OF PROJECTED ACTUAL COSTS OF OPERATIONS**

#### **1. Corroboration of Actual Costs (Incurrence and Categorization)**

- A. Corroboration of actual costs (incurred and categorized).
  - 1. Contractor's financial statement for the most recently completed year will be reviewed to determine Contractor's costs for each of the categories itemized in Section 8.3. City will determine that costs have actually been incurred and have been assigned to the appropriate category.

#### **2. Adjustment of Actual Costs**

- A. City may adjust the actual costs in two ways:
  - 1. To exclude any non-allowable costs, set out below; and,
  - 2. To exclude and/or reduce any costs which were not reasonably and necessarily incurred in the performance of the services, in accordance with this Agreement (for example, labor and equipment costs associated with the addition of routes beyond those listed in Exhibit E2 that are not caused by increases in the number of Waste Generators or the volume of solid waste collected unless agreed to in advance in writing by City).
- B. Costs that are non-allowable consist of the following:
  - 1. Payments to directors and/or owners of Contractor unless paid as reasonable compensation for services actually rendered. Compensation paid consistent with that shown on Exhibit E3 Directors / Owners Compensation will be deemed reasonable.
  - 2. Promotional, entertainment and travel expenses, unless authorized in advance by City.
  - 3. Payments to repair damage to property of third parties or City for which Contractor is legally liable.
  - 4. Fines or penalties of any nature.
  - 5. Liquidated damages assessed under Section 6.07 of this Agreement.
  - 6. Federal or state income taxes.
  - 7. Charitable or political donations.
  - 8. Rental or lease charges for collection vehicles unless specifically required by this Agreement and authorized in advance by City.
  - 9. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which City and Contractor are adverse parties, unless Contractor is the prevailing Party in such proceeding.

## **EXHIBIT E**

### **DETERMINATION OF PROJECTED ACTUAL COSTS OF OPERATIONS**

10. Accounting and/or legal expense related to tax return preparation, succession planning, etc.
  11. Costs relating to the acquisition of Contractor and the subsequent liquidation, dissolution or merger of Contractor or any Affiliate and the assignment of this Agreement, including additional depreciation that results from the revaluation of Contractor's assets for financial or tax accounting purposes, goodwill associated with the acquisition, and acquisition costs.
  12. Payments that relate to the termination of employment, including expenditures for expenses, claims, judgments, settlements, contract buyout payments, and severance payments, of any of the following persons:
    - a. officer,
    - b. shareholder,
    - c. management employee,
    - d. employees who are present spouses, former spouses, siblings, uncles, aunts, cousins, nieces or nephews of present or former officers, shareholders or management employees; and/or,
    - e. agent.
  13. Profit on interest.
- C. The costs resulting from adjustments to exclude non-allowable costs and costs that were not reasonably and necessarily incurred are:
1. Adjusted Allowed Labor-Related Costs (AALII);
  2. Adjusted Allowed Vehicle Related Costs (AAVII);
  3. Adjusted Allowed Other Costs (AAOII);
  4. Adjusted Allowed Net Interest and Depreciation Costs (AANID,11)
- D. Sale or lease of assets. Contractor must sell or lease assets no longer used in City to provide services under this Agreement in an arm's length transactions for no less than fair market value. Parties shall confer in advance of asset sale, and City shall provide direction regarding determination of "fair market value", and the level and type of Contractor effort and documentation required to identify opportunities to sell assets at fair market value. Failure to comply with this requirement may result in Contractor obligation to provide City the full fair market value.

The gain or loss on sold assets will be subtracted from or added to, as the case may be, "Projected Other Costs", and will be based upon the difference between the stated value Contractor previously used for purposes of determining Depreciation Expense as provided in this Exhibit below, and

## **EXHIBIT E**

### **DETERMINATION OF PROJECTED ACTUAL COSTS OF OPERATIONS**

documentation satisfactory to City on the sale price. The lease revenue payments on solid waste assets will be based upon documentation satisfactory to City.

