

**AMENDED AND RESTATED EXCLUSIVE FRANCHISE
AGREEMENT**

BETWEEN

CITY OF GARDEN GROVE, GARDEN GROVE SANITARY DISTRICT

AND

REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC

DBA, GARDEN GROVE DISPOSAL

FOR

**RECYCLING, ORGANIC MATERIALS, AND SOLID WASTE
COLLECTION**

AND

**RECYCLING, ORGANIC MATERIALS, AND C&D PROCESSING
SERVICES**

JUNE 28, 2022

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1 **Amended and Restated Exclusive Franchise Agreement**
2 **between**
3 **City of Garden Grove, Garden Grove Sanitary District**
4 **And**
5 **Republic Waste Services of Southern California, LLC**
6 **dba, Garden Grove Disposal**
7

8 THIS AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT (hereinafter "Agreement") is made
9 and entered into as of June 28, 2022, by and among the CITY OF GARDEN GROVE, a municipal
10 corporation, the GARDEN GROVE SANITARY DISTRICT, a subsidiary special district formed and existing
11 pursuant to the Sanitary District Act of 1923, California Health and Safety Code Section 6400 et seq., and
12 REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC ("Contractor"), a Delaware Limited Liability
13 Company dba GARDEN GROVE DISPOSAL. The City and District are hereby collectively referred to as
14 "City." The City, District, and Contractor are hereby collectively referred to as the "Parties."

15 **RECITALS**

16 A. The Legislature of the State of California, by enactment of the California Integrated
17 Waste Management Act of 1989 ("AB 939"), has declared that it is in the public interest to authorize and
18 require local agencies to make adequate provision for Solid Waste Collection within their jurisdictions.

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

30 C. SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid
31 Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal
32 reduction targets.

33 D. SB 1383 requires the City to implement Collection programs, meet Processing Facility
34 requirements, conduct contamination monitoring, provide education, maintain records, submit reports,
35 monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has contracted
36 with Contractor to delegate some of its responsibilities to the Contractor, acting as the City's designee,
37 through this Agreement.

38 E. For purposes of this Agreement and the convenience of all Persons, the term "City" shall
39 mean either or both the City of Garden Grove and/or the Garden Grove Sanitary District. District, being a
40 subsidiary district as defined in Government Code Section 56078, is governed by City's City Council as

41 the ex officio Board of Directors of District. The terms "City" and "City Council" when used herein
42 singularly shall refer to the powers, rights, duties, or actions of both City and District, unless the content
43 indicates otherwise. When both agencies are listed (e.g., City and/or District), there is no legal
44 distinction intended from the use of the term "City" alone. They are so phrased solely for emphasis.

45 F. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the
46 City has determined that the public health, safety, and welfare require that an exclusive franchise
47 agreement be awarded to a qualified Solid Waste enterprise for the Collection of Solid Waste,
48 Recyclable Materials, and Organic Materials within the City and District Limits.

49 G. District has contracted with Garden Grove Disposal under an exclusive franchise for
50 Solid Waste Collection services since 1989. Over the years, the franchise agreement has been amended
51 to include new Recycling programs intended to comply with new State mandates. On May 25, 2010, City
52 and District, acting as a subsidiary district of City, approved a new franchise agreement for the provision
53 of Solid Waste handling services with Garden Grove Disposal, a Division of Republic Waste Services of
54 Southern California, LLC effective July 1, 2010 through June 30, 2024 (the "Prior Agreement"). It is the
55 intent of the Parties, by entering into this Agreement, to supersede the Prior Agreement, except with
56 respect to certain continuing obligations as more specifically set forth herein.

57 H. It is the intent of the Parties that Contractor, and not City or District, shall be solely
58 responsible for establishing and collecting all reasonable charges for Collection services provided by
59 Contractor pursuant to this Agreement.

60 I. City, District, and Contractor are mindful of the provisions of Federal and State laws
61 governing the safe Collection, Transport, Recycling, Processing, and Disposal of Solid Waste, including
62 the California Integrated Waste Management Act of 1989, commonly referred to as AB 939 (California
63 Public Resources Code Sections 40000, et seq.), the Resource Conservation and Recovery Act of 1976
64 also known as the Solid Waste Disposal Act (42 USCA Section 6901 et seq.) ("RCRA"), and the
65 Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601
66 et seq.) ("CERCLA"). City and Contractor desire to leave no doubts as to their respective roles, and to
67 memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a
68 "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for"
69 the Collection, Transport for Disposal, Composting, Processing, and Recycling of municipal Solid Waste in
70 the City, which may contain Hazardous Waste as defined in Exhibit A. City and Contractor understand
71 and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste, that City has not,
72 and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the
73 Collection Process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend
74 that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the
75 absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title
76 to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of
77 this Agreement. By entering this Agreement, City and Contractor further desire to confirm that
78 Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or
79 intentional Collection, Transportation, and/or Disposal of Hazardous Waste that may occur in
80 connection with Contractor's performance under this Agreement.

81 J. Contractor has agreed, as part of this Agreement, to provide such services as are
82 necessary or desirable to ensure City complies with the requirements of AB 939, SB 1383, and other
83 current or future Federal, State, or local regulations, as amended.

84 K. City desires, among other things, to ensure adequate landfills remain available to meet
85 the public's need for the safe handling, Processing, and Disposal of Solid Waste, and further desires to
86 ensure its citizens do not incur undue costs in safely Disposing of Solid Waste they generate, and has
87 thus entered into the County Agreement. Contractor has agreed, as part of this Agreement, to provide
88 such services and take such actions as are necessary or desirable to ensure City complies with its
89 obligations pursuant to the County Agreement.

90 L. The Parties acknowledge the above recitals are true and correct and incorporate them
91 herein in the Agreement.

92 COVENANTS:

93 Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency
94 of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

95 ARTICLE 1. 96 GRANT AND ACCEPTANCE OF FRANCHISE

97 1.1 Grant and Acceptance of Franchise

98 By the signing of this Agreement, the City grants to Contractor, and Contractor accepts, this franchise
99 within the City Limits. The franchise granted to Contractor shall be for the scope of services described in
100 this Agreement, subject to the limitations described in Section 1.2 and except where otherwise
101 precluded by Federal, State, and local laws and regulations.

102 1.2 Limitations to the Franchise

103 The award of this Agreement shall not preclude the categories of Recyclable Materials, Organic
104 Materials, Solid Waste, or other materials listed below from being delivered to, and Collected and
105 Transported by, other Persons, provided that nothing in this Agreement is intended to or shall be
106 construed to excuse any Person from obtaining any authorization from the City that is otherwise
107 required by law:

108 A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to: (1) accept Source
109 Separated Recyclable Materials and Source Separated Organic Materials donated from the service
110 recipient; or, (2) to pay the service recipient for Source Separated Recyclable Materials and Source
111 Separated Organic Materials provided that there is no net payment made by the service recipient
112 to such other Person in the form of discounted service fees or otherwise.

113 B. **Self-Hauled Materials.** A Commercial Business Owner or resident may Transport Recyclable
114 Materials and Organic Materials for Processing if those materials are generated in or on their own
115 Premises using their own vehicles, equipment, and employees.

116 C. **Construction and Demolition Debris (C&D).** Construction and Demolition Debris that is removed
117 by a duly-licensed construction or demolition company or as part of a total service offered by said
118 licensed company or by the City, where the licensed company utilizes its own vehicles, employees,
119 and equipment.

- 120 D. **Donated or Sold Materials.** Any items that are Source Separated at any Premises by the Generator
121 and (a) sold or (b) donated to youth, civic, or charitable organizations. Materials will not be
122 deemed donated if they are Collected by a non-franchised waste hauler that is not a 501(c)(3)
123 organization.
- 124 E. **Edible Food.** Edible Food that is Collected from a Generator by other Person(s), such as a Person
125 from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery;
126 or that is Self-Hauled by the Generator to another Person(s), such as a Person from a Food
127 Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator
128 donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food.
- 129 F. **Food Scraps.** Food Scraps that are separated by the Generator and used by the Generator or
130 distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section
131 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled
132 by another party.
- 133 G. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container
134 Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.
- 135 H. **Materials Removed by Customer's Contractor as an Incidental Part of Services.** Recyclable
136 Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a
137 contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential
138 clean-out service) as an incidental part of a service being performed at the Premises, rather than
139 as a separately contracted or Subcontracted hauling service.
- 140 I. **On-site or Community Composting.** Organic Materials Composted or otherwise legally managed
141 at the site where they are generated (e.g., backyard Composting, or on-site anaerobic digestion)
142 or at a Community Composting site.
- 143 J. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or
144 butcher shops, grease, or used cooking oil.
- 145 K. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash,
146 grit, and screenings.
- 147 L. **Excluded Waste.** Excluded Waste regardless of its source.
- 148 M. **Materials Generated by State and County Facilities.** Materials generated by State and County
149 facilities located in the City including, but not limited to, the Garden Grove Unified, Westminster
150 Unified, and Orange Unified School Districts, provided that the Generator has arranged services
151 with other Persons or has arranged services with the Contractor through a separate agreement.

152 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to
153 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
154 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other
155 Persons are servicing Collection Containers or are Collecting and Transporting Recyclable Materials,
156 Organic Materials, and/or Solid Waste in a manner that is not consistent with this Agreement or the
157 City's Municipal Code, it shall report the location, as well as the name and phone number of the Person

158 or company to the City Manager or their designee, along with Contractor's evidence. In such case, City
159 may notify the Generator and Person providing service of Contractor's rights under this Agreement.

160 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,
161 now and during the Term of the Agreement. If future judicial interpretations of current law, regulations,
162 or judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the
163 manner and consistent with the provisions of this Agreement, Contractor agrees that the scope of the
164 Agreement will be limited to those services and materials that may be lawfully included herein and that
165 the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of
166 limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the
167 responsibility of Contractor to minimize the financial impact of such future judicial interpretations or
168 new laws and the Contractor may meet and confer with City and may petition for a Rate adjustment
169 pursuant to Section 8.5.

170 **1.3 Obligations of Parties**

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

- 172 A. Provide timely notice to one another of a perceived failure to perform any obligations under this
173 Agreement and access to information demonstrating the Party's failure to perform.
- 174 B. Provide timely access to the City Manager and the Contractor's designated representative and
175 complete and timely responses to requests of the other Party.
- 176 C. Provide timely notice of matters that may affect either Party's ability to perform under the
177 Agreement.

178 **1.4 Acceptance of Agreement; Waiver of Terms**

179 Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor
180 waives Contractor's right to challenge the terms of this Agreement under Federal law, State law, local
181 law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of
182 the City under any prior grant of franchise, contract, license, or permit issued or granted by any
183 governmental entity including any right under Section 49520 of the Public Resources Code. Additionally,
184 by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior
185 Agreement as of the Effective Date; however, nothing contained in this provision is intended to or shall
186 relieve Contractor from any obligation existing under the Prior Agreement pertaining to insurance,
187 indemnification, or other legal obligations to City or Customers (as opposed to obligations to provide
188 service pursuant to the terms thereof), or from any obligation set forth in the Prior Agreement which
189 are called out as surviving the termination thereof, and all such obligations, including specifically those
190 indemnification obligations relating to Excluded Waste, general liability, and AB 939 shall survive the
191 termination of the Prior Agreement. As of the Effective Date of this Agreement, neither City nor
192 Contractor is aware of any claim for breach or default of the terms of the Prior Agreement either may
193 have.

ARTICLE 2.
TERM OF AGREEMENT

194
195

196 **2.1 Term and Option to Extend**

197 A. **Term of Agreement.** The Term of the services to be performed by Contractor under this
198 Agreement shall be ten (10) years, commencing at midnight July 1, 2022, and expiring at midnight
199 June 30, 2032, subject to extension as provided herein. Notwithstanding the foregoing, the
200 unexcused failure or refusal of Contractor to perform any material term, covenant, obligation, or
201 condition contained in this Agreement shall give rise to the right, in favor of City, for earlier
202 termination of this Agreement for cause in accordance with the procedures elsewhere contained
203 herein.

204 B. **Mutual Option to Extend.** City and Contractor may, by mutual agreement, extend the Term of the
205 Agreement for an additional five (5) years at the end of the initial ten (10) year term defined in
206 Section 2.1.A. The mutual option to extend may be exercised by written amendment to this
207 Agreement no sooner than five (5) years prior to the expiration of the initial term described in
208 Section 2.1.A and no later than two (2) years prior to the expiration of the initial term defined in
209 Section 2.1.A.

210 C. **City Option to Extend.** City, in its sole discretion, may authorize an extension (“Extension Period”)
211 of up to thirty-six (36) months. The Extension Period shall be on a month-to-month basis. During
212 the Extension Period, and in addition to rights of termination set forth elsewhere in this
213 Agreement, this Agreement may be terminated by City at any time, without cause, if City gives
214 Contractor a ninety (90) day written notice of termination. City may, upon ninety (90) days’
215 advance written notice to Contractor prior to expiration of the Term of Agreement as defined in
216 Section 2.1.A, or prior to the expiration of an extended term by mutual agreement under Section
217 2.1.B, exercise the thirty-six (36) month extension option. If City provides this extension notice,
218 then the Agreement Term will automatically renew on a month-to-month basis, up to a total of
219 thirty-six (36) months, unless earlier terminated pursuant to this Agreement.

220 **2.2 Conditions to Effectiveness of Agreement**

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

224 A. **Accuracy of Representations.** All representations and warranties made by Contractor and set
225 forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this
226 Agreement.

227 B. **Furnishing of Insurance, Bond, Letter of Credit, and Corporate Guarantee.** Contractor shall have
228 furnished evidence of the insurance and Surety required by Sections 9.2 and 9.3 hereof, and shall
229 comply with all ongoing requirements relating thereto, and shall provide the Corporate Guarantee
230 required by Exhibit G hereof.

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

233 governmental authority, commission, board, agency, or instrumentality decided, pending, or
234 threatened against Contractor or Republic Services, Inc. wherein an unfavorable decision, ruling,
235 or finding in any single case or in the aggregate, would:

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

240 D. **Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation
241 of all Approved Facilities owned or operated by Contractor, Republic Services, Inc., or any
242 Subcontractor for use under the terms of this Agreement.

243 E. **Payment of Fees and Costs.** Contractor shall have made payment to City of all fees, costs, and
244 other payments due as of the Effective Date as more fully set forth in Section 7.4.

245 **2.3 Delegation of Authority**

246 The administration of this Agreement by the City shall be under the supervision and direction of the City
247 Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by
248 the City Manager, or his or her designee.

249 **ARTICLE 3.** 250 **SCOPE OF AGREEMENT**

251 **3.1 Summary Scope of Services**

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

253 A. Providing a program for the separate Collection of Recyclable Materials, Organic Materials, and
254 Solid Waste generated by and placed for Collection by Customers pursuant to the requirements of
255 Article 4 and Exhibit B.

256 B. Transporting Collected materials to the appropriate Approved Facilities or Designated Disposal
257 Facilities pursuant to requirements of Article 4 and Exhibit B;

258 C. Processing Collected Recyclable Materials and Organic Materials at the appropriate Approved
259 Facilities pursuant to the requirements of Article 4 and Exhibit B;

260 D. Performing all other services required by this Agreement including, but not limited to, Customer
261 billing, public education, Customer service, contamination monitoring, record keeping, and
262 reporting pursuant to Articles 4 and 6 and Exhibits C (Public Education & Outreach) and F
263 (Reporting);

264 E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all
265 other items and services necessary to perform its obligations under this Agreement;

- 266 F. Paying all expenses related to provision of services required by this Agreement including, but not
267 limited to, taxes, regulatory fees (including City Fees and Reimbursements), and utilities;
- 268 G. Performing or providing all services necessary to fulfill its obligations in full accordance with this
269 Agreement at all times using best industry practice for comparable operations; and,
- 270 H. Complying with all Applicable Laws.

271 The enumeration and specification of particular aspects of service, labor, or equipment requirements
272 shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its
273 obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere
274 in the Agreement, unless excused in accordance with Section 11.7.

275 3.2 City's Flow Control Option/County Agreement

276 A. **Flow Control Option.** City shall have the absolute ability to choose the location for the delivery
277 and/or Disposal of all Solid Waste (including Recyclable Material, Organic Materials, and
278 Construction and Demolition Debris) Collected pursuant to this Agreement (hereinafter City's
279 "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for
280 Disposal of Solid Waste hereunder and waives any and all rights to challenge City's ability to do so
281 including, without limitation, any rights under the Commerce Clause of the United States
282 Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control
283 Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County
284 landfill system in a manner consistent with its obligations under the County Agreement (including,
285 without limitation, its obligations related to Solid Waste that is delivered to a Processing/Transfer
286 Facility prior to being delivered to a landfill for Disposal), and Contractor has agreed to handle all
287 Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control
288 Option as noted above. At any time during the Term of this Agreement, the City Manager may
289 notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the
290 event City so notifies Contractor of its desire to cease exercising its Flow Control Option,
291 Contractor shall have the absolute discretion to utilize any Disposal Facility, Transfer station,
292 Recycling facility, material recovery facility, landfill, or other facility of its choosing to retain,
293 Recycle, Process, and Dispose of Solid Waste generated within the City, provided the use of such
294 facility by Contractor enables it to meet all other requirements of this Agreement.

295 1. **Organic Materials Flow Control Option.** Contractor will deliver Organic Materials
296 Collected from the City's Customers to the Approved Organic Materials Processing
297 Facilities included in Exhibit N.

298 The City retains the right, if so desired, under Section 3.2.A of the Agreement, Flow
299 Control Option, to have the absolute ability to choose the location for the delivery of
300 Organic Materials, and that the Rate paid by the ratepayer will be reduced or increased
301 accordingly if the Transportation and Processing costs of using such facility are lower or
302 higher than the costs of using the Approved Organic Materials Processing Facilities
303 included in Exhibit N.

304 The current Customer Rates to Divert Residential Organic Materials are based on an
305 Organic Materials Transportation and Processing cost per Ton fee of one hundred fifteen
306 dollars and forty-nine cents (\$115.49) per Ton as documented in Exhibit O. The total cost

307 of one hundred fifteen dollars and forty-nine cents (\$115.49) per Ton is an average of the
308 Transfer, Transportation, and Processing cost per Ton originating at the Anaheim CVT
309 Transfer Station for the Approved Organic Materials Processing Facilities to Process
310 Residential Organic Materials included in Exhibit N.

311 Contractor will notify the City in connection with its regular annual Rate adjustment
312 effective July 1 of each year if a lower cost option becomes available to Divert the Organic
313 Materials to initiate a cost reduction to the City's Customers.

314 B. **County Agreement.** Contractor expressly acknowledges its awareness and understanding of the
315 County Agreement that has been adopted and entered into by City. Moreover, Contractor
316 acknowledges that it has had an opportunity to review the County Agreement (Exhibit M) and is
317 aware of the provisions thereof that require all Solid Waste Collected in the City and District Limits
318 to be Disposed of in the Orange County landfill system. Contractor further acknowledges that the
319 County of Orange is an intended third-party beneficiary of Contractor's obligations relating in any
320 way to the Disposal of Solid Waste pursuant to this Agreement and the County Agreement.
321 Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement
322 that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and
323 warrants that it can and will perform its duties in connection with this Agreement in such a
324 manner as to ensure that City does not breach the terms of the County Agreement as a result of
325 Contractor's actions or inaction. In the event City advises Contractor in writing that the County
326 Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in
327 a manner consistent with the County Agreement, then Contractor's obligations pursuant to this
328 paragraph shall be terminated.

329 **3.3 Use of Approved and Designated Facilities**

330 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
331 agrees to use the Approved and Designated Facilities, included in Exhibit N, for the purposes of
332 Transferring, Processing, and/or Disposing of all Recyclable Materials, Organic Materials, and other
333 materials Collected in the City. Use of a facility must be approved, in writing, by the City prior to use
334 consistent with the requirements of Article 4. Such decision by Contractor in no way constitutes a
335 restraint of trade notwithstanding any Change in Law regarding Flow Control limitations or any
336 definition thereof.

337 **3.4 Subcontracting**

338 Contractor shall not engage any Subcontractors for Collection, Transportation, or Processing of
339 Recyclable Materials, Organic Materials, or Solid Waste services without the prior written consent of
340 City Manager and/or City Council. As of the Effective Date of this Agreement, City has approved
341 Contractor's use of those Subcontractors identified by Contractor. If the Contractor plans to engage
342 affiliated or Related Party Entities in the provision of services, Contractor shall provide City Manager
343 with thirty (30) days' written notification of its plans and provide an explanation of any potential impacts
344 related to the quality, timeliness, or cost of providing services under this Agreement. All insurance
345 documents must be reviewed and approved by the City's Risk Manager prior to City acceptance.
346 Contractor shall require that all Subcontractors file insurance certificates with the City, name City as an
347 additional insured, and comply with all material terms of this Agreement.

348 3.5 Responsibility for Materials

349 Once Recyclable Materials, Organic Materials, and/or Solid Waste are placed in the Contractor's
350 Containers and at the Collection location, the responsibility for their proper handling shall transfer
351 directly from the Generator to Contractor, with the exception of Excluded Waste if the Contractor can
352 identify the Generator pursuant to Section 5.8.B. Once Recyclable Materials, Organic Materials, and/or
353 Solid Waste are deposited by Contractor at the appropriate Approved Facility, such materials shall
354 become the responsibility of the Owner or operator of the Approved Facility except for Excluded Waste
355 pursuant to Section 5.8.C.

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

359 3.6 City-Directed Changes to Scope

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

372 At any time during the Term of this Agreement, the City may solicit proposals from other Persons for
373 new services beyond those services included in Contractor's grant of exclusive franchise and the scope
374 of services set forth in Article 4 of this Agreement. The Contractor shall be offered the opportunity to
375 match any other Person's proposed pricing and retain the added scope of services. However, nothing in
376 this Agreement shall prevent the City from contracting with other Persons in the event that Contractor is
377 unable or unwilling to provide such new services at or below the cost proposed by the other Person.