- E. Fuel vendor payments (11.08). Payments from fuel vendors to Contractor under the fuel contracts described in Section 11.08 approved by City will be added in accordance with the subsection g.
- F. Sum = "Projected Other Costs for Contract Year". The projected insurance costs, franchise fees and loss on sold assets will be added to the calculation of other projected costs and gains on sold assets will be subtracted from the calculation of other projected costs. Lease revenue payments on leased assets will be added to that calculation. The result is "Projected Other Costs for Contract Year" (P014).
- G. Reconciliation plus Projection of Net Interest and Depreciation Expense.
  - 1. Net Interest Expense (reconciled actual) plus projected). Net Interest Expense will be projected for Year Fourteen based on:
    - a. Current debt amortization schedules as they exist at the time of submission of the Request for Calculation of Contractor's Payment plus,
    - b. Projected interest expense on new acquisitions during Years Thirteen and Fourteen.
  - 2. Depreciation Expense (reconciled actual plus projected). Depreciation expense will be calculated for by:
    - a. Dividing the actual purchase price of the assets by the useful operating life of each such asset listed on Contractor's fixed assets schedule at the time of submission of the Request for Calculation of Contractor's Profit, plus,
    - b. Projected depreciation expense on new acquisitions during the previous and current Contract Year.

For purposes of this calculation, assets are deemed to have the following useful lives, if Contractor owned and operated the assets within City in connection with services provided under this Agreement:

<u>Asset</u>	<u>Useful Life</u>
Office equipment (including Computers); repair equipment	5 years
Boom, maintenance container and pickup trucks	7 years
All other rolling stock, bins, containers	10 years

## **EXHIBIT E**

### **DETERMINATION OF PROJECTED ACTUAL COSTS OF OPERATIONS**

Real property and improvements

30 years

3. Sum = "Projected Net Interest and Depreciation". The sum of projected Net Interest Expense and Projected Depreciation for Year One is "Projected Net Interest and Depreciation for Year One (PNID14).

Examples of the computation described in this subsection are appended as Attachment (4) (Examples Of Reconciliation Plus Projection Of Net Interest And Depreciation Expense For Year One And For Each Year Thereafter).

*{Specialty: The above material will be incorporated into an exhibit for the final agreement.}*

4. Sum of (1) - (4) = "Projected Annual Costs of Operations" The sum of Projected Labor-Related Costs, Projected Vehicle Related Costs, Projected Other Costs, and Projected Net Interest and Depreciation equal "Projected Annual Costs of Operations for the prior Contract Year" (PAC013)

### **3. Escalation/Projection of Adjusted Allowed Costs.**

#### **A. Definitions**

**"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.

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).

#### **B. Adjusted Allowed Labor-Related Costs:**

1. Escalation of Labor-Related Cost: (#9240 San Francisco/Oakland/Hayward Consumer Price Index Urban Wage Earners and Clerical Workers Index, CWURS49BSA0) = "Projected Labor-Related Costs"
2. Projected Workers Compensation and Employee Health Insurance (quotes, etc.)

#### **C. Escalation of Adjusted Allowed Vehicle-Related Costs= "Projected Vehicle-Related Costs"**

## **EXHIBIT E**

### **DETERMINATION OF PROJECTED ACTUAL COSTS OF OPERATIONS**

1. Escalation of Fuel
    - a. Cost of diesel, gas and oil: (#2515 05- 73-02-01 Producer Price Index #2 Diesel Fuel, WPU057303)
    - b. Cost of Compressed Natural Gas (#2515 05-51 Producer Price Index Residential Natural Gas, WPU0551)
    - c. Sum of (a) and (b).
  2. Escalation of other vehicle costs (#9340 Producer Price Index Industrial Commodities, WPU03THRU15)
  3. Sum= "Projected Vehicle-Related Costs"
  4. Reconciliation of actual/ projected capitalized maintenance costs
- D. Escalation and Projection of Other Costs
1. "Projected Other Costs"
    - a. Escalated (#9340 Producer Price Index Industrial Commodities, WPU03THRU15)
    - b. Projected insurance costs (quotes etc.)
    - c. Sale or lease of assets
    - d. Franchise fees (7.0IC)
    - e. Sum= "Projected Other Costs"
- E. Reconciliation Plus Projection of Net Interest and Depreciation Expense
1. Net Interest Expense (reconciled actual plus projected)
  2. Depreciation Expense (reconciled actual plus projected)
  3. Sum = "Projected Net Interest and Depreciation"
- F. Sum of (B) through (E) = Projected Annual Costs of Operations



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## **EXHIBIT E1: ANNUAL COMPENSATION APPLICATION FORMAT**

*{Specialty: Format for annual application for Request for Calculation of Contractor's Payment; to be added}*



**EXHIBIT E1**  
**ANNUAL COMPENSATION APPLICATION FORMAT**

**EXHIBIT E1**  
**ANNUAL COMPENSATION APPLICATION FORMAT**

## **EXHIBIT E2: DIRECTORS/ OWNERS COMPENSATION**

*{Specialty: Provide new version of Exhibit 8.03 Attachment 1. Final to be inserted here.}*



## **EXHIBIT E2**

### **DIRECTORS/ OWNERS COMPENSATION**



**EXHIBIT E2**  
**DIRECTORS/ OWNERS COMPENSATION**

## **EXHIBIT E3: VEHICLE LEASE AGREEMENT**

*{Specialty: Placeholder for lease agreement providing for contractor's lease of vehicles to City, if applicable.}*



**EXHIBIT E3**  
**VEHICLE LEASE AGREEMENT**

**EXHIBIT E3**  
**VEHICLE LEASE AGREEMENT**

**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. In the event that 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: 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	\$300/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



## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
3.	Failure to Return Empty Container	Failure to properly return empty Carts or Bins to the Collection location, or to place Carts upright with lids closed.	Less than ten (10) per one thousand (1,000) Service Opportunities	\$50/Event
4.	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	\$200/Kit/Day
5.	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	Item 1: \$100/Event Item 2: \$300/Event
6.	Damage to Property	Driving onto private property; each event of damage to either public or private property as a result of Collection activity sufficient to result in an insurance claim, including without limitation 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	\$300/Event
7.	Damage to Public Streets	Each event of damage to public streets within the City caused by Contractor, including tire marks.	No acceptable failure level	\$500/event or actual cost of repair to City's satisfaction if above \$500.

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
8.	Notification of Injury to Member of the Public	Each failure to notify City of injury to a member of the public sufficient to result in a report to City Department of Public Safety within two (2) hours of such occurrence.	No acceptable failure level	\$2,000/event
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, including required cleaning, painting, and labeling of containers.	No acceptable failure level	\$100/Item/Day
10.	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
11.	Failure to Provide City Required Vehicle Data	Failure to provide City vehicle specifications, purchasing costs, taxes, and insurance for purchased, borrowed and reconditioned vehicles within 30 days of purchase, borrow, or reconditioning.	No acceptable failure level	\$500/event
12.	Unlicensed Vehicle Operator	Failure to have a vehicle operator properly licensed.	No acceptable failure level	\$1,000/Operator/Day
13.	Failure to Display Contractor's Name	Failure to display and maintain visibility of Contractor's name and customer service phone number, and website on Collection vehicles, Bins and other containers.	No acceptable failure level	\$100/Instance/Day
14.	Failure to Wear Uniform	Failure to have Contractor personnel in proper uniform.	No acceptable failure level	\$100/Person/Day

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
15.	Discourteous Behavior	For each occurrence of discourteous behavior of Contractor's employees to a Customer.	None	\$1,000/Event
16.	Failure to Meet Vehicle Noise Requirements	Failure to meet vehicle noise requirements contained in the Municipal Code.	No acceptable failure level	\$500/Event
17.	Inaccurate Billing; Charging Rates not Approved by City	Each Complaint received where the Contractor billed a Customer in error. Inaccurate billing may include either 1) over- or under-charging of the Customer relative to the approved Rates for services, or 2) charging customer a rate that is not on the City-approved rate schedule.	Item 1: Less than five (5) per one thousand (1,000) bills issued.  Item 2: No acceptable level.	Item 1: \$100/Event  Item 2: \$500/Event
18.	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
19.	Changing Routes	Changing routes without proper notification to the City Contract Manager.	No acceptable failure level	\$500/Route/Day
20.	Overweight Vehicles	Loading Collection vehicles in excess of State or local weight restrictions.	No acceptable failure level	\$150/Event
21.	Uncovered Loads	Failure to properly cover materials in Collection vehicles.	No acceptable failure level	\$500/Event
22.	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

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
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

#### 2. Performance Area: Customer Service

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Route Service and/or Provide Move-in Kits (if required to do so by City)	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) working 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 PRTs to Customers upon request.	Less than one (1) per one hundred (100) Service Requests	\$300/Event, Plus \$250 Per Day for Each Day Beyond Five (5) Working Days of the Request
2.	Failure to Exchange Container at Customer Request	Any failure by Contractor to exchange Container within seven (7) 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 Damaged 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

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
4.	Failure to Report and/or Resolve Complaint	Any failure to 1) report customer complaints to City as required, or 2) neglect by Contractor to resolve each Complaint within the time set forth in this Agreement.	Less than one (1) per one hundred (100) Complaints	Item 1: \$150/Event  Item 2: \$500/Event
5.	Failure to Leave Non-Collection Notices	Failure to leave a tag for a customer when containers are not collected due to improper set-out including overflow		\$300/Event
6.	Failure to Answer Phones	Any failure by Contractor to answer a telephone call from a Customer during normal business hours. A call is not considered to be answered if the Customer does not speak with a live operator. (A call is considered to be 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
7.	Failure to Maintain Office Hours	Failure to maintain office hours as required by this Agreement.	No acceptable failure level	\$100/Event