378 ARTICLE 4.
379 SCOPE OF SERVICES

380 Contractor shall perform the Recyclable Materials, Organic Materials, Solid Waste, and Bulky Item
381 services described in this Article 4, for any Customer in the City that subscribes to Contractor's
382 Collection services. Contractor's Collection services shall be offered to any Customer that places
383 Containers in a public right-of-way or that provides a waiver for Contractor to access the private road(s)
384 where Customer places its Containers.

385 This Article 4 describes the general requirements for the services to be provided. More specific
386 requirements for how each service shall be provided to each Customer Type are described in Exhibit B.

387 Failure to specifically require an act necessary to perform the service does not relieve Contractor of its
388 obligation to perform such act.

389 **4.1 Recyclable and Organic Materials**

390 A. **Collection.** Contractor shall provide Recyclable and Organic Materials Collection services as
391 described in Exhibit B.

392 B. **Transfer.** Contractor plans to Transport Recyclable and Organic Materials to the Approved
393 Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into
394 large-capacity vehicles and Transported to the Approved Processing Facilities. Contractor shall
395 keep all existing permits and approvals necessary for use of the Approved Transfer Facility in full
396 regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or
397 notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to City
398 Manager. If the Contractor is unable to use the Approved Transfer Facility, then the Contractor
399 shall be responsible for making other Transportation arrangements. In such event, Contractor
400 shall not be compensated for any additional costs. If the Contractor plans to change its Transfer
401 method, Contractor shall obtain written approval from the City prior to making the change.

402 C. **Processing.** Contractor shall Transport and deliver all Customer-generated Source Separated
403 Recyclable Materials placed in Recyclable Material Containers to the Approved Recyclable
404 Materials Processing Facility and Source Separated Organic Materials placed in Organic Material
405 Containers to the Approved Organic Materials Processing Facility. All tipping fees and other costs
406 associated with Transporting to, and Processing of, such Recyclable and Organic Materials at the
407 Approved Processing Facilities and Disposing of the Residue as required in Section 4.1.1 below shall
408 be paid by Contractor.

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

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

416 F. **Notification of Emergency Conditions.** Each Approved Facility or the Designated Disposal Facility
417 shall notify the City of any unforeseen operational restrictions that have been imposed upon the
418 Facility by a regulatory agency or any unforeseen equipment or operational failure that would
419 temporarily prevent the Facility from Processing the Discarded Materials Collected under this
420 Agreement.

421 G. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If Contractor is unable to use
422 the Approved Processing Facility due to an event that meets the requirements for excusing
423 Contractor from performance of this specific obligation as described in Section 11.7, Contractor
424 shall use an alternative Processing Facility provided that the Contractor provides written notice to
425 City Manager. Within forty-eight (48) hours of emergency or sudden and unforeseen closure, the
426 Contractor shall provide a written description of the reasons the use of the Approved Processing
427 Facility is not feasible, and the period of time Contractor proposes to use the alternative

428 Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such
429 time as the City Manager is able to consider and respond to the use of the proposed alternative
430 Processing Facility. If the use of the proposed alternative Processing Facility is anticipated to or
431 actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such
432 Processing Facility shall be subject to approval by the City Manager. The City Manager may, in
433 their sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the
434 use of the proposed alternative Processing Facility. If the City disapproves the use of the proposed
435 alternative Processing Facility, the Parties shall meet and confer to determine an acceptable
436 Processing Facility.

437 If the use of an alternative Processing Facility is for reasons within Contractor's or its Processing
438 Facility Subcontractor's control, Contractor's Compensation shall not be adjusted for any change
439 in Transportation and Processing costs associated with use of the alternative Processing Facility.
440 However, if the use of an alternative Processing Facility is due to an uncontrollable circumstance
441 or other reasons beyond Contractor's or its Subcontractor's control, then Contractor may adjust,
442 either up or down, Contractor's Compensation for changes in Transportation and Processing costs
443 associated with the use of the alternative Processing Facility. In the event that the change in the
444 Processing Facility results in increased costs, City may identify and direct Contractor to an
445 alternative Processing Facility, at the Contractor's expense, that results in less cost than the
446 Contractor-identified alternative.

447 Except for the emergency conditions described in this Section 4.1, Contractor shall not change its
448 selection of the Approved Processing Facilities without City's written approval, which may be
449 withheld in the City's reasonable discretion. If Contractor elects to use a Processing Facility that is
450 different than the initial Approved Processing Facilities, it shall request written approval from the
451 City Manager sixty (60) calendar days prior to use of the site and obtain City's written approval no
452 later than ten (10) calendar days prior to use of the site. Failure to meet the requirements of this
453 Section 4.1 shall result in Liquidated Damage as identified in Section 11.6.

454 Contractor shall observe and comply with all regulations in effect at the Approved Processing
455 Facilities and cooperate with and take direction from the operator thereof with respect to delivery
456 of Recyclable and Organic Materials. Contractor shall actively work with the Approved Processing
457 Facility operators throughout the Term of this Agreement to ensure that contamination of the
458 Recyclable and Organic Materials Collected under this Agreement and delivered to the Processing
459 Facility remains below the limits established by Applicable Law including, without limitation, SB
460 1383.

461 H. **Marketing.** The Contractor shall be responsible for marketing Recyclable Materials and Organic
462 Materials Collected in the City that are delivered for Processing at the Approved Processing
463 Facilities. Contractor's marketing strategy shall promote the highest and best use of materials
464 presented in the waste management hierarchy established by AB 939. Where practical, the
465 marketing strategy should include use of local markets for Recyclable and Organic Materials.

466 I. **Residue Disposal.** Residue from the Processing of Recyclable and Organic Materials Collected
467 under this Agreement at the Approved Processing Facilities that cannot be marketed, shall be
468 Disposed of by Contractor, or the Processing Facility Subcontractor. Residue delivered for Disposal
469 shall not include any Excluded Waste.

470 J. **Compostable Plastics.** If Compostable Plastics are accepted at the Approved Organic Materials
471 Processing Facility, Customers may place Compostable Plastics in the Organic Materials Container
472 for Collection, including Compostable Plastic bags used by Customers to contain Food Waste prior
473 to placement in the Organic Materials Container for Collection. Contractor may prohibit use of
474 Compostable Plastics in Organic Material Containers. Contractor shall Collect and Transport such
475 materials for Processing at the Approved Organic Materials Processing Facility. At least six (6)
476 months prior to the commencement of the Agreement, and annually thereafter, Contractor shall
477 provide a written notification to the City authorizing that the Facility has and will continue to have
478 the capability to Process and recover the Compostable Plastics throughout the Term of the
479 Agreement; and the Contractor shall not revoke this authorization at any time during the Term of
480 the Agreement. If the Contractor does not submit such notification, or if at any time during the
481 Term of the Agreement the Approved Organic Materials Processing Facility can no longer accept
482 and/or Process Compostable Plastics, the City may assess Liquidated Damages or deem such
483 failure an event of default of the Contractor under Article 11. Contractor shall notify the City
484 within seven (7) days of the Facility's inability to accept the Compostable Plastics. The notification
485 shall, at a minimum, include: the date and a description of the reasons that the Facility is not able
486 to Process and recover the Compostable Plastics; the period of time the Facility will not Process
487 and recover these materials; and, the Contractor's proposed plan to find an alternative Facility or
488 arrangement to Process the Compostable Plastics, subject to City approval. City may prohibit or
489 restrict the use of Compostable Plastics, with a six (6) month notice to Contractor, and this shall
490 not constitute a City-directed change in scope or Change in Law under this Agreement.

491 **4.2 Solid Waste**

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

493 Contractor acknowledges that City is committed to Diverting materials from Disposal through the
494 implementation of source reduction, reuse, Recycling, Composting, and other programs, and that City
495 may implement new programs other than Discarded Materials Collection programs. Examples of new
496 programs City may implement include Reuse programs, drop-off programs, Community Composting, and
497 other Diversion programs, with or without the involvement of the Contractor, that may impact the
498 overall quantity or composition of Solid Waste to be Collected by Contractor. Contractor shall not be
499 entitled to any compensation or other relief resulting from a decline in Solid Waste volumes or Tonnage
500 or from a change in the composition of Solid Waste.

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

506 **4.3 Bulky Items and Reusable Materials**

507 Contractor shall offer Bulky Item and Reusable Materials Collection services as described in Exhibit B.
508 On-call Bulky Item and Reusable Materials Collection services shall be offered to Customers within a
509 reasonable time but not longer than seven (7) days of Contractor's receipt of such a Customer request
510 for service, pursuant to Exhibit B. Contractor shall make reasonable efforts to schedule on-call Bulky
511 Item and Reusable Materials Collections on a day that is convenient to the Customer. Contractor shall

512 Transport all Bulky Items or Reusable Materials Collected under this Agreement to the Approved
513 Reusable Materials Processing Facility. Contractor shall pay all costs associated with Transporting and
514 Processing Bulky Items and Reusable Materials. Contractor shall observe and comply with all regulations
515 in effect at the Approved Reusable Materials Processing Facility and cooperate with and take direction
516 from the operator thereof with respect to delivery of Bulky Items and/or Reusable Materials.

517 **4.4 City Sponsored Events**

518 Contractor shall provide Recyclable Materials, Organic Materials, and Solid Waste services to City
519 sponsored events, at no cost to the event or City. Special event services include all of the following
520 unless specifically waived in writing by City Manager.

521 A. **Event Collection Stations.** Contractor shall provide and set-up event Collection stations for
522 Collection of Recyclable Materials, Organic Materials, and Solid Waste at City-sponsored events.
523 Each event Collection station shall include a separate Cart for each of Recyclable Materials,
524 Organic Materials, and Solid Waste, as appropriate. Contractor shall provide a sufficient number
525 of event Collection stations of sufficient capacity to meet the needs of the event as determined by
526 Contractor in cooperation with the City and/or the event organizer. Collection stations shall utilize
527 the same Carts used to provide services to Residential Customers unless alternative Containers are
528 approved by the City. Contractor shall provide liners/bags for the Carts at the Collection stations
529 and shall line the Carts as a part of the station set up. Collection stations shall include adequate
530 signs and labeling.

531 B. **Roll-Off Boxes.** Upon request, Contractor shall provide Containers for the aggregation of material
532 removed from event Collection stations during the course of the event. Contractor shall provide
533 Containers in sufficient number of appropriate type(s) for the needs of the event as determined by
534 Contractor in cooperation with the City and/or the event organizer. Contractor shall service
535 Containers, as agreed-upon with the City and/or the event organizer, and deliver Collected
536 materials to the appropriate Approved Facility for Processing and/or Disposal.

537 C. **Public Education Booth.** Upon request of either the City Manager or the event organizer,
538 Contractor shall staff a booth or exhibit at the event for the purpose of educating the public about
539 the services and programs provided by Contractor under this Agreement and the benefits of
540 source reduction, reuse, Recycling, and Composting.

541 D. **Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a
542 report to the City Manager and event organizer. The report should include, at a minimum: the
543 number of event Collection stations deployed at the event, the Tonnage of each material type
544 (i.e., Recyclable Materials, Organic Materials, and Solid Waste) Collected, and a description of the
545 public education provided at the event.

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

550 For special events that are not identified in Exhibit B4 or otherwise hosted or sponsored by the City,
551 Contractor shall provide the above-described special event services at the request of the event organizer

552 and may negotiate the charges for such services with the event organizer based on the specific needs of
553 the event, or provide the services at their sole expense, at no cost to the City or ratepayers.

554 **4.5 Public Education and Outreach**

555 The public education and outreach activities included in the scope of services provided by Contractor
556 under this Agreement are described in Exhibit C.

557 A. **Program Objectives.** The City's public education and outreach strategy shall focus on improving
558 Generator understanding of the benefits of, and opportunities for, source reduction, reuse, and
559 landfill Disposal reduction and supporting compliance with Applicable Laws and regulations
560 including, but not limited to, AB 939, AB 341, AB 1826, and SB 1383. Examples of goals of the City-
561 provided public education and outreach program include, but are not limited to: (i) informing
562 Generators about the services that are provided under this Agreement with specific focus on
563 describing the methods and benefits of source reduction, reuse, Recycling, and Composting;
564 (ii) instructing Generators on the proper method for placing materials in Containers for Collection
565 and setting Containers out for Collection, with specific focus on minimizing contamination of
566 Recyclable Materials and Organic Materials; (iii) clearly defining Excluded Waste and educating
567 Generators about the hazards of such materials and their opportunities for proper handling;
568 (iv) discouraging Generators from buying products if the product and its packaging are not readily
569 reusable, Recyclable, or Compostable; (v) informing Generators subject to Food Recovery
570 requirements under SB 1383 of their obligation to recover Edible Food and actions they can take
571 to prevent the creation of Food Waste; (vi) encouraging the use of Compost and recovered
572 Organic Waste products; and, (vii) encouraging Generators to purchase products/packaging made
573 with Recycled content materials. The cumulative intended effect of these efforts is to reduce
574 generation of Solid Waste and, ultimately, Disposal of Solid Waste by each Generator in the City,
575 and Contractor agrees to support and not undermine or interfere with such efforts.

576 B. **Contractor Public Education Requirements.** Contractor agrees to print, produce, and distribute
577 education materials and conduct outreach detailed in Exhibit C at no additional cost to ratepayers
578 or City.

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

585 C. **Non-English Language Requirements.** The Contractor shall make all public education and
586 outreach materials required by this Section 4.5 available in English, Spanish, Korean, and
587 Vietnamese.

588 Upon City's request, Contractor shall provide materials in additional languages beyond those
589 specified in this Section 4.5 in response to: shifting demographics within the City; updates to State
590 requirements or Applicable Law; or, any other reason deemed appropriate by the City

591 4.6 Billing

592 Except as otherwise set forth in this Section 4.6, Contractor shall, at its own expense, be solely
593 responsible for the billing to and collection from every Customer for all of its Collection services and
594 shall provide itemized bills to each Customer distinctly showing charges for all classifications of services,
595 including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a
596 Franchise Fee to City as consideration for this Agreement. Accordingly, Contractor's bills shall not
597 include separate itemization of a "Franchise Fee" or other similar designation. Billings shall be made
598 monthly for Commercial Customers and may occur bi-monthly or quarterly for Residential Customers.
599 Customers may be billed in advance of, or subsequent to, services being provided at the option of
600 Contractor. Customers ordering service after the first of the month or canceling service prior to the end
601 of the month shall be charged on a prorated per-pickup basis.

602 Upon request by Contractor, the City Manager in the exercise of his/her reasonable discretion, may
603 modify, on an interim basis, the procedures set forth in this Section 4.6 regarding Contractor's
604 obligations for billing and collection for Collection services in order to assist Contractor in efficiently
605 accomplishing such billing and collection activities. Such modification may include, but is not limited to,
606 authorization for the collection of Customer bills for the ID-1 area on the tax rolls for a specified period
607 of time, instead of through direct Customer billing and collection by Contractor. No authorization for
608 modification of the procedures shall be valid unless issued in writing by the City Manager and only to
609 the extent authorized by law. Such authorization shall automatically expire at the end of the time period
610 specified in writing by the City Manager unless renewed in writing by the City Manager. Contractor shall
611 develop, maintain, and regularly update a Customer Account Information Database, which shall include
612 but is not limited to:

- 613 • Customer name;
- 614 • Phone number;
- 615 • Service address;
- 616 • Email address; and,
- 617 • Customer Service Levels, including:
 - 618 ○ Customer Service Levels exceptions, and,
 - 619 ○ Customer service waivers.

620 Contractor shall make access to such database available, upon no more than five (5) Working Days'
621 request from the City Manager, in accordance with this Section 4.6 and Section 6.1. Contractor shall
622 additionally, on an annual basis, reconcile all Customer accounts with City's GIS information. Failure to
623 maintain database in accordance with this Section 4.6 shall result in Liquidated Damages as identified in
624 Section 11.6.

625 Contractor shall provide Customers the option to receive invoices electronically using paperless invoices,
626 or by standard mail using standard (paper) invoices. Contractor shall permit Customers the ability to pay
627 their bills through an electronic check or credit card and include the ability for Customer billings to be
628 automatically charged on a recurring basis. Contractor shall prepare, mail, and collect bills from
629 Customers who decline to use such internet-based billing system. Contractor shall make arrangements
630 to allow such Customers to pay bills by check, electronic check, money order, and credit card.

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

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

641 If Contractor fails to invoice a Customer, or otherwise undercharges a Customer for services provided
642 for more than six (6) months, Contractor may not subsequently attempt to collect the undercharged
643 amount for more than six months of service. If Contractor overcharges a Customer for a period of more
644 than six (6) months, Contractor shall reimburse or credit the Customer for at least six months of the
645 overcharged service but is not required by this Agreement to reimburse or credit the Customer for more
646 than six (6) months of overcharges. This Agreement also does not prohibit Contractor from reimbursing
647 or crediting a Customer for more than six (6) months of overcharges.

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

652 A. **Vacant Premises.** During any time when a Premises is vacant and following receipt of written
653 notice by Contractor from Customer that the Premises has been vacated, Collection services shall
654 not be provided by Contractor, and Contractor shall not bill such Premises for Collection Service.
655 The Customer at any such Premises shall be responsible to provide reasonable evidence to
656 Contractor, pursuant to such guidelines as Contractor shall develop and City Manager shall
657 approve, demonstrating the Premises is vacant. Any Customer grievance regarding a claim that a
658 Premises was vacant and received no service, and hence should not be billed for a given period
659 pursuant to this Section 4.6.A, may be appealed by the Customer to the City Manager subject to
660 substantial evidence. City Manager's decision shall be final. It is the intent of the Parties that
661 Contractor shall not be entitled to charge for services that are not needed or used.
662 Notwithstanding the foregoing, it is the intent of the Parties that Premises shall not be deemed
663 vacant for purposes of this Section 4.6.A during such period of time that such Premises are vacant
664 due only to a temporary absence of the Owner(s) or Occupant(s), such as a period during which
665 the Owner(s) or Occupant(s) are merely on vacation.

666 B. **Delinquent Accounts.**

667 1. Any service account unpaid by the due date listed on the billing statement shall be
668 deemed delinquent. Except to the extent otherwise provided herein, it shall be the sole
669 responsibility of Contractor to take any authorized measures to collect any delinquent
670 sums owed.

671 2. Any delinquent fees or service charges to be imposed in connection with delinquent
672 accounts shall be set by Contractor and be subject to City Manager review.

- 673 3. Contractor may discontinue service to any Customer whose account is delinquent in the
674 manner as set forth in this Section 4.6.B. Customers who have not remitted required
675 payments within thirty (30) days after the date of billing shall be notified on forms
676 approved by the City Manager. Said forms shall contain a statement that services may be
677 discontinued fifteen (15) days from the date of notice if payment is not made before that
678 time. If payment is not made by the expiration of said fifteen (15) day period, Contractor
679 may discontinue service forty-eight (48) hours thereafter.
- 680 4. Contractor shall resume Collection services on the next regularly scheduled Collection day
681 for any Customer whose service is discontinued upon receipt of payment of delinquent
682 fees and any related service restart charges, or at such sooner time as directed to do so by
683 City.
- 684 5. A deposit equal to the maximum Rate for one (1) month's service as set forth on in the
685 approved Rate schedule, as such Rates may be amended from time to time, may be
686 required of accounts which have been discontinued for non-payment prior to re-
687 instituting service at such accounts.
- 688 6. Contractor shall make all reasonable efforts to diligently pursue and collect all delinquent
689 sums owed by Customers to Contractor for Collection Service provided by Contractor.
690 Following exhaustion all such reasonable efforts by Contractor, Contractor may request
691 City's assistance in collecting any remaining delinquent sums owed, and City shall
692 endeavor, in good faith, to assist Contractor with its collection efforts. City's obligation to
693 assist Contractor hereunder shall include, to the extent authorized by law, the imposition
694 of a lien on the property receiving Collection Service and collection of such delinquent
695 amounts on the tax rolls in accordance with Applicable Law. Notwithstanding the
696 foregoing, City shall have no liability to Contractor for failure to collect any such
697 delinquent sums from Customers on behalf of Contractor. Contractor shall reimburse City
698 for any and all costs incurred by City in assisting Contractor in the collection of delinquent
699 sums owed.

700 C. **Collection and Processing of Payments.**

- 701 1. **Accounting and Deposit of Funds.** All payments received by Contractor shall be
702 appropriately credited to Customer accounts, deposited in a bank account, and accounted
703 for in a businesslike manner utilizing generally accepted accounting principles. To facilitate
704 audits and record keeping, Contractor shall make all withdrawals from its bank accounts
705 by check, ACH debit/credit, or wire, regardless of whether the withdrawal is to provide
706 funds to City, Contractor, or any permissible Subcontractor, vendor, or supplier of
707 Contractor.
- 708 2. **Allocation of Funds.** With respect to payments received from each Customer, unless a
709 Customer specifically directs a different allocation, funds shall be allocated first to
710 outstanding charges for Collection services, then to any related delinquency fees or other
711 administrative charges, up to the amount of any outstanding balance. Any overpayment
712 shall be credited to future bills in the same sequence or returned to Customers, as
713 appropriate.

714 4.7 Customer Service Program

715 A. Program Requirements.

716 1. **Customer Service Office.** Contractor maintains an office located at 1131 North Blue Gum
717 Street, Anaheim. No change in this location shall occur without City's approval if such
718 change would result in Contractor not having an office within 25 miles of City's City Hall.
719 Said office shall be open, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through
720 Friday, and 8:00 a.m. to 12:00 p.m. Saturday, Holidays excepted. At least one (1)
721 responsible and qualified representative of Contractor, capable of communicating in
722 English, Spanish, Korean, and Vietnamese, shall be present and available during all times
723 that an office is required to be open as noted above ("Office Hours"), for personal
724 communication with the public, and a similarly qualified Person shall be available for
725 communication with the public by phone during any times other than Office Hours when
726 Collection is occurring.

727 2. Telephone Customer Service Requirements.

728 a. Contractor shall maintain a toll-free telephone number that rings at an office within
729 North Orange County at all times during Office Hours. English and Spanish speaking
730 personnel will be available during Office Hours to assist Customers with telephonic
731 inquiries. Contractor shall also have the ability (through the use of outside resources
732 or otherwise, including having access to translation services for telephone inquiries
733 made during Office Hours) to communicate with Customers who speak Spanish,
734 Korean, Vietnamese, or another foreign language to ensure their inquiries, questions,
735 Complaints, and other matters are dealt with in a reasonably timely fashion. All such
736 personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and
737 have the authority to respond and/or advise Customers seeking assistance.
738 Contractor's telephone system shall be adequate to handle the volume of calls
739 typically experienced on the busiest days. Contractor shall provide City with a 24-
740 hour emergency number to a live Person, not voicemail.

741 b. Contractor shall make reasonable attempts to answer all phone calls within five (5)
742 rings. If a call has been placed on hold for three (3) minutes, the caller will either be
743 switched to a message center that shall be responsible to obtain the caller's address
744 and phone number, or a Customer service representative will obtain the Customer's
745 address and a number at which the call can be returned. Contractor shall make at
746 least three (3) attempts within the next twenty-four (24) hour period to return the
747 call, with the first such attempt not more than one (1) hour after the caller leaves the
748 message. If Contractor is unsuccessful in contacting the Customer after following this
749 procedure, it shall send a letter to the caller indicating its efforts.

750 c. Contractor shall record Customer Complaints regarding Customer service personnel
751 in accordance with Section 4.7.A.3. Customer service representatives receiving
752 multiple Complaints are to be transferred from Customer service duties relating to
753 services performed under this Agreement.

754 d. Contractor will maintain an emergency telephone number for use outside normal
755 office hours. Contractor shall have a representative, or an answering service to
756 contact such representative, available at said emergency telephone number during
757 all hours other than normal office hours. Contractor shall be able to respond to

758 inquiries in English, Spanish, Vietnamese, and other languages as directed by the City.
759 Contractor must also provide a Telecommunications Device for the Deaf (TDD)
760 service for use by Persons with hearing or speech difficulties.

761 3. **Complaint Documentation.** Daily logs of Complaints shall be retained for a minimum of
762 twenty-four (24) months and shall be available to City at all times upon request.

763 Contractor shall log all Complaints received by telephone, and or email, and said log shall
764 include the date and time the Complaint was received, name, address and telephone
765 number of callers, description of Complaint, employee recording Complaint and the action
766 taken by Contractor to respond to and remedy Complaint. Missed pickups shall be
767 included in this log.

768 All Customer Complaints and inquiries shall be date-stamped when received and shall be
769 initially responded to within one (1) Business Day (excluding Saturday, Sunday and
770 Holidays as defined in Exhibit A) of receipt. Contractor shall log action taken by Contractor
771 to respond to and remedy the Complaint.

772 All Customer service records and logs kept by Contractor shall be available to City upon
773 request and at no cost to City. City shall, at any time during regular Contractor business
774 hours, have access to Contractor's City Liaison for purposes that may include monitoring
775 the quality of Customer service or researching Customer Complaints.

776 4. **Resolution of Customer Complaints.** Disputes between Contractor and its Customers
777 regarding the services provided in accordance with this Agreement may be resolved by
778 the City, except for Customers claims for personal injury or damages to property. The
779 City's decision shall be final and binding. Contractor shall reimburse the City's legal and
780 consultant costs for each City intervention in a dispute between Contractor and a
781 Customer if the City reasonably deems intervention is required and the Customer's
782 dispute is valid.

783 Should Contractor and Customers not be able to establish a mutually acceptable fee to be
784 charged for special hauling services, the matter shall also be determined by the City, and
785 the City's decision shall be final.

786 Intervention by the City is not a condition precedent to any rights or remedies Customers
787 or third parties might otherwise have in any dispute with Contractor. Nothing in this
788 Section 4.7.A is intended to affect the remedies of third parties against Contractor or to
789 Customer claims for personal injury or property damage. To the extent that remedies are
790 warranted through this Agreement, this Section shall apply.

791 5. **Website and Email Access.** Contractor shall develop and maintain a website that is
792 accessible by the public and solely dedicated to the operations under this Agreement in
793 the City. Contractor's website shall include all Rates allowed to be charged under the
794 Agreement, all public education and outreach materials produced and distributed under
795 this Agreement and provide the public the ability to e-mail Contractor questions, service
796 requests, or Complaints. Contractor shall respond the same day to all Customers who
797 leave e-mail messages by 5:00 p.m. on a Working Day and shall respond by noon of the
798 following Working Day for any e-mail messages left after 5:00 p.m. Contractor may
799 respond to Customer e-mails via e-mail or phone.

800 B. **Missed Collections.**

801 1. **Missed Collection Complaints.** When handling Customer Complaints related to missed or
802 incomplete Collections, Contractor shall not question or contest the Customer's claim that
803 the Collection was missed or incomplete, even in cases where the route driver recorded
804 the Container(s) in question as already "Collected" or "not out."

805 2. **Schedule for Resolution.** Contractor shall resolve every Customer Complaint of a missed
806 or incomplete Collection by returning to the Customer address and completing the
807 Collection. For all Complaints related to missed Collections that are received by 12:00 p.m.
808 on a Working Day, the Contractor shall return to the Customer address and Collect the
809 missed materials on the same Working Day on which the missed Collection was reported.
810 For those Complaints related to missed Collections that are received after 12:00 p.m. on a
811 Working Day, the Contractor shall have until the end of the following Working Day to
812 resolve the Complaint. Contractor's failure to comply with this Section 4.7.B may result in
813 Liquidated Damages, in accordance with Section 11.6.

814 Contractor shall not be required to return and complete a Collection in response to a
815 Complaint if the Contractor's driver has left a Non-Collection Notice in accordance with
816 Section 4.10.A.4.

817 3. **Courtesy Collections for Admitted Late Set-Outs.** In the event that a Customer: (i) reports
818 that their Container(s) were placed for Collection after Contractor's Collection vehicle had
819 already passed the Premises for regularly scheduled Collection; (ii) does not claim that
820 Contractor missed the Collection; and, (iii) requests that the Contractor return and Collect
821 their Containers, Contractor shall return to the Customer Premises and provide a courtesy
822 Collection at no charge to the Customer. Contractor is not required to provide more than
823 three (3) courtesy Collections for admitted late set-outs per Customer per calendar year.
824 For Residential Customers, one (1) courtesy Collection represents Collection of up to three
825 (3) Carts (Recyclable Materials, Organic Materials, Solid Waste) per incident. Contractor
826 shall complete the courtesy Collection by the end of the following Working Day. The
827 provisions of this Section 4.7.B shall only apply if the Customer acknowledges, and
828 Contractor documents in writing, that the event did not constitute a missed or incomplete
829 Collection event by the Contractor.

830 C. **SB 1383 Non-Compliance Complaints.** For Complaints received in which the Person alleges that an
831 entity is in violation of SB 1383 requirements, Contractor shall document the information listed in
832 Exhibit F. Contractor shall provide this information in a brief Complaint report to the City for each
833 SB 1383-noncompliance Complaint within seven (7) days of receipt of such Complaint, and a
834 monthly summary report of SB 1383-non-compliance Complaints in accordance with Exhibit F.

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

837 **4.8 Access to Customer Service and Billing Systems**

838 Upon request of City, Contractor shall provide access and any necessary training to one (1) or more City
839 employee(s) (as designated by the City) regarding the use of Contractor information systems as
840 described in this Section 4.8. Contractor shall designate one (1) member of Contractor staff to work
841 directly with such City employee. Contractor shall provide such City employee with access to Customer

842 service, call center, and operations information systems in order to validate Contractor performance
843 standards and recommend changes to Customer Service Levels to resolve service issues or otherwise
844 address Customer needs. If recommended Service Level changes are made, the designated City staff will
845 work with Contractor's route manager to make such changes, which shall not be denied by Contractor
846 except for reasons related to Customer, route driver, and/or equipment safety. Contractor shall also
847 provide access to Customer contact information (including email addresses) for purposes of City-
848 provided public education and outreach activities. In addition, Contractor shall ensure that the City
849 Manager and any other City staff, as requested by the City, have read-only access to all service order,
850 billing, and Customer service records in Contractor's internal information systems. Such read-only access
851 is intended to provide the City the ability to review notes related to Customer service and/or billing
852 issues.

853 **4.9 Service Exemptions**

854 A. **General Exemptions.** Upon Customer request, and with written approval from the City Manager,
855 Contractor shall cease providing, and collecting payment for, Collection services to a Premises
856 which is anticipated to be vacant for no less than thirty (30) days based on verified information
857 from Customer. In addition, upon written direction from the City Manager, Contractor shall
858 modify or otherwise cease providing Collection services to Customers requesting other service
859 exemptions, provided that such Customers consistently demonstrate the ability to responsibly
860 manage Discarded Materials generated at the Premises in question, in a manner consistent with
861 Applicable Law.

862 B. **Commercial and Multi-Family Customer Waivers.**

863 1. **General.** The City may grant waivers described in this Section 4.9.B to Commercial or
864 Multi-Family Generators that impact the scope of Contractor's provision of service for
865 those Customers; provided, the Generator shall continue to subscribe with Contractor for
866 franchised Collection services to the extent such services are not waived by the City.
867 Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14
868 CCR Section 18984.11, or other requirements specified by the City.

869 2. **Types of Generator Waivers**

870 a. De Minimis Waivers. The City may waive a Commercial Business' or Multi-Family
871 property's obligation to comply with some or all of the Recyclable Materials and
872 Organic Materials requirements set forth in this Agreement, SB 1383, and of the
873 Municipal Code and District's Code of Regulations if the Generator provides
874 documentation or the City has evidence demonstrating one (1) of the following de
875 minimis conditions:

876 i. The Commercial or Multi-Family Generator's total Discarded Materials
877 Collection service is two (2) cubic yards or more per week, and Organic Waste
878 subject to Collection in a Recyclable Materials Container or Organic Materials
879 Container comprises less than twenty (20) gallons per week, per applicable
880 Container, of the Commercial Business' total waste; or,

881 ii. The Commercial or Multi-Family Generator's total Discarded Materials
882 Collection service is less than two (2) cubic yards per week, and Organic Waste
883 subject to Collection in a Recyclable Materials Container or Organic Materials

884 Container comprises less than ten (10) gallons per week, per applicable
885 Container, of the Commercial Business' total waste.

886 b. Physical Space Waivers. The City may waive a Commercial or Multi-Family
887 Generator's obligation to comply with some or all of the Recyclable Materials and
888 Organic Materials requirements set forth in this Agreement, SB 1383, and the
889 Municipal Code and District's Code of Regulations if the Commercial or Multi-Family
890 Generator provides documentation, or the City has evidence from its staff, the
891 Contractor, licensed architect, engineer, or similarly qualified source demonstrating
892 that the Premises lacks adequate space for Recyclable Materials Containers and/or
893 Organic Materials Containers.

894 3. **Contractor Review of Waiver Requests.** Generators may submit requests for de minimis
895 waivers and physical space waivers to the City or Contractor. The City shall notify
896 Contractor of the request, and Contractor shall within seven (7) days of receipt of the
897 City's request, inspect the Generator's Premises to verify the accuracy of the application.
898 Contractor shall provide documentation of the inspection, including the date of the
899 inspection, Customer name and address, a description of the Premises, evaluation of each
900 criterion of the relevant waiver type, and photographic evidence. The Contractor shall
901 send this information and documentation to the City in a timely manner, not to exceed
902 three (3) days after the date of inspection. The City ultimately retains the right to approve
903 or deny any application, regardless of the information provided by the Contractor.
904 Contractor shall report information regarding waivers reviewed within the month, if any,
905 in accordance with this Section and Section 11.6.

906 4. **Service Level Updates.** When the City grants a waiver to a Customer, or the Customer's
907 waiver status changes after a re-verification determination, the City shall notify the
908 Contractor within seven (7) days of the waiver approval or status change with information
909 on the Customer and any changes to Service Level or Collection service requirements for
910 the Customer. Contractor shall have seven (7) days to modify the Customer's Service
911 Level, Customer account data, and billing statement, as needed.

912 5. **Waiver Re-verification.** The City shall be responsible for re-verification of waivers. Upon
913 request of the City, the Contractor shall support the City in this re-verification process by
914 providing requested Customer information as per Customer database requirements in
915 Section 4.6. In the event that a waiver status changes, Contractor shall update the
916 Customer's information and Service Level in accordance with Subsection 4.9.B.4 above.

917 C. **Contractor Service Exemptions.**

918 1. **Disaster Waivers.** In the event of a disaster, the City may grant Contractor a waiver of
919 some or all Discarded Materials Collection requirements under this Agreement and 14
920 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the
921 waiver, provided that such waiver has been approved by CalRecycle. Any resulting
922 changes in Collection requirements shall be addressed as a change in scope in accordance
923 with Section 3.6.

924 2. **Quarantined Waste.** If approved by the City, the Contractor may Dispose of, rather than
925 Process, specific types of Organic Materials and/or Recyclable Materials that are subject
926 to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) for a
927 period of time specified by the City or until the City provides notice that the quarantine

928 has been removed and directs Contractor to Transport the materials to the Approved
929 Facilities for such material.

930 In accordance with Exhibit F, the Contractor shall maintain records and submit reports
931 regarding compliance agreements for quarantined Organic Materials and Recyclable
932 Materials that are Disposed of pursuant to this Subsection 4.9.C.

933 **4.10 Contamination Monitoring**

934 **A. Annual Route Reviews.**

935 1. **Methodology.** The Contractor shall, at its sole expense, conduct route reviews of
936 Containers for Prohibited Container Contaminants in a manner that meets the
937 requirements of this Section 4.10; is approved by the City; and results in all routes being
938 reviewed at least annually.

939 The Contractor's route review shall include all Container types in service (Recyclable
940 Materials, Organic Materials, and Solid Waste Containers) for all Customer Types. The
941 Containers shall be selected prior to beginning the route review.

942 Contractor shall ensure that a minimum of one percent (1%) of accounts or twenty-five
943 (25) accounts, whichever is larger, on each and every hauler route are inspected annually.

944 Contractor shall develop a specific route review methodology to accomplish the above
945 Container inspection requirements and such methodology shall comply with the
946 requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed route
947 review methodology for the coming year to the City no later than January 15 of each year
948 describing its proposed methodology for the calendar year and schedule for performance
949 of each route's annual review. Contractor's proposed route review methodology shall
950 include not only its plan for Container inspections but shall also include its plan for
951 prioritizing the inspection of Customers that are more likely to be out of compliance. The
952 City and/or CalRecycle will review and approve the proposed methodology. Contractor
953 may commence with the proposed methodology upon approval.

954 If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate
955 to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole
956 expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct
957 additional route reviews, increased Container inspections, or implement other changes
958 using the revised procedure. If the Contractor's proposed methodology meets the
959 requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the City,
960 the Contractor shall, at the expense of the City, revise the methodology and implement
961 the necessary changes using the revised procedure.

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

967 2. **Contamination Notification.** Upon identification of Prohibited Container Contaminants in
968 a Customer's Container, Contractor shall provide the Customer with a notice of

969 contamination in the form of either a Courtesy Pick-Up Notice or a Non-Collection Notice
970 as determined by the route auditor.

971 3. **Courtesy Pick-Up Notice.** Upon identification of Prohibited Container Contaminants in a
972 Customer's Container, Contractor shall provide the Customer a Courtesy Pick-Up Notice at
973 the Customer's door or gate; or, subject to City's approval, may deliver the notice by mail,
974 e-mail, or phone. Contractor shall also attach or adhere Courtesy Pick-Up Notice to
975 Generators contaminated Containers.

976 The Courtesy Pick-Up Notice shall, at a minimum:

- 977 a. Inform the Customer of the observed presence of Prohibited Container
978 Contaminants;
- 979 b. Include the date and time the Prohibited Container Contaminants were observed;
- 980 c. Include information on the Customer's requirement to properly separate materials
981 into the appropriate Containers, and the accepted and prohibited materials for
982 Collection in each Container;
- 983 d. Inform the Customer of the courtesy pick-up of the contaminated materials on this
984 occasion with information that following three (3) instances for Residential and one
985 (1) instance for Commercial of contaminated materials; Contractor may assess
986 contamination fees; and,
- 987 e. Include photographic evidence.

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

990 Contractor shall Collect the contaminated Recyclable Materials and/or Organic Materials
991 Containers and either Transport the material to the appropriate Approved Facility for
992 Processing or Contractor may Collect the contaminated materials with Solid Waste and
993 Transport the contaminated materials to the Designated Disposal Facility. A courtesy
994 Collection of contaminated Recyclable Materials or Organic Materials where the materials
995 are sent to the Designated Disposal Facility may be made with a Solid Waste Collection
996 vehicle, provided that the contaminants may safely and lawfully be Collected as Solid
997 Waste.

998 4. **Non-Collection Notices.**

999 a. Non-Collection Notice. Upon identification of Prohibited Container Contaminants in a
1000 Container in excess of standards agreed upon by the Parties or that contain Excluded
1001 Waste, Contractor shall provide a Non-Collection Notice to the Generator.

1002 The Non-Collection Notice shall, at a minimum:

- 1003 i. Inform the Customer of the reason(s) for non-Collection;
- 1004 ii. Include the date and time the notice was left or issued;
- 1005 iii. Describe the premium charge to Customer for Contractor to return and Collect
1006 the Container after Customer removes the Prohibited Container Contaminants;
- 1007 iv. Provide a warning statement that a contamination Processing fee may be
1008 assessed; and,

- 1009 v. Include photographic evidence of the violation(s).
- 1010 b. Communications with Customer. Whenever a Container at the Premises of a
- 1011 Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the
- 1012 Customer on the scheduled Collection day or within two (2) hours of the scheduled
- 1013 Collection day by telephone, email, text message, or other verbal or electronic
- 1014 message to explain why the Container was not Collected. Whenever a Container is
- 1015 not Collected because of Prohibited Container Contaminants, a Customer service
- 1016 representative shall contact the Customer to discuss and encourage the Customer to
- 1017 adopt proper Discarded Materials preparation and separation procedures.
- 1018 c. Contractor Return for Collection. Upon request from Customer, Contractor shall
- 1019 Collect Containers that received Non-Collection Notices within one (1) Working Day
- 1020 of Customer's request if the request is made at least two (2) Working Days prior to
- 1021 the regularly scheduled Collection Day. Contractor shall bill Customer for the extra
- 1022 Collection service event ("extra pick-up") at the applicable Rates only if Contractor
- 1023 notifies Customer of the premium Rate for this service at the time the request is
- 1024 made by Customer.
- 1025 5. **Assessment of Contamination Processing Fees.** If the Contractor observes ten percent
- 1026 (10%) or more Prohibited Container Contaminants on more than three (3) occasions for
- 1027 Residential and one (1) occasion for Commercial and issued Courtesy Pick-Up Notices on
- 1028 each of those occasions, the Contractor may impose a contamination fee for that
- 1029 Customer's Service Level. The intent of contamination fees is to provide a behavioral tool
- 1030 to educate and prevent Customers from placing Source Separated Discarded Materials
- 1031 into the improper designated Container(s), as well as to cover the increased costs to
- 1032 Dispose of the contaminated loads. To ensure that the assessment of fees is to be used for
- 1033 the intended purposes and not as a form of revenue generation, Contractor agrees that
- 1034 contamination fees shall not exceed one percent (1%) of Contractor's Gross Receipts in
- 1035 any calendar quarter. In the event that contamination fees exceed one percent (1%) of
- 1036 Contractor's Gross Receipts in any calendar quarter, the assessment of contamination
- 1037 fees shall be suspended immediately and indefinitely pending a program assessment by
- 1038 the City and Contractor. Upon program suspension or at the request of the City at any
- 1039 time during the Term of the Agreement, City and Contractor shall meet and confer
- 1040 regarding the application and effectiveness of contamination fees in accomplishing the
- 1041 behavior change. If the program is suspended due to excessive revenue generation, the
- 1042 City may require Contractor to either: i) modify the program parameters; ii) modify the
- 1043 amount of the contamination fee; or, iii) return to the City any funds generated by the
- 1044 Contamination fee that exceed one percent (1%) of Contractor's Gross Receipts for a
- 1045 given period of time to be used for Recycling education and/or enforcement
- 1046 programming.
- 1047 Failure to comply with the requirements of this Section 4.10.A shall equate to Liquidated
- 1048 Damages in accordance with Section 11.6.
- 1049 Contractor shall leave a Contamination Processing Fee Notice attached to the Generators'
- 1050 contaminated Container(s). Contractor must also deliver notice by mail to the bill payer's
- 1051 address within twenty-four (24) hours of assessing the contamination fee.
- 1052 a. Contamination Processing Fee Notice. Contamination Processing Fee Notices shall be
- 1053 in a format approved by the City Manager. Contractor shall notify the City in its

1054 monthly report of Customers for which contamination Processing fees were assessed
1055 per Section 4.10.A.6.

1056 Each Contamination Processing Fee Notice shall, at a minimum:

- 1057 i. Describe the specific material(s) of issue;
- 1058 ii. Explain how to correct future set outs; and,
- 1059 iii. Indicate that the Customer will be charged a contamination Processing fee on
1060 their next bill.

1061 **6. Reporting Requirements.**

1062 a. Container Contaminant Log. The driver or other Contractor representative shall
1063 record each event of identification of Prohibited Container Contaminants in a written
1064 log or in the on-board computer system including, but not limited to: date, time,
1065 Customer's address, type of Container, and photographic evidence. Photographic
1066 evidence by the driver or other Contractor representative will be forwarded to City
1067 staff at the time it is provided to a Customer via digital means.

1068 b. Contaminant Fees Assessment Report. Additionally, on no less than a weekly basis,
1069 Contractor's Contract Administrator shall update the Customer's account records to
1070 note the contaminant event(s) as identified by driver(s). Contractor shall maintain
1071 records and report to the City monthly on contamination monitoring activities and
1072 actions taken, consistent with the submittal timing and content requirements of
1073 Exhibit F. Failure to meet the requirements of this Section 4.10.A.6.b, shall be subject
1074 to Liquidated Damages as identified in Section 11.6.