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
8.	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
9.	Unauthorized Hours of Operation	Each occurrence of Contractor Collecting from Customers during unauthorized hours.	Less than five (5) annually	\$500/Event
10.	Failure to Conduct Route Audits	Failure to conduct Route Audits as required by this Agreement.	No acceptable failure level	\$150/Event /Day
11.	Failure of Management to Respond to City Query or Request within Required Timeframe(s).	Failure to respond to City query or request within the required timeframe(s) as specified in Section 3.6.	No acceptable failure level	\$500/Day

### 3. Performance Area: SB 1383; Diversion

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Conduct Route Monitoring and/or Sampling	Failure to conduct route monitoring, lid flipping, and/or container sampling as required by Section 4.8 of this Agreement.	No acceptable failure level	\$5,000/Event
2.	Failure to Properly Apply Contamination Protocol as Provided in Section 4.12.3.	Failure to leave City-approved tags for contaminated containers, and to complete required protocol.		
3.	Failure to Change Container Lids and/or Labeling as Required in Section 4.8.3.			

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
4.	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
5.	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 Section 4.10 to this Agreement.	No acceptable failure level	\$50/Customer

#### 4. 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 an Approved Facility.	No acceptable failure level	\$5,000/load
2.	Mixing Materials During Collection	Each individual Container that is Collected by Contractor in a vehicle or vehicle compartment 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 the Food Scraps compartment of a FoodCycle vehicle, etc.)	No acceptable failure level	\$1,000/Container

## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

#### 5. Performance Area: Reporting

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
1.	Failure to Submit the Report on the Monthly Audit of Billings	For each failure to timely submit the report on the monthly audit of billings as required by Section 4.11.C.	No acceptable failure level	\$500/Each Day Report is Late
2.	Failure to Submit Annual Compensation Application on Time	For each failure to timely submit the annual compensation application as required by Section 8.3.	No acceptable failure level	\$500/Each Day Application is Late
3.	All Other Late Reports	Each occurrence of a report, as required under Exhibit D to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format.	No acceptable failure level	\$250/Report/Day
4.	Misleading/ Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.	No acceptable failure level	\$250/Event
5.	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



## EXHIBIT F

### PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Item	Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
6.	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.	Less than five (5) calendar days after report due date	\$500/Event

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

City

Initial Here: \_\_\_\_\_

Initial Here: \_\_\_\_\_

## **EXHIBIT G: CONTRACTOR'S PROPOSAL**

*To be included in final agreement*



## **EXHIBIT G1: TECHNICAL PROPOSAL**

*To be included in final agreement*



## **EXHIBIT G2: COST BASIS FOR PROPOSAL**

*To be included in final agreement*



## **EXHIBIT G3: INITIAL RATES FOR COLLECTION SERVICES**

*To be included in final agreement*





## **EXHIBIT G4: IMPLEMENTATION PLAN AND SCHEDULE**

*To be included in final agreement*



## **EXHIBIT G5: APPROVED SUBCONTRACTORS**

*To be included in final agreement*



## **EXHIBIT G5**

### **APPROVED SUBCONTRACTORS**

In accordance with Section 3.3 of the Agreement, the City has approved the following Subcontractors to manage the specified services and otherwise assist the Contractor in the performance of the requirements of this Agreement.

Approved Facility or Subcontractor	Services

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## **EXHIBIT H: INITIAL STAFFING**

*To be included in final agreement*





## EXHIBIT H INITIAL STAFFING

Positions detailed in this Exhibit H are the maximum anticipated positions needed for the provision of Recycling, Organics, and Solid Waste Collection Services and other related services in the City.

**Table 1** represents management positions, classified as salary, exempt. For positions where the employee has been identified, the name is listed.

**Table 2** represents non-management positions, classified as hourly, non-exempt. Contractor will be hiring for these positions as per Section 5.7 of the Agreement.