1075 c. Monthly Report. The monthly report shall include, but is not limited to: list of
1076 Customers that were assessed charges; photographic evidence of each
1077 contamination event(s) where a fee(s) was assessed if requested by Customer or City
1078 for identified occurrences; verification processes to assure accurate fee assessment;
1079 date of notification, form(s) of notification given to Customer; list of efforts made in
1080 educating the Customer that was assessed a fee; list of Customer Complaints in
1081 response to fee assessment; Contractor's response and actions taken in response to
1082 Customer Complaints; and, the dollar amount of contamination fees assessed during
1083 the reporting period. Failure to meet the requirements of this Section 4.10.A.6.c,
1084 shall be subject to Liquidated Damages as identified in Section 11.6.

1085 **4.11 Route Audit**

1086 Once during the first year and thereafter at City's request (but not more than once every four (4) years),
1087 Contractor shall conduct an audit of its Collection routes in the City. City may use information from the
1088 audit to develop a request for proposals for a new service provider. City may instruct Contractor when
1089 to conduct the audit in order for the results to be available for use in preparation of a request for
1090 proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that
1091 would produce the most accurate Customer service information for a new service provider to use in
1092 establishing service with Customers. In setting these audit dates, City will establish due dates for
1093 Contractor providing routing and account information, and later, the report, to City.

1094 The route audit, at minimum, shall consist of an independent physical observation by Person(s) other
1095 than the route driver of each Customer in City. This Person(s) is to be approved in advance by City. The

1096 route audit information shall include, as a minimum, the following information for each account:

1097 For Cart Customers:

- 1098 • Route Number
- 1099 • Truck Number
- 1100 • Number and size of Carts by waste stream (Refuse, Recyclable Materials, and Organic Waste)
- 1101 • Cart condition

1102 For Bin and Roll-Off Customers:

- 1103 • Route Number
- 1104 • Truck Number
- 1105 • Account Name
- 1106 • Account Number
- 1107 • Account Service Address
- 1108 • Account Type (Residential, Commercial, Roll-Off Box)
- 1109 • Service Level per Contractor Billing system (Quantity, Size, Frequency, Waste Stream)
- 1110 • Observed Containers (Quantity, Size, Frequency, Waste Stream)
- 1111 • Container condition
- 1112 • Proper signage
- 1113 • Graffiti

1114 Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report
1115 summarizing the results of the audit. This summary shall include:

- 1116 • Identification of the routes
- 1117 • Route map
- 1118 • Truck numbers
- 1119 • Number of accounts, by route and in total (Residential, Commercial and Roll-Off Box)
- 1120 • Confirmation that all routes are dedicated exclusively to City Customers
- 1121 • Number and type of exceptions observed
- 1122 • Name and addresses of Customers that do not have Source Separated Recyclable Materials
1123 Collection services and documentation of waivers if any for each account
- 1124 • Name and addresses of Customers that do not have Source Separated Organic Materials
1125 Collection services and documentation of waivers if any for each account
- 1126 • Total monthly service charge (Residential, Commercial, and Roll-Off Box), pre-audit for each
1127 Customer

- 1128 • Total monthly service charge (Residential, Commercial, and Roll-Off Box), post-audit
1129 (subsequent to corrections of identified exceptions) for each Customer.

1130 The report shall include a description of the procedures followed to complete the route audit. This
1131 description shall include the names and titles of those supervising the route audits and the name and
1132 titles of those performing the observations.

1133 The report shall also include a description of the changes and Contractor's plans to resolve the
1134 exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or
1135 its representative.

1136 **4.12 Preparation of CalRecycle Electronic Annual Report (EAR)**

1137 Contractor shall prepare, and submit to City for approval, the EAR by July 1 of each Rate Period.
1138 Contractor shall revise EAR upon receipt of revisions made by City and/or their designee, and submit
1139 EAR to CalRecycle on behalf of the City.

1140 **ARTICLE 5.** 1141 **STANDARD OF PERFORMANCE**

1142 **5.1 General**

1143 Contractor shall at all times comply with Applicable Law and provide services in a manner that is safe to
1144 the public and the Contractor's employees. Except to the extent that a higher performance standard is
1145 specified in this Agreement, Contractor shall perform services in accordance with Recyclable Materials,
1146 Organic Materials, and Solid Waste management practices common to the Orange County area.

1147 **5.2 Operating Hours and Schedules**

1148 A. **Hours of Collection.** Unless otherwise authorized by the City Manager, Contractor's days and
1149 hours for Collection operations shall be as follows:

1150 1. **Residential Premises.** Collection from Residential Premises shall only occur between the
1151 hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. Collection at Residential
1152 Premises shall not occur on Saturdays; excepting Temporary Bin Services and Collection
1153 occurring on Saturdays following such Holidays as may be approved by the City Manager.
1154 No Collection services shall occur on Sundays at Residential Premises, except in
1155 exceptional circumstances for which specific approval is given by the City Manager.

1156 2. **Commercial Premises.** Collection from Commercial Premises shall only occur between the
1157 hours of 6:00 a.m. and 8:00 p.m., Monday through Saturday. Collection services may
1158 occur at Commercial Premises on Sundays; provided, however, no such service shall occur
1159 on Sundays in connection with any Premises at which the City Manager determines such
1160 service would be contrary to the public interest. The City Manager may require Contractor
1161 to comply with time frames applicable to Residential Premises in connection with
1162 Collection services for Customers at Commercial Premises whose Premises are in close
1163 proximity to Residential Premises.

1164 3. **City Facilities.** The Collection schedule for City facilities shall be the same as Commercial
1165 Premises specified in Subsection 5.2.A.2 above.

1166 B. **Changes in Collection Routes.** Contractor shall establish Collection routes and a Collection
1167 schedule that shall be approved by the City Manager such that Customers at all Residential and
1168 Commercial Premises within the City will have not less than one (1) established Collection day
1169 each week. Contractor shall provide the City with route maps identifying at a minimum: the type
1170 of route (e.g., Single-Family, Multi-Family, Commercial) and the service day. Contractor may, at
1171 any time during the Term of this Agreement, propose changes or additional routes, subject to City
1172 approval, which shall not be unreasonably withheld. If a standard Collection route change is
1173 approved, Contractor must notify all affected Customers fourteen (14) days prior to Contractor
1174 implementing the new route. Failure to obtain City approval on route changes resulting in service
1175 day changes for Customers shall be subject to Liquidated damages as identified in Section 11.6.

1176 C. **Commingling of Routes.** During its Collection process, Contractor shall not commingle Solid Waste
1177 Collected within the City hereunder with Solid Waste Collected in other cities based on
1178 Contractor's methodology to account for Solid Waste Collected within the City, any other city, or
1179 on behalf of any other entity operating or existing within City that is not subject to this
1180 Agreement, and is specifically prohibited from combining Collection routes related to services
1181 provided pursuant to this Agreement with Collection routes for other jurisdictions it may service.
1182 Notwithstanding the forgoing, if Contractor utilizes a methodology satisfactory to the City
1183 Manager and CalRecycle to account for one (1) or more types of Solid Waste Collected within City.
1184 Approval of this Amendment constitutes, and Contractor obtains the written consent of the City
1185 Manager for Contractor to commingle such Solid Waste Collected with Solid Waste Collected from
1186 other jurisdictions, Contractor may commingle such Solid Waste Collected within the City in a
1187 Collection Vehicle with Solid Waste Collected from Premises in other jurisdictions.

1188 The City Manager may grant their consent for such commingling in their absolute and sole
1189 discretion if they determine the methodology used to account for commingled Solid Waste is
1190 reasonably likely to result in the City being in compliance with the Applicable Laws; and, similarly
1191 may withdraw their consent if they determine the methodology used to account for commingled
1192 Solid Waste is reasonably likely to result in the City not being in compliance with Applicable Laws.
1193 As of the effective date of this Agreement, commingling of routes for the Collection of Recyclable
1194 Materials and Organic Materials from Customers at Commercial Premises and Multi-Family
1195 Dwellings is approved by the City, using a methodology for tracking such types of Solid Waste
1196 generated in the City and in other jurisdictions that is premised upon Container capacity.

1197 D. **Holiday Collection.** Contractor, at its sole discretion, may choose not to provide Collection
1198 services on a Holiday. In such event, Contractor shall provide Single-Family Collection services on
1199 the day following the Holiday thereby adjusting subsequent work that week with normally
1200 scheduled Friday Collection Services being performed on Saturday; however, Customer service
1201 days shall be returned to the normal schedule within one (1) week of the Holiday. Multi-Family,
1202 Commercial, and City Collection Services shall be adjusted as agreed between the Contractor and
1203 the Customer but must meet the minimum frequency requirement of one (1) time per week. The
1204 Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at
1205 least two (2) weeks prior to the change.

1206 5.3 Collection Standards

1207 A. **Servicing Containers.** Contractor shall Collect and return each Container to the location where the
1208 Occupant placed the Container for Collection. Contractor shall place the Containers upright with

1209 lids properly secured. For Customers other than Single-Family Residential Customers, Contractor
1210 may provide scout service, pull-out service, accessing Container enclosures with a key or access
1211 code, or locking Bin service as described in Exhibit B3.

1212 B. **Non-Collection, Courtesy Pick-Up Noticing.** Within thirty (30) days of the Effective Date,
1213 Contractor shall develop, and submit to the City Manager for review and approval, and as per the
1214 requirements of Section 4.10.A.4:

1215 1. A template Non-Collection Notice, for use in instances of acceptable non-Collection of
1216 Discarded Materials; and,

1217 2. A template Courtesy Pick-Up Notice, for use in instances of improper set-out of Discarded
1218 Materials, which the Contractor, at its sole option, elects to Collect as a courtesy to the
1219 Customer.

1220 Per the requirements identified in Section 4.10.A, in the event that Contractor is prevented from
1221 Collecting Discarded Materials which have been placed for Collection, Contractor shall leave a
1222 Non-Collection Notice at the Customer Premises clearly explaining Contractor's reason for refusal
1223 to Collect the Discarded Materials. Contractor shall not be required to Collect Discarded Materials
1224 that are reasonably believed to contain Excluded Waste, pursuant to the requirements of Section
1225 5.8. Contractor may propose an alternative to a paper Non-Collection Notice left at Customer
1226 Premises (e.g., Customer notification via a phone call or e-mail) subject to City approval. Such an
1227 alternative must involve pro-active communication with Customer, initiated by Contractor.

1228 In the event that Contractor encounters circumstances at a Customer Premises which allow for
1229 safe Collection of Discarded Materials, but do not otherwise reflect proper set-out procedures
1230 (including, but not limited to spills not caused by the Contractor, Carts placed too close together,
1231 Carts placed in front of one another, and/or Carts placed too close to parked cars), Contractor
1232 shall Collect the material and leave a Courtesy Pick-Up Notice at the Customer Premises clearly
1233 explaining how the Customer failed to comply with proper set-out procedures.

1234 Contractor may educate the public on proper set-out procedures designed to maximize the
1235 efficiency of Collection (e.g., Carts spaced three (3) feet apart). However, Contractor
1236 acknowledges that such procedures are not practical in all circumstances and failure of the
1237 Customer to follow such procedures does not constitute a reason for non-Collection if the
1238 Discarded Materials may be safely and reasonably serviced. Contractor's route drivers shall
1239 dismount their Collection vehicles and reposition Containers as necessary to provide Collection
1240 service. Contractor may not require a Customer to set out the Customer's Containers in such a
1241 manner that would block vehicle access to Customer's driveway. Contractor and Customers may
1242 mutually agree to uncommon service locations if necessary for Collection in specific areas (e.g.,
1243 setting out all of the Carts in a court in a line down the middle of the court as opposed to
1244 Curbside.)

1245 Contractor may refuse to Collect Recyclable Materials or Organic Materials Containers that are
1246 contaminated in accordance with Exhibit B and Section 4.10 and shall leave an approved Non-
1247 Collection Notice informing Customer how to properly separate materials.

1248 C. **Litter Abatement.** Contractor shall use due care to prevent spills or leaks of material placed for
1249 Collection, fuel, and other vehicle fluids while providing services under this Agreement. If any

- 1250 materials are spilled or leaked during Collection and Transportation, the Contractor shall clean up
1251 all spills or leaks before leaving the site of the spill.
- 1252 Contractor shall not Transfer loads from one (1) vehicle to another on any Public Street, unless it is
1253 necessary to do so because of mechanical failure, combustion of material in the truck, or
1254 accidental damage to a vehicle.
- 1255 Contractor shall cover all open Roll-Off Boxes at the pickup location before Transporting materials
1256 to an Approved Facility or the Designated Disposal Facility.
- 1257 Contractor shall conduct public outreach and staff training to Customers on best management
1258 practices for litter abatement at no extra charge. Such best management practices include,
1259 without limitation:
- 1260 1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers
1261 with Courtesy Pick-Up Notices, which will serve as outreach and education to the
1262 Customer. Photos of the Container will be taken by drivers, attached to the Customer's
1263 account, and will be available to outreach and Customer service staff in order to
1264 demonstrate to the Customer where a problem exists.
 - 1265 2. Outreach to Customer on importance of bagging lightweight materials such as plastic
1266 bags, film plastics, foam peanuts, and other materials that can easily become litter due to
1267 their lightweight nature.
 - 1268 3. Driver training on litter reduction techniques and litter removal best management
1269 practices.
 - 1270 4. Affixing signage to the back of Contractor trucks which provides a phone number for
1271 residents to report material spills.
- 1272 **D. Development and Review of Collection Specifications.** Contractor shall work with the City to
1273 develop standard specifications for Collection Container enclosures at Commercial and Multi-
1274 Family Premises. These specifications shall be developed to ensure that the Collection Container
1275 enclosures are built to provide adequate space for and suitable configuration to allow the
1276 Contractor to safely and efficiently service Recyclable Materials, Organic Materials, and Solid
1277 Waste Containers. Contractor's Operations Manager or other appropriately qualified staff shall,
1278 upon request by the City Manager, provide a review of plans for new Multi-Family and
1279 Commercial development or project design drawings. Contractor shall provide comments and
1280 recommendations resulting from the review in writing within ten (10) Working Days of receipt of
1281 the documents for review. In each review report, Contractor shall comment on the acceptability of
1282 the proposed enclosure arrangements in terms of the: i) adequacy of space for Recyclable
1283 Materials, Organic Materials, and Solid Waste Containers; ii) accessibility of the Containers for
1284 Collection, including whether additional charges (e.g., pull-out or scout service) would apply; and,
1285 iii) ease of use by tenants.
- 1286 **E. No Commingling of Materials.** Contractor shall not commingle materials which have been Source
1287 Separated with other material types (for example, Source Separated Recyclable Materials that
1288 have been properly placed for Collection shall not be combined with Solid Waste or Source
1289 Separated Organic Materials).

1290 5.4 Transfer and Processing Standards

1291 A. **Equipment and Supplies.** Contractor shall equip and operate the Approved Processing Facilities in
1292 a manner to fulfill Contractor's obligations under this Agreement. Contractor is solely responsible
1293 for the adequacy, safety, and suitability of the Approved Processing Facilities. Contractor shall
1294 modify, enhance, and/or improve the Approved Processing Facilities as needed to fulfill Services
1295 under this Agreement.

1296 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare
1297 parts, maintenance supplies, Transfer, Transport, Processing equipment, and other consumables
1298 as appropriate and necessary to operate the Approved Processing Facilities and provide all
1299 services required by this Agreement. Contractor shall place the equipment in the charge of
1300 competent operators. Contractor shall repair and maintain all equipment at its own cost and
1301 expense.

1302 B. **Scales and Weighing.** Contractor is solely responsible for ensuring accurate weighing of all
1303 materials entering and leaving the Approved Processing Facilities.

1304 1. **Facility Scales.** Contractor shall maintain State-certified motor vehicle scales in
1305 accordance with Applicable Law. All scales shall be linked to a centralized computer
1306 recording system at the Approved Processing Facilities to record weights for all incoming
1307 and outgoing materials. Contractor shall provide back-up generator(s) capable of
1308 supplying power to the scales in the event of a power outage. Contractor shall promptly
1309 arrange for use of substitute portable scales should its usual scales not be available for
1310 whatever reason. Pending substitution of portable scales, Contractor shall, as necessary,
1311 estimate the Tonnages of materials delivered to and Transported from the Approved
1312 Processing Facilities, on the basis of delivery vehicle and Transfer trailer volumes, tare
1313 weights, and/or other available facility weight records. These estimates shall take the
1314 place of actual weights while scales are inoperable and shall be identified as estimates in
1315 electronic records and reporting.

1316 2. **Tare Weights.** No less than thirty (30) calendar days after the Effective Date, Contractor
1317 shall ensure that all vehicles used by Contractor to deliver Recyclable Materials, Organic
1318 Materials, and Solid Waste to the Approved Processing Facilities are weighed to
1319 determine unloaded ("tare") weights. Contractor shall electronically record the tare
1320 weight, identify vehicle as Contractor owned, and provide a distinct vehicle identification
1321 number for each vehicle. Contractor shall provide City with a report listing the vehicle tare
1322 weight information upon request. Contractor shall promptly weigh additional or
1323 replacement vehicles prior to placing them into service. Contractor shall check tare
1324 weights at least annually, or within fourteen (14) calendar days of a City request and shall
1325 re-tare vehicles immediately after any major maintenance or service event.

1326 3. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law,
1327 but at least one (1) test and recalibration per scale every twelve (12) months or upon City
1328 request.

1329 4. **Records.** Contractor shall maintain computerized scale records and reports that provide
1330 information including date of receipt, inbound time, inbound and outbound weights of
1331 vehicles, and vehicle identification number. Contractor shall also maintain computerized

1332 scale records and reports providing historical vehicle tare weights for each vehicle and the
1333 date and location for each tare weight recorded.

1334 5. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on
1335 video cameras at the Approved Processing Facilities, Contractor shall make those videos
1336 available for City review during the Approved Processing Facility's operating hours, upon
1337 request of the City, and shall provide the name of the driver of any particular load if
1338 available.

1339 **5.5 Collection Vehicle Requirements**

1340 A. **Vehicle Requirements.** Contractor shall provide a fleet of Collection vehicles sufficient in number
1341 and capacity to efficiently perform the work required by the Agreement in strict accordance with
1342 its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection
1343 vehicle used to respond to scheduled and unscheduled maintenance, service requests,
1344 Complaints, and emergencies.

1345 1. Contractor shall operate no vehicles within the City over ten (10) years in age during the
1346 Term of this Agreement. All such vehicles shall have watertight bodies designed to
1347 prevent leakage, spillage, or overflow and shall comply with all Federal, State, and local
1348 laws and regulations. Contractor's vehicles shall utilize Recycled motor oil to the extent
1349 practicable.

1350 2. Contractor will annually investigate the ability to procure qualified RNG with their fueling
1351 provider and will implement the use of such fuel to the maximum available extent
1352 provided that the premium cost of qualified RNG does not cause Contractor's total fuel
1353 expense to increase by more than ten percent (10%). Contractor shall make best efforts to
1354 seek and utilize RNG that is purchased through a wheeling agreement with a party(ies),
1355 provided that the wheeling agreement is for purchase of gas derived from Organic Waste
1356 that has been Diverted from a landfill and Processed at an in-vessel digestion Facility that
1357 is permitted or otherwise authorized by 14 CCR to Recycle Organic Waste and meets SB
1358 1383 requirements. Contractor shall maintain records of the amount of RNG purchased
1359 and shall report this information in accordance with Exhibit F. Contractor shall agree to
1360 the City the right to report this RNG usage toward the City's fulfilment of its annual
1361 recovered Organic Waste product procurement target in accordance with 14 CCR Section
1362 18993.1.

1363 3. Collection vehicles shall have the capacity to Collect and Transport loose Cardboard
1364 overages to ensure that Contractor is capable of complying with Exhibit B.

1365 4. Collection vehicles shall present a clean appearance while providing service under this
1366 Agreement.

1367 5. Beginning January 1, 2023, Contractor will phase in all new Collection vehicles and trucks
1368 for full City fleet replacement by December 31, 2026. The replacement schedule by
1369 calendar year is:

1370 a. 2023: Fourteen (14) vehicles replaced

1371 b. 2024: Fourteen (14) vehicles replaced

1372 c. 2025: Five (5) vehicles replaced

- 1373 d. 2026: Eight (8) vehicles replaced
- 1374 6. No later than April 1, 2023, Contractor will operate one (1) electric Collection vehicle to be
1375 used full-time on a Recyclable Materials route five (5) days per week in the City. Republic
1376 will meet and confer with City to determine a plan for City to approve deployment of an
1377 electric Collection vehicle.
- 1378 B. **Vehicle Display.** Contractor's name, local or toll-free telephone number, and a vehicle number
1379 shall be visibly printed or painted in letters not less than five (5) inches in height on both sides and
1380 the rear of each Collection Vehicle. Additionally, the words "Serving the City of Garden Grove"
1381 shall be displayed on both sides of every Residential Collection vehicle in letters not less than
1382 three (3) inches in height.
- 1383 C. **Vehicle Inspection.** Contractor shall inspect each vehicle daily to ensure that all equipment is
1384 operating properly. Vehicles that are not operating properly shall be taken out of service until they
1385 are repaired and operate properly. Contractor shall repair or arrange for the repair of all its
1386 vehicles and equipment for which repairs are needed because of accident, breakdown, or any
1387 other cause so as to maintain all equipment in a safe and operable condition. City Manager may
1388 inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to
1389 determine compliance with sanitation requirements.
- 1390 D. **Vehicle Operations.** All Collection operations shall be conducted as quietly as possible and shall
1391 conform to applicable Federal, State, County, and City noise level regulations, including the
1392 requirement that the noise level during the stationary compaction process not exceed sixty (60)
1393 decibels with the exception of sixty-five (65) decibels for one (1) minute duration. All decibel
1394 readings shall be based on a distance of ten (10) feet from any part of the vehicle. The City may
1395 request Contractor to check any piece of equipment for conformance with the noise limits in
1396 response to Complaints and/or when the City Manager believes it is reasonable to do so.
- 1397 E. **Leaks and Spill Mitigation.** Contractor shall clean up any leaks or spills from its vehicles per the
1398 National Pollutant Discharge Elimination System (NPDES) permit in effect at the time. Contractor
1399 shall notify City of any leaks or spills reported to Contractor or observed by any employee of
1400 Contractor. Contractor shall ensure that leaks or spills are remediated within two (2) hours of
1401 notification or observation. Contractor shall notify City immediately upon remediation of leaks or
1402 spills. No pollutant that leaks, spills, or otherwise escapes from any Contractor vehicle may be
1403 washed into a storm drain or otherwise allowed to enter a storm drain at any time. Contractor
1404 must take all measures necessary to prevent the discharge of any such pollutant into a storm
1405 drain. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be
1406 equipped with absorbent for such cleanup efforts. Contractor shall provide photographic evidence
1407 to the City for each clean up. Payment of Liquidated Damages for failure to clean up leaks or spills
1408 within the required timeframe, and/or for failure to follow the cleanup procedures, does not
1409 excuse Contractor from the clean-up requirements contained in this Section 5.5.E.
- 1410 F. **Costs of Operation and Damages.** Contractor shall be responsible for any costs incurred in
1411 connection with ensuring all Collection Vehicles comply with all Applicable Laws and regulations,
1412 including without limitation any such laws and regulations that may now exist or hereinafter be
1413 adopted relating to noise, fuels, emission standards, or weight limits.

1414 5.6 Container Requirements

1415 A. **Containers Provided to Customers.** Contractor shall provide Containers to new Customers
1416 requesting service initiation within three (3) Working Days of Contractor's first receipt of the
1417 Customer request. Contractor-provided Containers shall be new and shall comply with the
1418 Container standards set forth in this Section 5.6. All Containers shall display the Contractor's
1419 name, logo, telephone number, website, capacity (yards or gallons) and some identifying
1420 inventory or serial number. All Residential and Commercial Customers using Carts for services will
1421 receive new Carts in calendar year 2027 so that all Residential and Commercial Cart Customers will
1422 have new, color compliant Carts with SB 1383 by December 31, 2027.

1423 B. Container Standards.

1424 1. All Carts shall be manufactured by injection or rotational molding methods. The Cart
1425 handles and handle mounts may be an integrally molded part of the Cart body or molded
1426 as part of the lid. The Cart handles shall provide comfortable gripping area for pulling or
1427 pushing the Cart or lifting the lid. Pinch points are unacceptable. Carts provided to
1428 Customer shall have a useful life of ten (10) or more years or more as evidenced by a
1429 manufacturer's warranty or other documentation acceptable to the City.

1430 2. Carts shall remain durable, and at a minimum, shall meet the following durability
1431 requirements to satisfy its intended use and performance, for the Term of this
1432 Agreement: maintain its original shape and appearance; be resistant to kicks and blows;
1433 require no routine maintenance and essentially be maintenance free; not warp, crack,
1434 rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its
1435 intended use; resist degradation from ultraviolet radiation; be incapable of penetration by
1436 biting or clawing of household pets (i.e., dogs and cats); the bottoms of Cart bodies must
1437 remain impervious to any damage, that would interfere with the Cart's intended use after
1438 repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface;
1439 all wheel and axle assemblies are to provide continuous maneuverability and mobility as
1440 originally designed and intended.

1441 3. Carts shall be resistant to: common household or Residential products and chemicals;
1442 human and animal urine and feces; and, airborne gases or particulate matter currently
1443 present in the ambient air of the Service Area.

1444 4. All Bins with a capacity of one (1) cubic yard or more shall meet applicable Federal
1445 regulations for Bin safety and be covered with attached lids.

1446 5. Contractor shall obtain the City's written approval of Container material, design, colors,
1447 labeling, and other specifications before acquisition, painting, labeling, or distribution
1448 occurs.

1449 6. When purchasing plastic Collection Containers, Contractor shall purchase Containers that
1450 contain a minimum of thirty percent (30%) post-consumer Recycled plastic content, unless
1451 such requirement is waived by the City Manager.

1452 7. Container lids shall be designed such that the follow requirements are met:

1453 a. Prevents the intrusion of rainwater and vectors;

1454 b. Prevents the emissions on odors;

- 1455 c. Enables the free and complete flow of material from the Container during the dump
1456 cycle without interference with the material already deposited in the truck body or
1457 the truck body itself and its lifting mechanism;
- 1458 d. Permits users of the Cart to conveniently and easily open and shut the lid throughout
1459 the serviceable life of the Cart;
- 1460 e. Hinges to the Cart body in such a manner to enable the lid to be fully opened, free of
1461 tension, to a position whereby it may rest against the backside of the Cart body;
- 1462 f. Prevents damage to the Container body, the lid itself, or any component parts
1463 through repeated opening and closing of the lid by Generators or in the dumping
1464 process as intended;
- 1465 g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All
1466 lid hinges must remain fully functional and continually hold the lid in the original
1467 designed and intended positions when either opened or closed or any position
1468 between the two (2) extremes; and,
- 1469 h. Designed and constructed such that it prevents physical injury to the user while
1470 opening and closing the Cart.
- 1471 8. Containers shall be stable and self-balancing in the upright position, when either empty or
1472 loaded to its maximum design capacity with an evenly distributed load, and with the lid in
1473 either a closed or an open position. Containers shall be capable of maintaining upright
1474 position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied
1475 from any direction.
- 1476 9. Containers shall be capable of being easily moved and maneuvered, if applicable, with an
1477 evenly distributed load equal in weight to its maximum design capacity on a level, sloped
1478 or stepped surface.
- 1479 10. All such Containers shall be one hundred percent (100%) Recyclable at the end of their
1480 useful life.
- 1481 11. All Containers shall be designed and constructed to be watertight and prevent the leakage
1482 of liquids.
- 1483 **C. Container Colors.** Contractor shall provide all Customers with Collection Containers that comply
1484 with the Container color requirements specified in this Section 5.6, or as otherwise specified in 14
1485 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Colors shall
1486 be colorfast and resistant to fading as a result of weathering or ultraviolet degradation; and the
1487 lids and bodies shall be uniform for each Container type, as follows:
- 1488 1. Recyclable Materials Container lids shall be blue;
- 1489 2. Organic Materials Container lids shall be green;
- 1490 3. Solid Waste Container lids shall be black or grey; and,
- 1491 4. Source Separated Food Waste Container lids shall be brown.
- 1492 Hardware such as hinges and wheels on the Containers may be a different color than specified
1493 above. All Containers shall comply with these color requirements, including Split-Bins. Each
1494 section of the Split-Bin shall be painted in accordance with the color requirements in this Section
1495 5.6 for the applicable Discarded Material type intended for that segregated section of the Bin

1496 (e.g., a Split-Bin for Solid Waste and Recyclable Materials would be half gray and half blue,
1497 respectively).

1498 **D. Container Labeling.** Refuse, Recyclable Materials, and Organic Materials Carts shall carry
1499 stickers/labels or other identifying markings indicating the materials that should and should not be
1500 placed in each Container.

1501 All Carts that are not currently in Contractor's inventory shall include a high-quality educational
1502 information label using in-mold technology, such that all labeling shall be integral to the outside of
1503 the lid, through the use of injection molding, and shall not be affixed to any part of the Cart or lid
1504 using adhesives. Notwithstanding the provisions of this Section 5.6, or the requirements of SB
1505 1383, the in-mold lid label shall, at a minimum, include for each Container: primary materials
1506 accepted; a clear indication of Prohibited Container Contaminants for that Container type,
1507 notification forbidding Hazardous Waste and describing proper Disposal thereof. Design for the in-
1508 mold labels must be approved by City prior to ordering labels or Carts. Lids shall be replaced when
1509 in-mold labels become worn, but no later than ninety (90) days of request from City. Information
1510 on the Refuse Carts shall include the telephone number to call for Contractor for Bulky Item
1511 pickups and for general Customer service. Contractor may also add to the required Cart label a
1512 scannable Quick Response ("QR") Code that can be scanned by Customer's personal digital
1513 devices, including cell phones, to allow Customer to review information including Cart materials
1514 accepted, Prohibited Container Contaminants, and other information concerning SB 1383
1515 programs that can be updated over time to reflect new information or program changes. All Carts
1516 shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the Term
1517 of this Agreement. In-mold labels shall be designed to include English, Spanish, and Vietnamese.
1518 Hot stamps shall be on the top of the lid and/or on the body of the Cart and shall be reviewed and
1519 approved by the City.

1520 **E. Repair and Replacement of Containers; Inventory.** Contractor shall be responsible for repairing or
1521 replacing Containers when Contractor determines the Container is no longer suitable for service;
1522 or when the City or Customer requests replacement of a Container that does not properly
1523 function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be responsible for
1524 acquiring and providing the replacement Containers. Contractor shall repair or replace all
1525 damaged or broken Containers within three (3) Working Days of Customer or City request. Minor
1526 cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts
1527 shall be readily repairable by the Contractor personnel. All repairs must restore the Cart to its full
1528 functionality to meet the design and performance requirements as set for herein.

1529 Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer
1530 requests for service, requests for change in Service Levels (size, type, or number of Containers)
1531 from current subscribers, and requests for replacement due to damage. All replacement
1532 Containers requested by Customers and any newly deployed Containers for new services will be
1533 new and SB 1383 color compliant.

1534 Contractor shall provide to Single-Family Customers at least one (1) free Cart replacement per any
1535 twelve (12) month period for any reason, upon Customer request. If Customer requests more than
1536 one (1) Cart replacement per any twelve (12) month period, Contractor shall make Carts available
1537 at the City-approved Rate for such services. In addition, Single-Family Customers may also request
1538 one (1) Cart size exchange per Rate Period at no charge. All such Containers shall be provided

1539 within three (3) Working Days of request. Contractor's failure to comply with the Container
1540 requirements may result in assessment of Liquidated Damages pursuant to Section 11.6.

1541 All Bins will be replaced on the Contractor's normal replacement schedule and any new Bins
1542 placed into service will comply with the color and labeling requirements of SB 1383. All Refuse,
1543 Source Separated Recyclable Materials, and/or Organic Materials Bins at a Customer location shall
1544 be uniform in color.

1545 **F. Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and
1546 functional condition, and present a clean appearance. Contractor shall repair or replace all
1547 Containers damaged by Collection operations in accordance with standards specified in this
1548 Section 5.6, unless damage is caused by Customer's gross negligence, in which case, the Customer
1549 will be billed for repair or replacement of Container at a City-approved Rate for such service. All
1550 Containers shall be maintained in a functional condition.

1551 Contractor shall steam clean and/or repaint all Containers as needed to present a clean
1552 appearance. Contractor shall offer steam cleaning service (or clean Container exchange) to
1553 Customers requesting such service and may charge Customers for such cleaning (or Container
1554 exchange).

1555 Contractor shall remove graffiti from Containers within two (2) Working Days or notification at no
1556 additional charge.

1557 Upon request from the City Manager, Contractor shall provide the City with a list of Containers
1558 and the date each Container was painted and maintained.

1559 **G. Monitoring and Cleaning of Container Enclosures.** Contractor shall work with the City Manager in
1560 identifying and resolving continual problems with overflowing Carts, Bins, or within Container
1561 enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out
1562 any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by
1563 City. Contractor shall provide photographic evidence of overflowing Bins to City. Contractor may
1564 bill Customers for any such services when they are required by City in an amount not to exceed
1565 Contractor's actual and reasonable costs incurred in doing so.

1566 **5.7 Personnel**

1567 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
1568 services required by this Agreement in a safe and efficient manner.

1569 Contractor shall use its best efforts to assure that all employees present a neat appearance and
1570 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,
1571 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from Customers
1572 or members of the public.

1573 **B. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
1574 issued by the California Department of Motor Vehicles. Contractor shall use the Class II California
1575 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

- 1576 C. **Safety Training.** Contractor shall provide suitable operational and safety training for all employees
1577 who operate Collection vehicles or equipment. Contractor shall train its employees involved in
1578 Collection to identify, and not to Collect, Excluded Waste. Upon the City Manager's request,
1579 Contractor shall provide a copy of its safety policy and safety training program, the name of its
1580 safety officer, and the frequency of its trainings.
- 1581 D. **Designated Staff.**
- 1582 1. **Contractor's Contract Administrator.** Contractor shall designate at least one (1) qualified
1583 employee as City's primary point of contact with Contractor who is principally responsible
1584 for Collection operations and resolution of service requests and Complaints. Such
1585 individual shall be empowered to negotiate on behalf of and bind Contractor with respect
1586 to any changes in scope, dispute resolution, compensation adjustments, and service-
1587 related matters which may arise during the Term of this Agreement. Such individual is
1588 defined as Contractor's Contract Administrator.
- 1589 2. **Field Supervisor.** Contractor shall designate one (1) qualified full-time employee as
1590 supervisor of field operations. The designated Field Supervisor will devote at least fifty
1591 percent (50%) of their time in the City in the field checking on Collection operations,
1592 including responding to Customer requests, inquiries, and Complaints.
- 1593 3. **Recycling Coordinator.** To achieve a high level of Recycling public education and
1594 awareness, the Contractor shall dedicate the equivalent of two and one-half (2.5) full-time
1595 Recycling Coordinators and the equivalent of one-half of a full-time route auditor or
1596 compliance monitor to the City to complete outreach to Residential, Multi-Family and
1597 Commercial Customers, and develop and implement all public education and outreach
1598 activities required under the Agreement. The Recycling Coordinators and route auditors
1599 shall conduct outreach, promote waste reduction, Recycling, Diversion programs, and
1600 provide technical assistance to Multi-Family and Commercial Customers.
- 1601 a. The Recycling Coordinators shall work exclusively on the City programs and services
1602 and shall not have other, non-City responsibilities or other City responsibilities not
1603 related to Recycling Coordinator responsibilities in the City.
- 1604 b. The Recycling Coordinators shall visit each school located within the City each Rate
1605 Period to discuss environmental issues with students, read books and facilitate craft
1606 activities.
- 1607 c. Contractor shall provide fully trained and experienced Recycling Coordinators on or
1608 before the start of services under this Agreement. In the event of resignation of a
1609 Coordinator, Contractor shall have a maximum of ninety (90) calendar days to
1610 replace the Coordinator. Contractor shall notify City, in writing, of the name,
1611 education, background and experience, including a resume, and a list of three (3)
1612 references for each Coordinator prior to commencing operations and whenever
1613 there is a change in the staffing of the positions. Contractor shall provide Recycling
1614 Coordinators that can speak Spanish or Vietnamese in addition to English.
- 1615 d. Upon City request, Contractor shall designate a different Coordinator if the City is
1616 dissatisfied with the performance of one (1) of the designated Coordinators.
- 1617 e. The Contractor shall allow the City a reasonable opportunity to review, request
1618 modifications to, and approve all materials including, but not limited to: print, radio,

1619 television, or internet media before publication, distribution, and/or release. The
1620 Recycling Coordinators shall also work cooperatively with any City-appointed
1621 outreach and education consultant.

1622 E. **Key Personnel.** Contractor shall make every reasonable effort to maintain the stability and
1623 continuity of Contractor's staff assigned to perform the services required under this Agreement.
1624 Contractor shall notify the City of any changes in Contractor's key staff to be assigned to perform
1625 the services required under this Agreement and shall obtain the approval of the City Manager of
1626 all proposed key staff members who are to be assigned to perform services under this Agreement
1627 prior to any such performance.

1628 Notwithstanding City's approval of Contractor's personnel, Contractor shall not be relieved from
1629 any liability resulting from the work to be performed under this Agreement, nor shall Contractor
1630 be relieved from its obligation to ensure that its personnel maintain all requisite certifications,
1631 licenses, and the like, and Contractor shall ensure that its personnel at all times fully comply with
1632 Applicable Law.

1633 At any point during the Term of this Agreement, the City may request, in writing, that any of
1634 Contractor's employees be reassigned such that they no longer perform any work relating to this
1635 Agreement and shall provide a statement describing the reason for such request. Within twenty-
1636 four (24) hours of Contractor's receipt of such request, or such other time agreed to by City in
1637 writing, Contractor shall remove the identified employee(s) from performing any work related to
1638 this Agreement; the vacated position(s) must be filled by Contractor with a suitable replacement
1639 within ten (10) calendar days and Contractor shall immediately fill the vacated position with a
1640 temporary replacement if required to perform, without delay, all services required under this
1641 Agreement.

1642 **5.8 Hazardous Waste Inspection and Handling**

1643 A. **Inspection Program and Training.** Contractor shall develop a load inspection program that
1644 includes the following components: (i) personnel and training; (ii) load checking activities; (iii)
1645 management of wastes; and, (iv) record keeping and emergency procedures.

1646 Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in: (i)
1647 the effects of Hazardous Substances on human health and the environment; (ii) identification of
1648 prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle
1649 drivers shall inspect Containers before Collection when practical.

1650 B. **Response to Excluded Waste Identified During Collection.** If Contractor determines that material
1651 placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's
1652 employees, the Contractor shall have the right to refuse to accept such material. The Generator
1653 shall be contacted by the Contractor and requested to arrange proper Disposal. If the Generator
1654 cannot be reached immediately, the Contractor shall, before leaving the Premises, leave Non-
1655 Collection Notice, which indicates the reason for refusing to Collect the material and lists the
1656 phone number of a facility that accepts the Excluded Waste or a phone number of an entity that
1657 can provide information on proper Disposal of the Excluded Waste. Under no circumstances shall
1658 Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly
1659 containerized Excluded Waste from a Collection Container.

1660 If Excluded Waste is found in a Collection Container or Collection area that could possibly result in
1661 imminent danger to people or property, the Contractor shall immediately notify the Fire
1662 Department.

1663 C. **Response to Excluded Waste Identified at Processing or Disposal Facility.** Materials Collected by
1664 Contractor will be delivered to the Approved Facilities for purposes of Processing or Disposal. In
1665 the event that load checkers and/or equipment operators at such facility identify Excluded Waste
1666 in the loads delivered by Contractor, such personnel shall remove these materials for storage in
1667 approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for removal of
1668 the Excluded Wastes at its cost by permitted haulers in accordance with Applicable Laws and
1669 regulatory requirements. The Contractor may at its sole expense attempt to identify and recover
1670 the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost of
1671 this effort, as well as the cost of Disposal shall be chargeable to the Generator.

1672 **5.9 Contract Management**

1673 The City Manager shall monitor and administer this Agreement. Contractor's Contract Administrator
1674 shall be responsible for working closely with the City Manager in the monitoring and administration of
1675 this Agreement.

1676 The Contractor's Contract Administrator shall meet and confer with the City Manager to resolve
1677 differences of interpretation and implement and execute the requirements of this Agreement in an
1678 efficient and effective manner that is consistent with the stated objectives of this Agreement.

1679 The City Manager and the Contractor's Contract Administrator shall hold contract management
1680 meetings monthly or at such other frequency as designated by the City Manager. This meeting is
1681 intended to review the status of Contractor's implementation of programs and services required under
1682 this Agreement, coordinate shared efforts between the parties, and such other agenda items as are
1683 deemed appropriate by the Parties for such meetings.

1684 From time to time the City Manager may designate other agents of City to work with Contractor on
1685 specific matters. In such cases, those individuals should be considered designee of the City Manager for
1686 those matters to which they have been engaged. Such designee shall be afforded all of the rights and
1687 access granted thereto. In the event of a dispute between the City Manager's designee and Contractor,
1688 the City Manager's determination shall be conclusive.

1689 City Manager shall have the right to observe and review Contractor operations and Processing Facilities
1690 and enter Premises for the purposes of such observation and review, including review of Contractor's
1691 records, during reasonable hours with reasonable notice. In no event shall Contractor prevent access to
1692 such Premises for a period of more than three (3) calendar days after receiving such a request. City
1693 Manager shall be granted access to Contractor's information systems and Customer service database in
1694 accordance with Section 4.8.

1695 **5.10 Minimum Diversion Requirements**

1696 A. **General.** Contractor shall Divert from landfilling a minimum of twenty percent (20%) of all
1697 Discarded Material it Collects under this Agreement excluding Construction and Demolition
1698 Debris. Compliance will be measured on a calendar year basis, beginning with calendar year 2023.
1699 Discarded Materials Collected shall only be considered to have been Recycled or Diverted as

1700 required under this Agreement if it is deemed to be Diversion by CalRecycle in connection with
1701 efforts to meet City's Diversion goals. The Contractor shall make reasonable efforts to assure that
1702 Recyclable Materials and Organic Materials are Transported, handled at the Approved Processing
1703 Facilities, so as to prevent or minimize the amount of such materials taken to a landfill and to
1704 maximize Diversion credits for the City. Contractor shall provide documentation to the City within
1705 thirty (30) days of the end of each calendar year stating and supporting that calendar year's
1706 Diversion rate. Diversion from sources other than Contractor's Collection and Diversion efforts
1707 (such as source reduction, reuse, or Recyclable Materials and Organic Materials Diverted by other
1708 enterprises, Collection of materials that are not the subject of this Agreement, or the efforts of
1709 Self-Haulers) is not to be counted as Diversion achieved by Contractor. Transformation may be
1710 used as a method to achieve the minimum Recycling requirements to the extent that is allowable
1711 as Diversion as defined by CalRecycle.

1712 Contractor shall Divert from landfilling the State-mandated Construction and Demolition Debris
1713 Diversion percentage of all Construction and Demolition Debris loads Contractor Collects under
1714 this Agreement. Contractor shall provide a Diversion report for each construction and demolition
1715 project performed by Contractor.

1716 Upon the request of either Party, not more often than once every two (2) years, the Parties agree
1717 to meet and confer regarding adjustments to the minimum Diversion rate, based on factors
1718 including waste composition data provided by Contractor, trends in source reduction and reuse,
1719 trends in third party Diversion, extent of reverse logistics, emerging methods of Processing and
1720 Recycling/reusing new waste materials, the availability of markets, Transportation constraints,
1721 embargoes, and the impact of scavenging. City shall consider such information provided by
1722 Contractor and other industry data and shall, at its sole discretion, determine if any adjustments
1723 to the minimum Diversion requirements shall be made, and such changes must be approved by
1724 the City Council before becoming effective. If these Diversion requirements are not met, City may
1725 instruct Contractor to initiate new programs at Contractor's expense in order for this goal to be
1726 met on a consistent basis.