**Table 1: Management Positions**

Position	Name	Classification	FTE
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
		Management, Exempt	
<b>Total Management Positions</b>			

**Table 2: Non-Management Positions**

Position	Name	Classification	FTE
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
		Non-Management, Non-Exempt	
<b>Total Non-Management Positions</b>			

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**EXHIBIT I:  
CONTRACTOR'S ENVIRONMENTALLY PREFERABLE  
PURCHASING POLICY**

*To be included in final agreement*



## **EXHIBIT J: CART SPECIFICATIONS**



## **EXHIBIT J**

### **CART SPECIFICATIONS**

The Cart specifications provided in this Exhibit shall pertain to all Carts provided by the Contractor to Customers on the Commencement Date of this Agreement and during the Term of the Agreement.

*{Specialty: City will work with you to make necessary revisions to avoid inconsistencies with SB 1383 container requirements and/or with current practice.}*

#### **1. CART DESIGN REQUIREMENTS**

##### **A. General**

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. Contractor shall purchase Carts that contain a minimum of thirty percent (30%) post-consumer recycled plastic content. Contractor must submit Cart orders (including material and design specifications, colors and identification marks) to City Contract Manager for City's written approval prior to submitting the order to the manufacturer. All new Carts must be fitted with a radio frequency identification (RFID) chip to be used by Contractor for tracking, routing, inventory, or other purposes.

##### **B. Cart Handles**

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles shall provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

##### **C. Cart Lid**

Each Cart shall be provided with a lid that continuously overlaps and comes in contact with the Cart body or otherwise causes an interface with the Cart body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Cart during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable life of the Cart;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Cart from tilting backward when flipping the lid open; and,



## **EXHIBIT J**

### **CART SPECIFICATIONS**

- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Cart body.

#### **D. Cart Colors**

The Solid Waste, Recyclable Materials, and Organic Materials Carts shall be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color of lids and Cart bodies must be uniform for each Cart type (i.e., Solid Waste, Recyclable Materials, and Organic Materials). Solid Waste Cart bodies and lids shall be grey. Recyclable Materials Cart bodies and lids shall be blue. Organic Materials Cart bodies and lids shall be green. Contractor may propose other colors for Cart lids or Cart bodies, which are subject to written approval by the City. For all colors including those prescribed in this paragraph, the Contractor shall obtain written approval from the City for the Cart colors before Contractor's purchase of the Carts.

#### **E. Positional Markings**

An arrow (at least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction of Cart placement. {Proposer may suggest alternative identification markings for the City's consideration.}

In character size of no less than 3/16 inches, the phrase:

PLACE CART WITH ARROW FACING  
STREET FOR COLLECTION

## **2. CART PERFORMANCE REQUIREMENTS**

#### **A. General**

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

#### **B. Cart Load Capacity**

Depending on the capacity, the Carts shall have a minimum load capacity as noted on the following table without Cart distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (Pounds)
96	200
64	130
32/35	70

## **EXHIBIT J CART SPECIFICATIONS**

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### **C. Cart Durability**

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the Term of this Agreement:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the Service Area.

### **D. Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

### **E. Stability and Maneuverability**

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position. The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from any direction. The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

### **F. Lid Performance**

Cart lid assemblies shall meet the following minimum requirements:

## **EXHIBIT J**

### **CART SPECIFICATIONS**

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.

#### **G. Repairability**

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.

**EXHIBIT K:**  
**SB 1383 ROLES AND RESPONSIBILITIES**



## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

The following table provides guidance regarding BCWS and City allocation of broad responsibility for compliance with SB 1383. The table is based on the draft regulations issued for formal review by CalRecycle on October 2, 2019, and assumes use of the standard approach to compliance. The table is not intended to be inclusive of detailed requirements for compliance addressed in the body of the Agreement and does not relieve the Contractor of those specific obligations.

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
Collection			
1.	Commencing January 1, 2022, provide Collection Containers to generators that have lids that comply with color requirements when replacing containers or by January 1, 2036, whichever comes first (§18984.7)	City to review, comment on, and approve Container colors and SB 1383 Container swap out notices to be provided to affected Customers by Contractor.	Contractor to provide Containers to City and Customers that comply with SB 1383 requirements, as described in Section 4.8.3.  At least two (2) weeks prior to providing Customers with SB 1383-compliant Containers, Contractor shall send affected Customers City-approved notices describing when and why the Container swap out will happen. Such notices shall include information about new SB 183 compliant labels, if applicable and as described under Item three (3) of this Exhibit K.