1727 **B. Implementation of Additional Diversion Services.** In the event City does not meet the current
1728 Diversion goal imposed by AB 939 or any other standard subsequently established by State
1729 Legislature with respect to all waste generated in City, City may direct Contractor to perform
1730 additional services (including the implementation of new Diversion programs) or modify the
1731 manner in which it performs existing services, and Contractor agrees to do so and may request a
1732 compensation adjustment under Section 3.6. Pilot programs and innovative services which may
1733 entail new Collection methods, and use of new or alternative waste Processing and Disposal
1734 technologies are included among the kinds of changes which City may direct.

1735 **ARTICLE 6.**

1736 **RECORD KEEPING AND REPORTING**

1737 **6.1 Record Keeping**

1738 Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational,
1739 programmatic, and other records, and associated documentation, related to its performance as shall be
1740 necessary to provide detailed and accurate reports under this Agreement, and to demonstrate
1741 compliance with this Agreement and Applicable Law. Unless otherwise required in this Article 6,

1742 Contractor shall retain all records and data required to be maintained by this Agreement for the Term of
1743 this Agreement plus five (5) years after its expiration or earlier termination. Records and data shall be in
1744 chronological and organized form that is readily and easily interpreted to facilitate the flexible use of
1745 data to structure reports. Contractor's records shall be stored in one (1) central location, physical or
1746 electronic, that can be readily accessed by Contractor. Upon request, any such records shall be retrieved
1747 in a timely manner, not to exceed five (5) Working Days of a request by the City Manager, and made
1748 available to the City Manager; including any record or documentation that City, may deem necessary,
1749 for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB
1750 1826, AB 876, AB 901, SB 1383, as amended.

1751 Contractor shall maintain adequate record security to preserve records from events that can be
1752 reasonably anticipated such as a fire, theft, and an earthquake. Electronically maintained data and
1753 records shall be protected and backed-up. The City reserves the right to require the Contractor to
1754 maintain Customer service and compliance records required herein using a City-approved web-based
1755 software platform, at Contractor's expense. To the extent that Contractor utilizes its computer systems
1756 to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a
1757 monthly basis, save all system-generated reports supporting those record keeping and reporting
1758 requirements in a static format in order to provide an audit trail for all data required by City, as
1759 requested, under this Agreement.

1760 At a mutually agreed upon time during normal business hours, but within five (5) Work Days of a written
1761 request from City, Contractor shall provide to the City the Contractor's data and records with respect to
1762 the matters covered by this Agreement and Applicable Law. Contractor shall permit the City, or its
1763 designee, to audit, examine, and make excerpts or transcripts from such data and records, and make
1764 copies of all data relating to all matters covered by this Agreement and the Applicable Law. Contractor
1765 may designate Customer information Applicable Law as confidential. Contractor shall maintain such data
1766 and records in an accessible location and condition for a period of not less than five (5) years following
1767 the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier
1768 disposition. Contractor agrees that all data requested by City regarding its business operations,
1769 Customer lists, routing, Tonnage, Service Levels, work orders issued from dispatch, and Customer
1770 service logs, shall be made available to the City Manager or their designee upon request and within the
1771 timelines required by this Section 6.1. City is subject to the California Public Records Act (Government
1772 Code section 6250, *et. seq.*) and nothing in this Agreement is intended to impair City's requirements or
1773 obligations under that Act.

1774 City is subject to the California Public Records Act (Gov. Code, §§ 6250 - 6276.48) ("CPRA"). City and
1775 Contractor agree that the confidential and Proprietary Information designated by Contractor asserts an
1776 exemption for "trade secrets" under subdivision (k) of Government Code section 6254, Evidence Code
1777 section 1060, Civil Code section 3426.1(d) and Public Resources Code section 40062(a). In the event that
1778 City receives a CPRA request seeking disclosure of information Contractor has designated as confidential
1779 and Proprietary, City shall promptly notify Contractor of the request and provide Contractor a
1780 reasonable opportunity to comment on the pending request before City acts upon it. Contractor shall
1781 have the right to seek an order from the Superior Court to limit or enjoin the City's disclosure of such
1782 records. City agrees that it will assert that the request, to the extent it seeks Confidential Information,
1783 seeks information that Contractor has designated confidential and Proprietary and is exempt from
1784 disclosure pursuant to the trade secret exemption under subdivision (k) of Government Code section
1785 6254 and any other applicable exemption. In the event City is subject to an action seeking to enforce the
1786 CPRA for any information designated confidential and Proprietary Information hereunder, Contractor

1787 shall defend and indemnify City in such litigation, which indemnity shall cover all of City's costs and
1788 expenses, including attorney's fees.

1789 City views its ability to defend itself against Comprehensive Environmental Response, Compensation and
1790 Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City
1791 regards its ability to prove where Collected Recyclable Materials, Organic Materials, and Solid Waste are
1792 taken for Transfer, Processing, or Disposal. Contractor shall maintain records which can establish where
1793 Recyclable Materials, Organic Materials, and Solid Waste Collected were Transferred, Processed, or
1794 Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor
1795 shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of
1796 the Agreement. Contractor shall provide these records to City (upon request or at the end of the record
1797 retention period) in an organized and indexed manner rather than destroying or Disposing of them.

1798 **6.2 Report Submittal Requirements**

1799 The parties acknowledge that City will require reporting by Contractor at various intervals by which
1800 information important to City can be compiled and analyzed. Throughout the Term the parties agree to
1801 work together to address City's needs with respect to the information to be contained in reports
1802 prepared by Contractor. The following is intended as a starting point in order to have established an
1803 objective baseline for reporting, but the frequency and content of the reports called out below may be
1804 changed by agreement of the parties, provided any such change is approved by the City Manager in
1805 writing. Records related to performance of this Agreement shall be maintained by Contractor in forms
1806 and by methods that facilitate flexible use of data contained in them to structure reports, as needed.
1807 The format of each report shall be approved by City. Contractor agrees to submit all reports in an
1808 electronic format compatible with City's software/computers at no charge to City. Monthly reports shall
1809 be submitted within twenty (20) calendar days after the end of the report month. Quarterly reports shall
1810 be submitted within twenty (20) calendar days after the end of the calendar quarter. Annual reports
1811 shall be submitted within forty-five (45) calendar days after the end of the calendar year.

1812 Monthly, quarterly, and annual reports shall include at a minimum, all data and information described in
1813 Exhibit F, unless otherwise specified under this Agreement.

1814 Contractor may propose report formats that are responsive to the objectives and audiences for each
1815 report. The format of each report shall be approved by the City Manager in their sole discretion. City
1816 Manager may, from time to time during the Term, review, and request changes to Contractor's report
1817 formats and content and Contractor shall not unreasonably deny such requests.

1818 Contractor shall submit all reports to the City Manager electronically via e-mail using software
1819 acceptable to the City. The City reserves the right to require the Contractor to maintain records and
1820 submit the reports required herein through use of a City-selected web-based software platform, at the
1821 Contractor's expense.

1822 City reserves the right to require Contractor to provide additional reports or documents as City Manager
1823 reasonably determines to be required for the administration of this Agreement or compliance with
1824 Applicable Law.

1825 **6.3 Performance Review**

1826 City may hold a public hearing, or other meeting, on or about the two-year anniversary of the start of
1827 this Agreement, and each twelve (12) months thereafter, at which time Contractor shall be present and
1828 shall participate, to review the Discarded Materials Collection, source reduction, Processing and other
1829 Diversion services and overall performance. The purpose of the hearing is to provide for a discussion and
1830 review of technological, economic, and regulatory changes in Collection, source reduction, Recycling,
1831 Processing and Disposal to achieve a continuing, advanced Discarded Materials Collection, source
1832 reduction and Recycling and Disposal system; and to ensure services are being provided with adequate
1833 quality, effectiveness, and economy.

1834 Forty-five (45) days after receiving notice from City of a Performance Review Hearing, Contractor shall,
1835 at a minimum, submit a report to City indicating the following:

- 1836 • Changes recommended and/or new services to improve City's ability to meet the goals of AB
1837 939, AB 341, AB 1826, SB 1383, and any current or future regulations, and to contain costs and
1838 minimize impacts on Rates. A specific plan for regulatory compliance shall be included.
- 1839 • Any specific plans and proposed costs for provision of changed or new services by Contractor.
- 1840 • Results of the most recent route audit as described in Section 4.11.

1841 The reports required by this Agreement regarding Customer Complaints shall be used as one (1) basis
1842 for review. Contractor may submit other relevant performance information and reports for
1843 consideration. City may request Contractor to submit specific information for the hearing. In addition,
1844 any Customer may submit comments or Complaints during or before the hearing, either orally or in
1845 writing, and these shall be considered.

1846 Topics for discussion and review at the Performance Review Hearing shall include, but shall not be
1847 limited to, services provided, route audit results, feasibility of providing new services, application of new
1848 technologies, Customer Complaints, amendments to this Agreement, developments in the law, new
1849 initiatives for meeting or exceeding AB 939's goals, regulatory constraints, and Contractor performance.
1850 City and Contractor may each select additional topics for discussion at any Performance Review Hearing.

1851 Not later than sixty (60) days after the conclusion of each Performance Review Hearing, City may issue a
1852 report. As a result of the review, City may require Contractor to provide expanded or new services
1853 within a reasonable time and for reasonable Rates and compensation and City may direct or take
1854 corrective actions for any performance inadequacies.

1855 **6.4 Biennial Audit**

1856 A. **General.** Contractor shall fund biennial audits as described below. The scope of the audit, and
1857 auditing party, will be determined by City and the scope may include, but is not limited to:

- 1858 • Compliance with terms of this Agreement;
- 1859 • Customer Service Levels and Billing;
- 1860 • Fee payments;
- 1861 • Receipts;

- 1862 • Tonnage;
- 1863 • Complaint log;
- 1864 • Compliance with Mandatory Commercial Recycling, Mandatory Commercial Organics
1865 Recycling, and SB 1383; and,
- 1866 • Verification of Diversion rate.
- 1867 The first audit, to be performed during 2024, will be based on the Contractor’s reports and
1868 records for the period from commencement of the Agreement through December 31, 2023.
1869 Audits will be performed every other year thereafter (the biennial audit). Contractor will
1870 reimburse to the City the cost of such audits up to fifty thousand dollars (\$50,000) for the first
1871 audit, and fifty thousand dollars (\$50,000) for each subsequent biennial audit in 2024 dollars. The
1872 fifty thousand dollars (\$50,000) amount in subsequent years shall be adjusted annually by 2.5%
1873 per year.
- 1874 Should an audit by the City disclose that Franchise or other fees payable by the Contractor were
1875 underpaid by three percent (3%) or more, or that more than two percent (2%) of the Customers
1876 were inaccurately billed, for the period under review, Contractor shall reimburse the City for the
1877 actual cost of the audit to the extent it exceeded fifty thousand dollars (\$50,000) and shall also
1878 pay for additional audit costs if City determines it is necessary to expand the scope of the audit.
- 1879 B. **Payments and Refunds.** Should an audit by the City disclose that the Franchise Fees payable by
1880 the Contractor were underpaid or that Customers were overcharged for the period under review,
1881 Contractor shall pay to City any underpayment of Franchise Fees and/or refund to Contractor's
1882 Customers any overcharges within thirty (30) days following the date of the audit. Should an audit
1883 disclose that Franchise Fees were overpaid, City shall refund to Contractor the amount of the
1884 overpayment within the same time frame. Should the audit disclose that Customers were
1885 undercharged, Customers may be billed for up to, but not exceeding, ninety (90) days of services
1886 not previously billed by Contractor or City.

1887 **6.5 Disaster Plan**

1888 Upon request of City, Contractor shall assist City in the preparation of an updated draft disaster debris
1889 cleanup implementation plan that sets forth procedures for Collection of debris following a major
1890 disaster such as an earthquake, flood, fire, or other similar event. The disaster plan shall address
1891 priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe
1892 communication plans, list key contact Persons, and provide maps showing proposed sites for stockpiling
1893 of disaster debris that cannot be Transported to the landfill. Contractor shall coordinate the
1894 implementation of the plan with City's emergency service teams.

1895 **6.6 Recyclist Software**

1896 Contractor shall utilize the “Recyclist” cloud-based software or, with City approval, another substantially
1897 equivalent cloud-based software, at no additional cost to the City or ratepayers, to integrate outreach
1898 efforts to businesses within the City, store reports required by Article 6 and Exhibit F of this Agreement,
1899 and additional data required to be made available to CalRecycle. City shall have on-line access to the
1900 database for real-time monitoring of data.

1901
1902

ARTICLE 7. CONTRACTOR'S CONSIDERATION

1903 In addition to any other consideration set forth herein, as part of its consideration for entering this
1904 Agreement, and for the exclusive franchise, right and privilege to provide Collection services within City
1905 as specified herein Contractor shall provide the following:

1906 **7.1 Franchise Fee**

1907 Contractor shall pay to City, a Franchise Fee based on the percentages in the below table of Contractor's
1908 annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement.

Fiscal Year	Franchise Fee Percentage
July 1, 2022 through June 30, 2023	Nine percent (9%)
July 1, 2023 through June 30, 2024	Nine and fifty-hundredths percent (9.5%)
July 1, 2024, and annually thereafter	Ten percent (10%)

1909 The Franchise Fee shall be paid to City monthly on or before the twentieth (20) day of each month.
1910 Should any such due date fall on a weekend or Holiday in which the City's business offices are closed,
1911 payment shall be due on the first day thereafter in which the City's business offices are open. The
1912 amount of each payment shall be equal to the percentages in the table above of Contractor's Gross
1913 Receipts received in the calendar month preceding the date payment is due.

1914 For those Customers, if any, whose service Rates are collected on the tax rolls or otherwise by the City
1915 on behalf of Contractor, and in the event any Customer makes a payment due for service to the City,
1916 City shall forward said sums to Contractor, which shall include such sums in the Gross Receipts for the
1917 month in which payment is made to Contractor. In order to realize more efficient costs of Processing,
1918 Contractor authorizes the Franchise Fee due in connection with amounts that are collected from
1919 Customers by City on behalf of Contractor, if any, to be deducted by City prior to City forwarding said
1920 funds.

1921 The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the
1922 expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise
1923 Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy
1924 of the amounts paid and setting forth the basis for their calculation in a manner acceptable to City.

1925 **7.2 Administrative Cost Reimbursement**

1926 On or before July 1 each year, Contractor shall make a payment to City in the amount more fully set
1927 forth in this paragraph to reimburse City for its administrative costs incurred related to this Agreement
1928 (the "Administrative Cost Reimbursement") during the ensuing year. The amount of the annual
1929 Administrative Cost Reimbursement is based on a review of past time expended by City staff relating to
1930 this Agreement and the reasonable estimate of actual costs that will be incurred. The initial annual
1931 Administrative Cost Reimbursement shall be in the amount of one hundred eighty-three thousand eight
1932 hundred dollars and ninety-eight cents (\$183,800.98). Thereafter, the amount due on or before July 1,
1933 2023 and each July 1 thereafter shall be the sum of: (1) one hundred eighty-three thousand eight
1934 hundred dollars and ninety-eight cents (\$183,800.98) adjusted annually by the change in the GTCI for
1935 the twelve (12) month period ending the preceding January 31; plus (2) City's actual consultant costs

1936 related to requests from Contractor pertaining to this Agreement (i.e., requests for discretionary Rate
1937 adjustments, requests for transfers, or requests to consider new programs); plus (3) City's legal fees and
1938 out of pocket costs incurred in the administration of this Agreement, including fees and costs associated
1939 with analyzing new legislation, considering requests from Contractor (including specifically, without
1940 limitation, requests for maximum Rate adjustments), and otherwise analyzing issues that arise in
1941 connection with this Agreement. Commencing with the payment due July 1, 2023, invoices for the
1942 Administrative Cost Reimbursement will be provided to Contractor by City and shall be due to City
1943 within thirty (30) days of the date such invoice is mailed by City, or on July 1, whichever comes later.

1944 **7.3 Section Reserved**

1945 **7.4 Payment Schedule and Late Fees**

1946 In the event Contractor fails to timely make any of the payments provided for in Article 7 or any other
1947 provision of this Agreement, Contractor shall pay to City, as additional consideration for entering into
1948 this Agreement, a sum of money equal to five percent (5%) of the amount due. This amount is required
1949 in order to defray those additional expenses and costs incurred by City by reason of the late payment
1950 including, but not limited to, the cost of administering, accounting for, and collecting said late payment
1951 and the cost to City of postponing services and projects necessitated by the delay in receiving the
1952 revenue. In addition to any other remedy provided by law, any amounts not paid to City by Contractor
1953 within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per
1954 annum, calculated on a daily basis for each day such sums remain past due.

1955 **7.5 Other Fees**

1956 City shall reserve the right to establish other fees, or negotiate changes to the Franchise Fee, AB 939/SB
1957 1383 Regulatory Reimbursement and Administrative Fee beyond the regular annual adjustments
1958 described above as it deems necessary, to the extent that such further adjustments are also included in
1959 the adjustments to the approved Rates.

1960 **ARTICLE 8.**

1961 **CONTRACTOR'S COMPENSATION AND RATE**

1962 **SETTING**

1963 **8.1 General**

1964 Contractor will perform the responsibilities and duties described in this Agreement in consideration of
1965 the right to receive compensation for services. Contractor Compensation provided for in this Article 8
1966 shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for
1967 all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, Recycling,
1968 Processing, Transfer, profit, and all other things necessary to perform all the services required by this
1969 Agreement in the manner and at the times prescribed.

1970 **8.2 Initial Rates**

1971 A. **General.** The Rates for the Rate Period ending June 30, 2023, shall not exceed those set forth in
1972 Exhibit D hereto, unless amended by a written amendment to this Agreement entered into by and
1973 between the City and the Contractor. Contractor has reviewed these maximum Rates and agrees

1974 they are reasonably expected to generate sufficient revenues to provide adequate Contractor
 1975 Compensation. Unless and until the maximum Rates set forth on Exhibit D are adjusted,
 1976 Contractor will provide the services required by this Agreement, charging no more than the
 1977 maximum Rates authorized by Exhibit D, except as provided herein in this Article 8.

1978 B. **Discount for Disabled or Low-Income Senior Customers.** Contractor shall develop and adopt a
 1979 program to provide a discounted Rate for qualified disabled or low-income senior Customers. The
 1980 program shall, at a minimum, meet the standards and conditions set forth in Exhibit L attached
 1981 hereto and incorporated herein by reference. If, at any time during the Term of this Agreement,
 1982 the number of Customers receiving a discounted Rate pursuant to such a program exceeds one
 1983 percent (1%) of the total number of Residential Customers receiving Collection services from
 1984 Contractor, Contractor and City shall meet and confer in good faith to determine a fair and
 1985 reasonable adjustment to the standards and conditions of the program and/or the maximum
 1986 Rates for such Customers set forth in Exhibit D, in order to ensure that Contractor is fairly
 1987 compensated for the additional costs incurred in continuing to provide the program.

1988 **8.3 Schedule of Future Adjustments**

1989 Beginning with Rate Period two (2) (July 1, 2023 to June 30, 2024) and for all subsequent Rate Periods,
 1990 Contractor or City may request an annual adjustment (increase or decrease) to the maximum Rates
 1991 shown in Exhibit D, excepting that Contractor shall be entitled to those automatic adjustments in Rates
 1992 as provided in Section 8.4.B hereof without notice to the City. For all inflationary adjustments extending
 1993 beyond those set forth in Section 8.4.B, the Contractor shall submit notice in writing, to be received by
 1994 City in person or via certified mail, by March 1 of the same year based on the method of adjustment
 1995 described in Section 8.4. Failure to submit a written request by March 1, shall be conclusive as to
 1996 Contractor's decision not to proceed with an increase for the subsequent year. If an adjustment results
 1997 in a Rate decrease, then Contractor shall maintain the current Rates, and rollover the Rate decrease to
 1998 the next Rate adjustment; the intent is to ensure subsequent Rate increases shall be offset with any
 1999 decrease not previously implemented.

2000 **8.4 Method of Adjustments**

2001 A. **General.** Pursuant to Section 8.3, Contractor may implement an annual adjustment to the Total
 2002 Rate according to the formula shown in Exhibit E, subject to review and concurrence with
 2003 Contractor's calculations. Additionally, Contractor may be entitled to a further adjustment to the
 2004 service component for providing Mulch/Compost that may be requested by City in accordance
 2005 with the requirements of Exhibit B4, Section 4.A.1.

2006 1. **Indemnification.** To the maximum extent allowed by law, Contractor shall indemnify,
 2007 defend and hold harmless the City, their officers, employees, agents and volunteers,
 2008 (collectively, Indemnitees) from and against all claims, damages, injuries, losses, costs,
 2009 including demands, debts, liens, liabilities, causes of action, suits, legal or administrative
 2010 proceedings, interest, fines, charges, penalties and expenses (including attorneys' and
 2011 expert witness fees, expenditures for investigations, and administration) and costs or
 2012 losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed
 2013 against Contractor or any of the Indemnitees resulting in any form from the City's review
 2014 and concurrence with Contractor's Rates for service under this Agreement or in
 2015 connection with the application of California Constitution Articles XIII C and Article XIII D to

2016 the imposition, payment or collection of Rates and fees for services provided by
2017 Contractor under this Agreement. Notwithstanding the foregoing, this indemnity shall not
2018 extend to any loss arising directly from the negligence of City, its officers, and its
2019 employees. Nothing herein is intended to imply that California Constitution Articles XIIC
2020 or XIID apply to the setting of Rates for the services provided under this Agreement;
2021 rather, this Section 8.4.A.1 is provided merely to allocate risk of loss between the Parties.

2022 **B. Rate Adjustment Calculation.**

2023 1. **Annual Garbage and Trash Collection Index Adjustments to Service Component of**
2024 **Maximum Rates.** Commencing on July 1, 2023, the service component associated with
2025 any of the maximum Rates as set forth in Exhibit D may be adjusted by Contractor, and
2026 such Rates may be adjusted by Contractor annually thereafter on each subsequent July 1
2027 during the Term hereof (the "Adjustment Dates"), by multiplying such service component
2028 by a percentage equal to the average annual change in the Garbage and Trash Collection
2029 Index (GTCl) (CUUR0000SEHG02) in U.S. city average, all urban consumers, not seasonally
2030 adjusted, between the twelve (12) months ended December prior to the Adjustment Date
2031 and the twelve (12) months ended the prior December (the "GTCl Adjustment"). The GTCl
2032 Adjustment shall not exceed six percent (6%) for the July 1, 2023 adjustment.
2033 Notwithstanding the foregoing, the GTCl Adjustment shall not exceed five percent (5%) in
2034 any given year starting with the adjustment effective July 1, 2024, and all years thereafter.
2035 At least forty-five (45) days prior to each Adjustment Date, Contractor shall provide the
2036 City Manager with a revised Exhibit D reflecting the GTCl Adjustment, along with data
2037 supporting the basis for its calculations, so that City may review and verify the accuracy of
2038 Contractor's calculations. No GTCl Adjustment shall become effective until the City
2039 Manager confirms the accuracy of Contractor's calculations and the submitted revised
2040 Exhibit D.