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
2.	A jurisdiction may allow organic waste to be collected in plastic bags and placed in the green container if the facilities that recover the source separated organic waste provides annual written notice to the jurisdiction that the facility can remove plastic bags when it recovers source separated organic waste. (§18984.1.d)	None	Contractor shall Collect Organic Material in clear plastic bags placed inside Organic Material Containers for Processing (at SMaRT).
3.	Commencing January 1, 2022, clearly label or imprint all new containers or lids to include language or graphic materials indicating primary materials that are accepted and rejected in each container. (§18984.8)	City to review, comment on, and approve Container labels.	Contractor to place City-approved labels on all new Containers; labels should include text and/or graphic images that indicate primary materials that are accepted and primary materials that are not accepted for each Container type. Labels shall be placed on new Containers before or at time of initial Container delivery to Customer or to City. By the end of Agreement Term, every Customer Container shall have SB 1383-compliant labels.
<b>Contamination Monitoring</b>			
4.	Commencing April 1, 2022, conduct route reviews such that all hauler routes are inspected annually. During each route review, inspect randomly selected containers for contaminants and determine organic waste generator compliance (organic waste generators must subscribe to collection service or self-haul organic	City to review, comment on, and approve route review plan and methodology provided by Contractor.  City to review, comment on, and approve content and design of notices to be distributed by Contractor to noncompliant generators.	Contractor shall develop a plan and methodology, to be approved by City, for conducting annual route reviews such that an adequate number of Containers are inspected on all routes annually.  The amount of Containers that must be inspected per Route shall be based on guidelines provided below, as referenced in Section 18984.5. The draft regulations do not specify what an "adequate"

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	<p>materials; commercial organic waste generators are also required to provide color-compliant containers to their customers).</p> <p>If contamination is found during route reviews or if inspected generators are out of compliance, notify such generators of recycling requirements (§18984.5.b; 18995.1; 18984.9)</p> <p>“Route review(s)” means a visual inspection of containers along a hauler route for the purpose of determining contamination, and may include mechanical methods such as the use cameras (§18982)</p> <p>“Hauler route” means the designated itinerary or sequence of stops for each segment of the jurisdictions collection services.</p>		<p>number of containers per route review entails; however, Section 18984.5 determines adequacy for a different type of contamination study based on Route populations. As such, these guidelines will be utilized for route reviews.</p> <ol style="list-style-type: none"> <li>1. For routes with less than 1,500 generators the study shall include a minimum of 25 samples;</li> <li>2. For routes with 1,500-4,000 generators the study shall include a minimum of 30 samples;</li> <li>3. For routes with 4,001-7,000 generators the study shall include a minimum of 35 samples;</li> <li>4. For routes with more than 7,000 generators the study shall include a minimum of 40 samples.</li> </ol> <p>In the event that Contractor identifies contamination, Contractor shall be responsible for affixing a City-approved notice on to Customer's Containers, documenting the location or account where contamination was present.</p> <p>Contractor shall provide monthly reports to City summarizing the results of each route review and recording, at a minimum, each contamination location, corresponding photographic evidence, and date of Customer contamination identified.</p>



## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
Enforcement & Penalties			
5.	Commencing January 1, 2022, conduct annual compliance reviews of commercial solid waste accounts that produce over two (2) cubic yards of solid waste per week, including organics waste (§18995.1.a)	<p>City shall provide Contractor with a list of commercial accounts that have received City-approved organics collection waivers.</p> <p>City shall approve format and content of all compliance reports provided by Contractor.</p> <p>City shall receive Contractor's report, review and clarify as needed, and report to the State.</p> <p>City shall follow-up with Contractor-indicated commercial accounts that may back-haul organic materials.</p>	<p>Annually, Contractor shall perform a “desk review” of all Multi-Family and Commercial Customer accounts that produce over two (2) cubic yards of Solid Waste per week and that produce Organic Materials to ensure compliance with organics generator requirements, as described in Section 4.8.1 of this Agreement.</p> <p>Contractor may perform the “desk review” in conjunction with route reviews described under Item 4 of this Exhibit K.</p> <p>Following each compliance review, Contractor shall provide City with a report of results, including addresses, and service level information in a format accepted and approved by the City.</p> <p>Additionally, Contractor shall provide to City in quarterly reports a list of Commercial Customers that Contractor believes may be Back-Hauling Organic Materials. The list shall include account information including addresses and service levels.</p>

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
6.	From January 1, 2022 through December 31, 2023, provide educational materials to regulated entities not in compliance with SB 1383, as determined by compliance review of Commercial accounts (§18995.1.a)	City to develop content and design of compliance notices for Customers.	Contractor shall distribute City-developed compliance notices to all noncompliant Customers of Contractor annually.
7.	Commencing January 1, 2022, conduct inspections of Tier One commercial edible food generators for compliance with Section 18991.3. Beginning January 1, 2024, conduct inspections of Tier Two commercial edible food generators for compliance with Sections 18991.3. (§18995.1.a.2) <i>See Item 17 for outreach requirements related to edible food.</i>	City to design, develop, print and make available to Contractor outreach materials tailored for Tier One and Tier Two Commercial Edible Food Generators.	Contractor conduct inspections of Tier One and Tier Two Commercial Edible Food Generators. Upon observing violations and upon Customer request, Contractor shall distribute City-approved outreach materials tailored for Tier One and Tier Two Commercial Edible Food Generators.
8.	Commencing January 1, 2022, conduct inspections of edible food recovery organizations and services for compliance with Sections 18991.5. <i>See Item 17 for outreach requirements related to edible food.</i>	City to conduct inspections of food recovery services and organizations. Upon observing violations and upon Customer request, City shall distribute outreach materials tailored for edible food recovery organizations and services.	None.
9.	Commencing January 1, 2022, investigate written SB 1383-related	City to investigate and maintain records of all SB 1383-related	Contractor to investigate and resolve written complaints made by Customers alleging SB 1383

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	complaints received within ninety (90) days of receiving complaint; provide method for Customer who made complaint to determine results of complaint; maintain records of all complaints and responses; take enforcement action if it is determined that a violation has occurred (§18995.3)	<p>complaints received by Contactor that have not been resolved within thirty (30) days of receiving Customer complaint. Upon resolving the complaint, Contractor shall notify the Customer who made the complaint.</p> <p>From January 1, 2022 to December 31, 2023, if, upon investigation, City discovers a violation has occurred, City shall provide educational materials to noncompliant Customers.</p> <p>Commencing January 1, 2024, if, upon investigation, City discovers a violation has occurred, City shall take enforcement action against noncompliant Customers.</p>	<p>violations within thirty (30) days of receiving Customer complaint. Upon resolving the complaint, Contractor shall notify the Customer who made the complaint.</p> <p>From January 1, 2022 to December 31, 2023, if, upon investigation, Contractor discovers a violation has occurred, Contractor shall provide City-approved educational materials to noncompliant Customers.</p> <p>Commencing January 1, 2024, if, upon investigation, Contractor discovers a violation has occurred, Contractor shall provide City in monthly reports with a list of such noncompliant Customers.</p> <p>Contractor shall maintain all compliant records, including documentation of resolution.</p> <p>Contractor to provide City in monthly reports a list of Customer complaints that have not been resolved within thirty (30) days. The complaints list shall include Customer account information including the nature of the complaint. Such complaints shall be discussed during the monthly Franchise Roundtable Meeting.</p>
10.	Commencing January 1, 2024, take enforcement actions, including issuing notices of violations within	City to issue penalties to noncompliant generators based on Contractor-led inspections and	Contractor to maintain records of noncompliant generators and report via monthly reports to City on issuance of noncompliant notices (e.g.,

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	<p>sixty (60) days of determining a violation has occurred, following up at least every ninety (90) days to issue further notices if compliance is not achieved, grant compliance deadline extensions if applicable, and impose penalties equivalent to or greater than those outlined in Articles 14 and 16 of SB 1383 (§18995.4)</p> <p>Impose penalties on non-compliant entities (§18997.2)</p>	<p>monthly reports submitted by Contractor that identify noncompliant generators.</p>	<p>contamination tags issued, route review results, commercial account review).</p>
<b>Education &amp; Outreach</b>			
11.	<p>By February 1, 2022, and annually thereafter, provide generators with information on properly separating materials, organic waste prevention, on-site recycling, community composting, methane reduction benefits, how to recycle organic waste, a list of approved haulers, and information related to food recovery (§18985.1.a)</p>	<p>City to develop content and design of outreach materials and Contractor to distribute outreach materials to all Multi-Family and Commercial Customers annually.</p> <p>City to provide outreach materials to Contractor for website posting.</p>	<p>Contractor to post City-developed educational material on its website annually or as requested by City. Contractor shall post material on its website within two weeks of City's initial request and review and make updates/changes to website on a monthly basis to ensure accuracy of information.</p> <p>Contractor to disseminate City-approved educational materials as requested by City.</p>