2041 2. **Annual Adjustments to Landfill Disposal Component of Maximum Rates.** It is the
2042 intention of the Parties that the landfill Disposal component associated with any of the
2043 maximum Rates as set forth in Exhibit D shall be adjusted no more often than annually on
2044 each Adjustment Date such that they reflect each Customer's pro-rata share of any
2045 increase or decrease in the actual landfill Disposal (tipping) fees incurred by Contractor for
2046 Disposal of Solid Waste Collected pursuant to this Agreement. To arrive at an appropriate
2047 adjustment formula to satisfy this intent, Contractor warrants and represents that the
2048 "Landfill Disposal Component Tonnage Basis" set forth in Exhibit D is a fair estimate of the
2049 amount of Solid Waste generated and ultimately Disposed of by each applicable Customer
2050 and/or service type. In accordance with Article 6 of this Agreement, Contractor shall
2051 maintain and make available to the City and/or its auditor or examiner records and data
2052 relating to landfill Disposal costs incurred by Contractor and calculation of the Landfill
2053 Disposal Component Tonnage Basis applicable to each Customer and/or service type set
2054 forth on Exhibit D. If, at any time during the Term of this Agreement, the City Manager
2055 determines or agrees that, based on such records and data, the Landfill Disposal
2056 Component Tonnage Basis for any Customer and/or service type should be adjusted to
2057 more accurately reflect a fair estimate of Solid Waste generated and ultimately Disposed
2058 of by such Customer and/or service type, Exhibit D shall be revised accordingly. The initial
2059 maximum Rate associated with the landfill Disposal component for various services set
2060 forth in Exhibit D has been arrived at by multiplying the Landfill Disposal Component
2061 Tonnage Basis for each applicable Customer and/or service type by thirty-eight dollars and

2062 thirty-four cents (\$38.34) which is the per Ton tipping fee charged by the Orange County
2063 Landfill System as of July 1, 2022 (whereas of the Effective Date Solid Waste must be
2064 delivered for Disposal per the County Agreement). If prior to any Adjustment Date a
2065 change occurs in the tipping fees charged to Contractor by the landfill to which it delivers
2066 Solid Waste Collected hereunder, the landfill Disposal component associated with any of
2067 the maximum Rates set forth in Exhibit D shall be adjusted as of the Adjustment Date by
2068 similarly multiplying the Landfill Disposal Component Tonnage Basis for each applicable
2069 Customer and/or service type by the per Ton tipping fee then in effect, subject to the City
2070 Manager's verification and concurrence with Contractor's calculations. In the event an
2071 increase occurs in applicable landfill tipping fees at a time other than an annual
2072 Adjustment Date, Contractor may request an adjustment to the maximum Rates
2073 applicable to the landfill Disposal component set forth on Exhibit D pursuant to Section
2074 8.5 hereof, subject to the City Manager's verification and concurrence with Contractor's
2075 calculations.

2076 3. **Zero Percent (0%) or Decrease in Rate Adjustment Calculation.** If the Rate adjustment
2077 calculation is calculated to be zero percent (0%) or less, there shall be no changes to
2078 charges and Rates during the Rate Period corresponding the Rate adjustment calculation.
2079 In the case of a calculated Rate decrease, the amount of such decrease shall be carried
2080 forward as an offset to future Rate increases.

2081 4. **Source Separated Commercial Premises Recycling and Organic Materials Compensation**
2082 **Adjustment.** Contractor shall provide Source Separated Recycling and Organic Materials
2083 services to Commercial Premises at Rates are listed in Exhibit D. The service component
2084 associated with the Source Separated Commercial Premises Recycling and Organic
2085 Materials services maximum Rates as set forth in Exhibit D may be adjusted by Contractor
2086 annually on each subsequent July 1 during the Term hereof (the "Adjustment Dates"), by
2087 multiplying such service component by a percentage equal to the change in the GTCI
2088 average for the twelve (12) month period ending on the date of January 31 immediately
2089 prior to the applicable Adjustment Date (the "GTCI Adjustment).

2090 The GTCI Adjustment shall not exceed six percent (6%) for the July 1, 2023 adjustment.
2091 Notwithstanding the foregoing, the GTCI Adjustment shall not exceed five percent (5%)
2092 starting with the adjustment effective July 1, 2024 and all years thereafter. At least forty-
2093 five (45) days prior to each Adjustment Date, Contractor shall provide the City Manager
2094 with data supporting the basis for its calculations, so that City may review and verify the
2095 accuracy of Contractor's calculations. No GTCI Adjustment shall become effective until the
2096 City Manager confirms the accuracy of Contractor's calculations and the submitted revised
2097 Exhibit D.

2098 C. **Pass-Through of Surcharges.** Contractor may request a pass-through adjustment based on
2099 changes in a direct per Ton fee assessed at the Disposal Site by Federal, State, or local regulatory
2100 agencies after the Effective Date and City's approval shall not be unreasonably withheld.

2101 **8.5 Extraordinary Adjustments**

2102 Contractor or City may request an adjustment to maximum Rates at reasonable times other than that
2103 allowed under Section 8.3 in the event of extraordinary changes in the cost of providing service under
2104 this Agreement, including requests related to Change in Law as defined in Exhibit A. Such changes shall
2105 not include changes in Recyclable Materials or Organic Waste Processing costs or, changes in the market

2106 value of Recyclable Materials, inaccurate estimates by the Contractor of its proposed cost of operations,
2107 unionization of Contractor's work force, or change in wage rates or employee benefits. Extraordinary
2108 Rate adjustments may not be applied retroactively.

2109 For each request for an adjustment to the maximum Rates that Contractor may charge Customers
2110 brought pursuant to this Section 8.5 Contractor shall prepare a schedule documenting the extraordinary
2111 costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by
2112 Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs
2113 and total revenues have changed over the past three (3) years for the services provided under this
2114 Agreement.

2115 Contractor shall provide to City a report of its annual revenues and expenses for the services provided in
2116 the City, and City shall have right to audit this information in connection with the City's review of
2117 Contractor's Rate adjustment request. City may consider increases or decreases in the Contractor's total
2118 revenues and total cost of services when reviewing an extraordinary Rate adjustment request and City's
2119 determination will be final. A Rate adjustment request made in response to a new service requested by
2120 City will be determined in accordance with Section 3.6.

2121 **8.6 Limitations On Rate Adjustments**

2122 At least forty-five (45) days prior to adjusting any Rate(s) charged to Customers, Contractor shall provide
2123 written notice to the City Manager of its intent to adjust such Rate(s) and the amount of such
2124 adjustment. Contractor shall be entitled to implement the intended adjustment to such Rate(s) unless
2125 the City Manager determines that the adjusted Rates will exceed the then-current maximum Rates as
2126 set forth on Exhibit D.

2127 **ARTICLE 9.**

2128 **INDEMNITY, INSURANCE, AND PERFORMANCE**

2129 **BOND**

2130 **9.1 Indemnification**

2131 A. **General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless
2132 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and
2133 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs
2134 (including without limitation costs and fees of litigation, including attorneys' and expert witness
2135 fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's
2136 performance, and the performance of any Subcontractor, or agent of Contractor, under this
2137 Agreement, or its failure to comply with any of its obligations contained in the Agreement, except
2138 to the extent such loss or damage was caused by the negligence or willful misconduct of City. This
2139 Section 9.1 shall survive the expiration or termination of this Agreement and shall not be
2140 construed as a waiver of City's legal and/or equitable rights as defined herein and permitted under
2141 Applicable Law.

2142 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire
2143 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or
2144 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

2145 If Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its
2146 activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory
2147 and/or remedial action reasonably required for the remediation of such environmental
2148 contamination. Prior to undertaking any investigatory or remedial action, however, Contractor
2149 shall first obtain City's approval of any proposed investigatory or remedial action. Should
2150 Contractor fail at any time to promptly take such action, City may undertake such action at
2151 Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses
2152 within thirty (30) calendar days of being billed for those expenses, and any amount not paid within
2153 that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the
2154 delinquent fee payment provision of Section 7.4. These obligations are in addition to any defense
2155 and indemnity obligations that Contractor may have under this Agreement.

2156 Notwithstanding the foregoing, Contractor's duties under this Subsection shall not extend to any
2157 claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including, but
2158 not limited to, claims arising under Comprehensive Environmental Response, Compensation and
2159 Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful
2160 misconduct.

2161 C. **Environmental Indemnity.** Contractor shall defend with counsel acceptable to City, indemnify,
2162 and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and
2163 liability for damages of every name, kind and description, including attorneys' fees and costs
2164 incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded
2165 Waste.

2166 D. **Electronic and Web based Information Indemnity.** Contractor shall defend with counsel
2167 acceptable to City, indemnify, and hold City harmless against and from any and all related claims,
2168 including but not limited to, suits, losses, penalties, damages, responsibility for costs, regulatory
2169 fines, penalties, credit monitoring expenses, and liability for damages of every name, kind and
2170 description, including attorneys' fees and costs incurred, attributable to the negligence or willful
2171 misconduct of Contractor and any Subcontractors used in performance of this Agreement in
2172 handling or protecting Customer information over which Contractor has control, including but not
2173 limited to billing details, electronic payment(s), and Customer account information that is not
2174 readily available to the general public. Contractor shall maintain electronic files and Contractor's
2175 website in accordance with the industry best practices for maintaining such information as safely
2176 and securely as possible. Nothing in this Section 9.1.D shall prevent or restrict Contractor's
2177 obligation and responsibility to provide City with information required under this Agreement.

2178 E. **Related to AB 939, AB 341, and SB 1383.** Contractor's duty to defend and indemnify herein
2179 includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939, AB 341,
2180 AB 1826, and/or SB 1383 are not met by the Contractor with respect to the Contractor's
2181 obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet
2182 its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that
2183 prevents Contractor or City from submitting reports to regulators in a timely manner. This
2184 indemnity is subject to the provisions of Public Resources Code § 40059.1.

2185 F. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
2186 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
2187 (Commonly Proposition 218), which impacts the Rates for the Collection services established in

2188 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the
2189 impact of such Change in Law on either Party's ability to perform under this Agreement.

2190 If, at any time, a Rate adjustment determined to be appropriate by both City and Contractor to
2191 compensate Contractor for increases in costs as described in this Agreement cannot be
2192 implemented for any reason, Contractor shall be granted the option to negotiate with City, in
2193 good faith, a reduction of services equal to the value of the Rate adjustment that cannot be
2194 implemented. If City and Contractor are unable to reach agreement about such a reduction in
2195 services, then Contractor may terminate this Agreement upon one (1) year's prior written notice
2196 to City, in which case the Contractor and City shall each be entitled to payment of amounts due
2197 for contract performance through the date of termination but otherwise will have no further
2198 obligation to one another unless this Agreement specifically states otherwise, after the date of
2199 such termination. Should a court of competent jurisdiction determine that the Contractor cannot
2200 charge and/or increase its Rates for charges related to Franchise Fees and governmental fees and
2201 charges, Contractor shall reduce the Rates it charges Customers a corresponding amount,
2202 providing said fees, reimbursements, Rates and/or charges disallowed by the court are not related
2203 to the cost of providing service hereunder and had been incorporated in the Rates charged by
2204 Contractor to its Customers.

2205 Nothing herein is intended to imply that California Constitution, Articles XIII C or XIII D, apply to the
2206 Rates established for services provided under this Agreement; rather this Section 9.1.F is provided
2207 merely to allocate risk of an adverse judicial interpretation between the Parties.

2208 **G. CalPERS Eligibility Indemnification.** Contractor's employees, agents, or Subcontractors providing
2209 service under this Agreement shall not: (i) qualify for any compensation and benefit under
2210 CalPERS; (ii) be entitled to any benefits under CalPERS; (iii) enroll in CalPERS as an employee of
2211 City; (iv) receive any employer contributions paid by City for CalPERS benefits; or (v) be entitled to
2212 any other CalPERS-related benefit by reason of the services provided under this Agreement that
2213 would accrue to a City employee. Contractor's employees, agents, or Subcontractors hereby waive
2214 any claims to benefits or compensation described in this Section 9.1. This Section 9.1 applies to
2215 Contractor notwithstanding any other agency, State or Federal policy, rule, regulation, law, or
2216 ordinance to the contrary.

2217 If Contractor's employees, agents, or Subcontractors providing services under this Agreement
2218 claim, or are determined by a court of competent jurisdiction or the California Public Employees
2219 Retirement System ("CalPERS") to be eligible for enrollment in CalPERS of the City, Contractor
2220 shall indemnify, defend, and hold harmless City for the payment of any employer and employee
2221 contributions for CalPERS benefits on behalf of the employee as well as for payment of any
2222 penalties and interest on such contributions which would otherwise be the responsibility of the
2223 City.

2224 Contractor's Compensation under this Agreement shall be the full and complete compensation to
2225 which Contractor and Contractor's officers, employees, agents, and Subcontractors are entitled
2226 for performance of any work under this Agreement. Neither Contractor nor Contractor's officers,
2227 employees, agents, and Subcontractors are entitled to any salary or wages, or retirement, health,
2228 leave or other fringe benefits applicable to City employees. The City will not make any Federal or
2229 State tax withholdings on behalf of Contractor. The City shall not be required to pay any workers'
2230 compensation insurance on behalf of Contractor.

2231 Contractor agrees to defend and indemnify the City for any obligation, claim, suit, or demand for
2232 tax, retirement contribution including any contribution to CalPERS, social security, salary or wages,
2233 overtime payment, or workers' compensation payment that the City may be required to make on
2234 behalf of: (1) Contractor; (2) any employee of Contractor; or, (3) any employee of Contractor
2235 construed to be an employee of the City, for work performed under this Agreement.

2236 9.2 Insurance

2237 A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all
2238 times during the Term of this Agreement not less than the following coverage and limits of
2239 insurance:

2240 B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
2241 maintain, at its expense, the following coverages and requirements. Failure to maintain the
2242 identified insurance requirements during the entire Term of this Agreement shall constitute an
2243 event of default subject to Section 11.1.C. The comprehensive general liability insurance shall
2244 include broad form property damage insurance.

2245 1. **Minimum Coverages.** Insurance coverage shall be with limits not less than the following:

2246 a. Comprehensive General Liability – \$10,000,000 combined single limit per occurrence
2247 for bodily injury, personal injury, and property damage.

2248 b. Automobile Liability – \$10,000,000 combined single limit per accident for bodily
2249 injury and property damage (include coverage for Hired and Non-owned vehicles).

2250 c. Workers' Compensation – Statutory Limits/Employers' Liability - \$1,000,000/accident
2251 for bodily injury or disease.

2252 d. Employee Blanket Fidelity Bond – \$500,000 per employee loss covering dishonesty,
2253 forgery, alteration, theft, disappearance, and destruction (inside or outside).

2254 e. Pollution Liability – \$10,000,000 per loss and annual aggregate applicable to bodily
2255 injury; property damage, including loss of use of damaged property or of property
2256 that has not been physically damaged or destroyed; clean-up costs, including first
2257 party cleanup of the City's property and third party cleanup, and bodily injury costs if
2258 pollutants impact other properties; and defense, including costs, fees and expenses
2259 incurred in the investigation, defense, or resolution of claims. Coverage shall include
2260 completed operations and shall apply to sudden and non-sudden pollution
2261 conditions. Coverage shall apply to acts, errors or omissions arising out of, or in
2262 connection with, Contractor's scope of work under this Agreement. Coverage shall
2263 also apply to non-owned deposit sites ("NODS") that shall protect against, for
2264 example, claims regarding bodily injury, property damage, and/or cleanup costs
2265 involving NODS. Coverage is preferred by the City to be occurrence based. However,
2266 if provided on a claims-made basis, Contractor warrants that any retroactive date
2267 applicable to coverage under the policy precedes the Effective Date of this
2268 Agreement, and that continuous coverage shall be maintained, or an extended
2269 discovery period will be exercised through completion or termination of this
2270 Agreement for a minimum of five (5) years. This provision does not limit or alter any
2271 rights or remedies to City allowable under this Agreement and/or Applicable Law in
2272 perpetuity.

- 2273 f. Technology Professional Liability Errors and Omissions Insurance (Cyber Liability)
2274 appropriate to the Contractor's profession and industry practice, with limits not less
2275 than \$2,000,000 per occurrence. Coverage for cyber risks shall be sufficiently broad
2276 to respond to the duties and obligations as are undertaken by Contractor under this
2277 Agreement and shall include, but not be limited to claims involving infringement of
2278 intellectual property, including but not limited to infringement of copyright,
2279 trademark, trade dress, invasion of privacy violations, information theft, damage to
2280 or destruction of electronic information, release of private information, alteration of
2281 electronic information, extortion, and network security. The policy shall provide
2282 coverage for breach response notification and remediation costs, regulatory fines
2283 and penalties, credit monitoring expenses, electronic funds transfer losses, electronic
2284 data restoration expenses, and business interruption costs with limits sufficient to
2285 respond to these obligations, in the sole discretion of the City's Risk Manager.
- 2286 2. **Additional Insured.** City, its officers, agents, employees, and volunteers shall be named as
2287 additional insured on all but the workers' compensation and professional liability
2288 coverages.
- 2289 3. Said policies shall remain in force through the life of this Agreement and, with the
2290 exception of professional liability coverage, shall be payable on a "per occurrence" basis
2291 unless City's Risk Manager specifically consents in writing to a "claims made" basis. For all
2292 "claims made" coverage, if the Contractor changes insurance carriers Contractor shall
2293 purchase "tail" coverage or otherwise provide for continuous coverage covering the Term
2294 of this Agreement and not less than three (3) years thereafter, except for the five (5) year
2295 tail of Pollution Liability Coverage as described above. Proof of such "tail" or other
2296 continuous coverage shall be required at any time that the Contractor changes to a new
2297 carrier prior to receipt of any payments due.
- 2298 4. The Contractor shall declare all aggregate limits on the coverage before commencing
2299 performance of this Agreement, and City's Risk Manager reserves the right to require
2300 higher aggregate limits to ensure that the coverage limits required for this Agreement as
2301 set forth above are available throughout the performance of this Agreement.
- 2302 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
2303 the sole responsibility of the Contractor.
- 2304 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
2305 suspended, voided, canceled by either Party, reduced in coverage or in limits except after
2306 thirty (30) calendar days prior written notice by certified mail, return receipt requested,
2307 has been given to the City Manager ten (10) Business Days for delinquent insurance
2308 premium payments).
- 2309 7. Insurance must be placed with insurers with a current A.M. Best's rating of no less than A-
2310 VII, or with a surplus line carrier appearing on the List of Approved Surplus Line Insurers,
2311 ("LASLI") with a Best's Key Rating Guide of at least A: X.
- 2312 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
2313 volunteers arising out of or in connection with this Agreement.
- 2314 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
2315 primary, including as respects City, its officers, agents, employees, and volunteers. Any

2316 insurance maintained by City shall apply in excess of, and not contribute with, insurance
2317 provided by Contractor's liability insurance policy.

2318 10. The Contractor shall waive all rights of subrogation against City, its officers, employees,
2319 agents, and volunteers.

2320 C. **Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish
2321 City Manager with certificates or original endorsements reflecting coverage required by this
2322 Agreement. The certificates or endorsements are to be signed by a Person authorized by that
2323 insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and
2324 are subject to the approval of, City Risk Manager before work commences.

2325 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish City Manager with
2326 certificates or original endorsements reflecting renewals, changes in insurance companies, and
2327 any other documents reflecting the maintenance of the required coverage throughout the entire
2328 Term of this Agreement. The certificates or endorsements are to be signed by a Person authorized
2329 by that insurer to bind coverage on its behalf.

2330 E. **No Cap on Indemnity.** The minimum amounts of coverage described in this Section 9.2 will not
2331 constitute any limitations or cap on Contractor's indemnification obligations under this
2332 Agreement.

2333 F. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by
2334 State law and shall comply with Section 3700 of the State Labor Code.

2335 9.3 Faithful Performance Bond or Irrevocable Letter of Credit

2336 A. Contemporaneously with execution of this Agreement, as security for Contractor's faithful
2337 performance of all obligations of this Agreement, Contractor shall provide a surety mechanism
2338 (the "Surety") as more fully defined below in the amount of Two Million Five Hundred Thousand
2339 Dollars (\$2,500,000.00). The Surety may be comprised of either a performance bond or an
2340 irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some
2341 or all of the Surety requirement it shall be drawn upon a financial institution with an office within
2342 fifty (50) miles of City, and otherwise in a form acceptable to the City Attorney. The performance
2343 bond, if any, shall be issued by a duly authorized corporate surety company authorized to do
2344 business in California, and in a form acceptable to the City Attorney and in full compliance with
2345 the provisions of California Code of Civil Procedure Sections 995.610 – 995.660 re Admitted Surety
2346 Insurers. The cost of the Surety shall be the sole obligation of Contractor. The Surety shall be
2347 released within thirty (30) days after both: (i) the expiration of the Term of this Agreement; and,
2348 (ii) Contractor's satisfactory performance of all obligations hereunder.

2349 B. In the event Contractor shall for any reason become unable to, or fail in any way to, perform as
2350 required by this Agreement, City and/or District may declare a portion or all of the Surety, as may
2351 be necessary to recompense and make whole the City and/or District, forfeited to the City and/or
2352 District. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its
2353 original amount within thirty (30) days of the City's and/or District's notice to do so. Failure to
2354 restore the Surety to its full amount within thirty (30) days shall be a material breach of this
2355 Agreement.