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
12.	Translate educational materials required into any non-English language spoken by a substantial number of the public provided organic waste collection services by the jurisdiction (§18985.1.e)	City to translate City-developed outreach materials, and translate such materials as needed.  City to provide translated outreach materials to Contractor for website posting.	Contractor to post City-developed educational material that has been translated by City on its website annually or as requested by City. Contractor shall post material on its website within two weeks of City's initial request.
<b>Record Keeping &amp; Reporting</b>			
13.	By April 1, 2022, file an initial compliance report that includes copies of adopted ordinances, items required for the annual report under Section 18994.2.b, and contact information for the responsible party for compliance-related issues (§18994.1)  Commencing August 1, 2022, submit an annual report relative to compliance with SB 1383; the first report is due October 1, 2022 for the period of January 1, 2022 to June 30, 2022 (§18994.2)	City to compile and submit relevant documentation for the initial compliance report and the annual report.  The City shall compile documentation that details the City's: hauler oversight; CALGreen building standard utilization; edible food recovery program; organic waste recycling and edible food recovery capacity planning; and, organic waste product procurements.	No later than February 1, 2022, and within two weeks of City request, Contractor shall supply City with reports documenting organic waste collection services; contamination monitoring; education and outreach efforts; and, the monitoring and enforcement program.
14.	Maintain all implementation records in a central location (physical or electronic) that can be made available to or accessed by CalRecycle within ten business days (§18981.1, 18984.4.a, 18984.6,	City to maintain all implementation records including: ordinances, enforceable mechanisms, contracts, or agreements; waiver and exemption records; hauler program records; edible food recovery	Contractor shall enter required data including documentation of organic waste collection services; contamination monitoring; education and outreach efforts; and, monitoring and enforcement into a City-designated reporting platform (e.g., Recyclist, Microsoft Excel, a database, etc.) within five (5)

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	18984.14, 18985.3, 18988.4, 18991.2, 18993.2, 18995.2)	program records; and organic waste procurement records.	business days of any change affecting data within any required reporting category and within one (1) business days of notification from CalRecycle request to review implementation record.  In the event such information is not entered into a shared electronic platform, Contractor shall convey data to the City within the required period.
<b>Organics Procurement</b>			
15.	Procure a quantity of recovered organic waste that meets or exceeds the organic waste product procurement target as determined by the CalRecycle (CalRecycle will confirm and provide notice of annual procurement requirements to jurisdictions every five years). (§18993.1)	City to procure a quantity of compost and mulch from Contractor annually.  The exact quantity for procurement shall be determined by the Parties.	Contractor to transport Organic Materials collected from customers to the Approved Facility (SMaRT).  Contractor shall, at City's option, procure fuels derived from organics disposal (biofuels) to power collection vehicles.
16.	Procure paper products, and printing and writing paper consistent with the requirements of Section 22150-22154 of the Public Contracts Code. These paper products shall be eligible to be labeled with an unqualified recyclable label as defined in 16 C.F.R. 260.12. Jurisdiction shall require all businesses that it purchases paper products and	City to update Sustainable Purchasing Policy with requirements set forth in SB 1383.  City to provide Contractor with updated Sustainable Purchasing Policy for Contractor implementation.	Contractor to use City's updated Sustainable Purchasing Policy to meet minimum SB 1383 paper procurement requirements.

## EXHIBIT K

### SB 1383 ROLES AND RESPONSIBILITIES

Topic/ Ref. #	SB 1383 Requirement	City Responsibility	Contractor Responsibility
	printing/writing paper to certify minimum percentage of postconsumer material in the paper products. (§18993.3)		
<b>Edible Food Recovery</b>			
17.	Commencing January 1, 2022, annually provide Tier One and Tier Two edible food generators with information about the food recovery program, generator requirements, food recovery organizations and services, and edible food source-reduction information (§18985.2)	City to develop and provide to Contractor to distribute outreach materials for commercial edible food generators businesses during annual inspections.	Contractor to provide outreach material to edible food generators during annual inspections.  Contractor to post City-developed educational material on its website annually or as requested by City. Contractor shall post material on its website within two weeks of City's initial request and review and make updates/changes to website on a monthly basis to ensure accuracy of information.

## **EXHIBIT L: DOWNTOWN AREA**

*{Specialty – Downtown map(s) and text to be included in final agreement}*





**EXHIBIT L**  
**DOWNTOWN AREA**

**EXHIBIT L**  
**DOWNTOWN AREA**

## **EXHIBIT M: FORM OF PERFORMANCE BOND**

*{Specialty – To be included in final agreement}*



**EXHIBIT M**  
**FORM OF PERFORMANCE BOND**

**EXHIBIT M**  
**FORM OF PERFORMANCE BOND**