- 2356 C. District providing Contractor with written notice of its failure to pay City and/or District any
2357 amount owing under this Agreement, either the letter of credit or performance bond comprising
2358 the Surety may be utilized by City and/or District for purposes including, but not limited to:
- 2359 1. Payment of sums due under the terms of this Agreement which Contractor has failed to
2360 timely pay to City and/or District, including specifically, but not limited to, Liquidated
2361 Damages.
- 2362 2. Reimbursement of costs borne by City and/or District to correct violations of this
2363 Agreement not corrected by Contractor.
- 2364 D. City and/or District may draw upon the entire letter of credit (if any) utilized to meet Contractor's
2365 obligations pertaining to the Surety, and convert it to a cash deposit, if Contractor fails to cause
2366 the letter of credit to be extended or replaced with another satisfactory letter of credit no later
2367 than sixty (60) days prior to its expiration.

2368 **9.4 Forfeiture of Performance Bond or Irrevocable Letter of Credit**

2369 In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required
2370 by this Agreement, City may declare a portion or all of the performance bond or irrevocable letter of
2371 credit which is necessary to recompense and make whole the City, forfeited to the City. Upon partial or
2372 full forfeiture of the performance bond or irrevocable letter of credit, Contractor shall restore the
2373 performance bond or irrevocable letter of credit to its face amount within thirty (30) days of the City's
2374 declaration. Failure to restore the performance bond or irrevocable letter of credit to its full amount
2375 within thirty (30) days shall be a material breach of the Agreement.

2376 **9.5 Performance Security Beyond Service Term**

2377 Some Agreement requirements extend beyond the Term of this Agreement and will not be
2378 substantiated until after the final service date. Therefore, the Contractor shall not terminate the
2379 performance bond or letter of credit and will renew them to ensure continuous availability to the City,
2380 until receiving a written release from the City. City will provide such a release when City, in its
2381 reasonable judgment, is fully satisfied that all requirements have been met. However, permission from
2382 the City to discontinue holding these performance securities does not relieve Contractor of payments to
2383 the City that may be due or may become due.

2384 **ARTICLE 10.**

2385 **CITY'S RIGHT TO PERFORM SERVICE**

2386 **10.1 General**

2387 In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle,
2388 Process, Transport or Dispose of any or all Discarded Materials which it is required by this Agreement, at
2389 the time and in the manner provided in this Agreement, for a period of more than two (2) Business
2390 Days, excluding Saturday, Sunday, and Holidays defined in Exhibit A, and if, as a result thereof, Discarded
2391 Materials should accumulate in City to such an extent, in such a manner, or for such a time that such
2392 accumulation endangers or menaces the public health, safety or welfare, then City shall have the right,
2393 but not the obligation, upon twenty-four (24) hours prior written notice to Contractor during the period
2394 of such emergency as determined by City: (1) to perform, or cause to be performed, such services itself

2395 with its own or other personnel without liability to Contractor; and/or, (2) to take possession of any or
2396 all of Contractor's land, equipment, and other property used or useful in the Collection and
2397 Transportation of Discarded Materials, and to use such property to Collect and Transport any Discarded
2398 Materials generated within City which Contractor would otherwise be obligated to Collect, Transport,
2399 and properly Dispose of or Process pursuant to this Agreement.

2400 Notice of Contractor's failure, refusal, or neglect to Collect, Transport and properly Dispose of or Process
2401 Discarded Materials may be given orally by telephone to Contractor at its principal office and shall be
2402 effective immediately. Written confirmation of such oral notification shall be sent to Contractor within
2403 one (1) Business Day, excluding Saturday, Sunday and Holidays defined in Exhibit A of the oral
2404 notification.

2405 Contractor further agrees that in such event:

2406 A. It will take direction from City to affect the transfer of possession of equipment and property to
2407 City for City's use, or for use by any Person or entity designated by the City.

2408 B. It will, if City so requests, keep in good repair and condition all of such equipment and property,
2409 provide all motor vehicles with fuel, oil and other service, and provide such other service as may
2410 be necessary to maintain said property in operational condition.

2411 C. City may immediately engage all or any personnel, including 3rd parties not directly employed by
2412 the City, necessary or useful for the Collection and Transportation of Discarded Materials,
2413 including, if City so desires, employees previously or then employed by Contractor. Contractor
2414 further agrees, if City so requests, to furnish City the services of any or all management or office
2415 personnel employed by Contractor whose services are necessary or useful for Discarded Materials
2416 Collection, Transportation, Processing, and Disposal operations and for the Billing and collection of
2417 fees for these services.

2418 City agrees that it assumes complete responsibility for the proper and normal use of such equipment
2419 and Facilities while in its possession.

2420 If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.7, City
2421 shall pay to Contractor the reasonable rental value of the equipment and Facilities, possession of which
2422 is taken by City, for the period of City's possession, if any, which extends beyond the period of time for
2423 which Contractor has rendered bills in advance of service, for the class of service involved.

2424 **10.2 Temporary Possession of Contractor's Property**

2425 If City suffers an interruption or discontinuance of service (including interruptions and discontinuance
2426 due to events described in Section 11.7), City may take possession of and use all of Contractor's property
2427 described above until other suitable arrangements can be made for the provision of Discarded Materials
2428 Services which may include the grant of a Franchise to another waste hauling company.

2429 **10.3 Billing and Compensation to City During City's Possession**

2430 During such time that City is providing Discarded Materials services, as above provided, Contractor shall
2431 bill and Collect payment from all users of the above-mentioned services as described in Section 4.6.
2432 Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses

2433 incurred by City beyond that billed and received by City in taking over possession of the above-
2434 mentioned equipment and property for Discarded Materials service in such manner and to an extent as
2435 would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement
2436 shall be made from time to time after submission by City to Contractor of each statement listing such
2437 costs and expenses, but in no event later than five (5) Business Days from and after each such
2438 submission.

2439 **10.4 City's Right to Relinquish Possession**

2440 It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all
2441 of the above-mentioned property to Contractor and thereupon demand that Contractor resume the
2442 Discarded Materials services as provided in this Agreement, whereupon Contractor shall be bound to
2443 resume the same.

2444 **10.5 City's Possession Not A Taking**

2445 Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this
2446 Article 10: (1) does not constitute a taking of private property for which compensation must be paid;
2447 (2) will not create any liability on the part of City to Contractor; and, (3) does not exempt Contractor
2448 from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to
2449 circumstances arising under this Section 10.5 provided that the Contractor is not required to indemnify
2450 the City against claims and damages arising from the sole negligence of the City, its elected and
2451 appointed officials, boards, commissions, officers, employees and agents in the operation of Collection
2452 vehicles during the time the City has taken possession of such vehicles.

2453 **10.6 Duration of City's Possession**

2454 City's right pursuant to this Article 10 to retain temporary possession of Contractor's Facilities and
2455 equipment, and to render Collection services, shall terminate when City determines that such services
2456 can be resumed by Contractor, or when City no longer reasonably requires such property or equipment.
2457 In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or
2458 continue its use for any period of time and may at any time, in its sole discretion, relinquish possession
2459 to Contractor.

2460 **10.7 Disaster Preparedness Plan**

2461 Within twelve (12) months of the Effective Date, Contractor shall, with City assistance, prepare a written
2462 plan detailing how Discarded Materials services will be delivered in a time of emergency or natural
2463 disaster. For the plan, City shall provide Contractor with a written list of critical Facilities being those
2464 Facilities that the City deems in need of special consideration in a time of emergency because they are
2465 critical to City's emergency response, of priority to the need of the community and/or represent a public
2466 health risk to the community. Contractor's written plan shall contain a protocol for contacting
2467 Contractor management in the event of an emergency, an overview of Contractor's resources available
2468 for emergency response, a plan for Collection, Disposal, and Recycling of Discarded Materials generated
2469 by critical Facilities until the time of emergency passes and a plan for resuming normal operations
2470 following an emergency.

2471 In the event of a disaster, the City may grant Contractor a waiver of some or all Collection requirements
2472 under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the

2473 duration of the waiver. Any resulting changes in Collection requirements shall be addressed as a change
2474 in scope in accordance with Section 3.6.

2475

2476

ARTICLE 11. DEFAULT AND REMEDIES

2477 11.1 Events of Default

2478 All provisions of the Agreement are considered material. Each of the following shall constitute an event
2479 of default.

2480 A. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.

2481 B. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or
2482 upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

2483 C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force the workers'
2484 compensation, insurance coverage required by Section 9.2, or indemnification coverage as
2485 required by this Agreement.

2486 D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having
2487 authority over Contractor relative to this Agreement, which violation the City reasonably
2488 determines is material. If Contractor contests any such orders or filings by appropriate
2489 proceedings conducted in good faith, and the regulatory body determines no violation occurred,
2490 no breach or default of this Agreement shall be deemed to have occurred.

2491 E. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement, which
2492 violation the City reasonably determines is material.

2493 F. **Failure to Perform Direct Services.** Contractor ceases to provide Collection, Transportation, or
2494 Processing services as required under this Agreement for a period of two (2) consecutive calendar
2495 days or more, for any reason within the control of Contractor.

2496 G. **Failure to Pay or Report.** Contractor fails to make any payments to City required under this
2497 Agreement including payment of City Fees or Liquidated Damages and/or refuses to provide City
2498 with required information, reports, and/or records in a timely manner as provided for in the
2499 Agreement.

2500 H. **Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,
2501 or requirements of this Agreement, or Applicable Law and which is not corrected or remedied
2502 within the time set in the written notice of the violation. Additionally, an event of default occurs if
2503 Contractor cannot reasonably correct or remedy the breach within the time set forth in a notice of
2504 violation, or if Contractor fails to commence to correct or remedy such violation within the time
2505 set forth in such notice and diligently effect such correction or remedy thereafter.

2506 I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City by
2507 Contractor in connection with or as an inducement to entering into this Agreement, or any future
2508 amendment to this Agreement, which proves to be false or misleading in any material respect as
2509 of the time such representation or disclosure is made, whether or not any such representation or

- 2510 disclosure appears as part of this Agreement. Additionally, a default occurs if any Contractor-
2511 provided report contains a misstatement, misrepresentation, data manipulation, or an omission of
2512 fact or content explicitly defined by the Agreement, excepting non-numerical typographical and
2513 grammatical errors.
- 2514 J. **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's
2515 operating equipment, including without limits its equipment, maintenance or office facilities,
2516 Approved Facility(ies), or any part thereof.
- 2517 K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction
2518 of business by Contractor related to this Agreement, including without limit, due to labor unrest
2519 including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action
2520 lasting more than seven (7) calendar days for Residential Customers and three (3) calendar days
2521 for Commercial Customers.
- 2522 L. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
2523 activity related directly or indirectly to performance of this Agreement or any other agreement
2524 held with the City.
- 2525 M. **Assignment without Approval.** Contractor transfers or assigns this Agreement without the
2526 expressed written approval of the City unless the assignment is permitted without City approval
2527 pursuant to Section 13.6.
- 2528 N. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
2529 proposal for new services or changes to services or fails to implement a change in service as
2530 requested by the City as specified in Section 3.5.
- 2531 O. **Failure to Implement Collection Program.** Contractor fails to implement a Collection program that
2532 complies with the requirements of Article 4 and Exhibit B, which is essential for the City to achieve
2533 compliance with SB 1383.
- 2534 P. **Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity
2535 in accordance with Articles 4 and 5, which is essential for the City to achieve compliance with SB
2536 1383.
- 2537 Q. **Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards
2538 specified in Articles 4 and 5 including achievement of minimum Organic Waste recovery rates,
2539 which are essential for the City to achieve SB 1383 compliance.
- 2540 R. **Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other
2541 requirements of the Agreement including, but not limited to, public education, reporting,
2542 contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement
2543 that delegate the City's responsibility and/or authority under SB 1383 to the Contractor.
- 2544 S. **Failure to Dispose of Solid Waste at the Designed Disposal Facility.** Contractor fails to Dispose of
2545 all Solid Waste Collected within the City unless the Designated Disposal Facility is no longer
2546 required or in the event that the Designated Disposal Facility is not available.

2547 T. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
2548 this Agreement, which the City reasonably determines is material.

2549 City shall provide Contractor written notice of default within seven (7) calendar days of the City's first
2550 knowledge of the Contractor's default.

2551 **11.2 Contractor's Right to Cure; Right to Terminate Upon Event of Default**

2552 Contractor shall be given two (2) Business Days from written notification by the City Manager or as
2553 otherwise agreed to in writing by the Parties to cure any default which, in the City Manager's sole
2554 opinion, creates a potential public health and safety threat.

2555 Contractor shall be given two (2) Business Days from written notification by the City Manager or as
2556 otherwise agreed to in writing by the Parties to cure any default arising under Subsections C, D, E, F, G,
2557 H, J, K, N, O, P, Q, R, S, and T in Section 11.1. However, the City shall not be obligated to provide
2558 Contractor with a notice and cure opportunity if the Contractor has committed the same breach/default
2559 within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to
2560 receive notice of default, or to cure such default, with respect to those matters listed in Subsections A,
2561 B, I, L, and M above.

2562 Contractor shall be given thirty (30) calendar days from written notification by the City Manager to cure
2563 any other default (which is not required to be cured within two (2) Business Days). Furthermore, if
2564 Contractor cannot reasonably cure a default within the applicable period described in this Section 11.2,
2565 except for defaults that create a potential health and safety threat, and Contractor promptly
2566 commences the cure or remedy within the initial cure period and thereafter diligently pursues the cure
2567 or remedy to completion, Contractor shall not be in default of this Agreement. However, the City shall
2568 not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has
2569 committed the same or similar breach/default within a twenty-four (24) month period.

2570 **11.3 City's Remedies in the Event of Default**

2571 Upon Contractor's default, City has the following remedies in the event of Contractor default:

2572 A. **Waiver of Default.** City may waive any event of default or may waive Contractor's requirement to
2573 cure a default event if City determines that such waiver would be in the best interest of the City.
2574 City's waiver of an event of default is not a waiver of future events of default that may have the
2575 same or similar conditions.

2576 B. **Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its
2577 obligations if Contractor fails to cure default in the time frame specified in Section 11.2 until such
2578 time the Contractor can provide assurance of performance in accordance with Section 11.8.

2579 C. **Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet specific
2580 performance standards pursuant to Section 11.6.

2581 D. **Termination.** The City Manager may, in their sole discretion, set a public hearing for the City
2582 Council to determine whether to terminate this Agreement. Subject to Contractor's right to cure
2583 as described in Section 11.2, such termination hearing must be set if a default remains uncured
2584 thirty (30) calendar days after receipt of written notice of default from the City. Such termination

2585 hearing must also be set if a Contractor's default is not cured within two (2) calendar days and the
2586 default:

- 2587 ○ Creates an imminent public health and safety threat; or
- 2588 ○ Arises under Section 11.1. C, D, E, F, G, J, K, N, O, P, Q, R, S, and T.

2589 If the City terminates this Agreement based on the adopted findings of the termination hearing,
2590 the City Manager shall first provide written notice to the Contractor twenty (20) calendar days
2591 before the date of termination. The Contractor shall thereafter be relieved on a going-forward
2592 basis of all liabilities and obligations required by this Agreement, except for Section 9.1 and any
2593 other provisions specifically identified to survive termination of this Agreement. Upon expiration
2594 of the twenty (20) day notice, the City may, in its sole discretion:

- 2595 ○ Directly undertake performance of the services; or
- 2596 ○ Arrange with other Persons to perform the services with or without a written agreement; or
- 2597 ○ Permit Contractor to continue operating under this Agreement including Contractor's
2598 Compensation until such time that City is able to find substitute services.

2599 This right of termination is in addition to any other rights upon a failure of Contractor to perform
2600 its obligations under this Agreement.

2601 Contractor shall not be entitled to any further revenues from Collection operations authorized
2602 hereunder from and after the date of termination.

2603 E. **Other Available Remedies.** City's election of one (1) or more remedies described herein shall not
2604 limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

2605 **11.4 Possession of Records Upon Termination**

2606 In the event of termination for an event of default, the Contractor shall furnish City Manager with
2607 immediate access to its business records in a format compatible with the City's computer systems,
2608 including without limitation, Customer information that is not restricted by Applicable Law, Collection
2609 routes, compliance records, and billing of accounts for Collection services.

2610 **11.5 City's Remedies Cumulative; Specific Performance**

2611 City's rights to terminate the Agreement under Section 11.2 and to take possession of the Contractor's
2612 records under Section 11.4 are not exclusive, and City's termination of the Agreement and/or the
2613 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall
2614 be in addition to any and all other legal and equitable rights and remedies which City may have.

2615 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service;
2616 the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the
2617 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to
2618 injunctive relief (including but not limited to specific performance).

2619 **11.6 Performance Standards and Liquidated Damages**

2620 A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if
2621 not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a
2622 result of a breach by Contractor of its obligations under this Agreement. The factors relating to the
2623 impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
2624 substantial damage results to members of the public who are denied services or denied quality or
2625 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of
2626 the benefits of the Agreement to individual members of the general public for whose benefit this
2627 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of
2628 measurement in precise monetary terms; (iii) that exclusive services might be available at
2629 substantially lower costs than alternative services and the monetary loss resulting from denial of
2630 services or denial of quality or reliable services is impossible to calculate in precise monetary
2631 terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at
2632 best, a means of future correction and not remedies which make the public whole for past
2633 breaches.

2634 B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties
2635 further acknowledge that consistent, reliable Collection services are of utmost importance to City
2636 and that City has considered and relied on Contractor's representations regarding its quality-of-
2637 service commitment in awarding the Agreement to it. The Parties recognize that some quantified
2638 standards of performance are necessary and appropriate to ensure consistent and reliable service
2639 and performance. The Parties further recognize that if Contractor fails to achieve the performance
2640 standards or fails to submit required documents in a timely manner, City and its residents and
2641 businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to
2642 ascertain and determine the exact amount of damages that City will suffer. Therefore, without
2643 prejudice to City's right to treat such non-performance as an event of default under this Section
2644 11.6, the Parties agree that the Liquidated Damages amounts established in this Section 11.6 of
2645 this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of
2646 the amount of such damages considering all of the circumstances existing on the Effective Date of
2647 this Agreement, including the relationship of the sums to the range of harm to City that
2648 reasonably could be anticipated and the anticipation that proof of actual damages would be costly
2649 or impractical.

2650 Contractor City

2651 Initial Here Initial Here

2652 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth
2653 below:

2654 1. **Collection Reliability.**

2655 a. For each failure to commence service to a new Customer account within seven (7)
2656 days after order: \$100.00 per occurrence

2657 b. For each failure to Collect Discarded Materials, which has been properly set out for
2658 Collection: \$100.00 per occurrence

- 2659 c. For each failure to correct and Collect a missed service within the timeframe set forth
2660 in Section 4.7.B.2: \$100.00 per occurrence;
2661 each additional twenty-four (24) hour period: \$50.00 per occurrence.
- 2662 d. For each failure to comply with the provisions in Section 11.7 Contractor's Actions
2663 During a Work Stoppage: \$1,000 per day
- 2664 e. For each failure to Collect Abandoned Waste within four (4) days of notification by
2665 the City per Exhibit B4, Item 8A: \$100 per occurrence.
- 2666 2. **Collection Quality.**
- 2667 a. For failure to properly return empty Containers to avoid pedestrian or vehicular
2668 traffic impediments or to place Containers upright which exceeds ten (10) Containers
2669 annually:
2670 \$50.00 per Container
- 2671 b. For each occurrence of excessive noise or discourteous behavior which exceed ten
2672 (10) occurrences annually:
2673 \$100.00 per occurrence
- 2674 c. For each occurrence of Collecting Discarded Materials during unauthorized hours
2675 which exceeds ten (10) such occurrences annually: \$100.00 per occurrence
- 2676 d. For each occurrence of damage to private property which exceeds five (5) such
2677 occurrences annually: \$100.00 per occurrence
- 2678 e. For each failure to clean up Discarded Materials spilled from Collection Containers
2679 within ninety (90) minutes that exceeds ten (10) such failures annually:
2680 \$100.00 per occurrence
- 2681 f. For each failure to clean up vehicle leaks or spills within the timeframe required by
2682 Section 5.5.E: \$500 per occurrence
- 2683 g. For each failure to follow the cleanup procedures included in Section 5.5.E:
2684 \$500 per square foot of affected area
- 2685 3. **Customer Responsiveness.**
- 2686 a. For each failure to initially respond to a Customer Complaint within one (1) Business
2687 Day (excluding Saturday, Sunday, and Holidays as defined in Exhibit A), and for each
2688 additional day in which the Complaint is not addressed, which exceed five (5)
2689 annually: \$50.00 per day
- 2690 b. For each failure to process Customer Complaints as required by Article 4, which
2691 exceed five (5) annually: \$50.00 per occurrence
- 2692 c. For each failure to record a response to a Customer Complaint or request within
2693 twenty-four (24) hours of resolution: \$100.00 per occurrence
2694 For each additional twenty-four (24) hour period: \$50.00 per occurrence
- 2695 d. For each failure to respond to a written inquiry from the City's Solid Waste contract
2696 manager regarding service requests or requests for information within two (2)

- 2697 Business Days (excluding Saturday, Sunday and Holidays defined in Exhibit A), and for
 2698 each additional day in which the inquiry is not addressed, which exceed five (5)
 2699 occurrences annually: \$100 per occurrence
- 2700 e. For each failure to remove graffiti from Containers, or to replace with Containers
 2701 bearing no graffiti, within two (2) Business Days (excluding Saturday, Sunday, and
 2702 Holidays defined in Exhibit A) of request from City or Customer: \$ 50.00 per day
 2703 For each additional day problem not resolved: \$25.00 per day
- 2704 f. For each failure to repair or replace a damaged or missing Container within two (2)
 2705 Business Days (excluding Saturday, Sunday, and Holidays defined in Exhibit A) of
 2706 request from City or Customer: \$ 50.00 per day
- 2707 g. For each failure to process a claim for damages within thirty (30) days from the date
 2708 submitted to Contractor: \$100.00 per occurrence
- 2709 h) For each failure to issue a warning notice to a Container or materials not Collected
 2710 due to improper set out which exceeds ten (10) such occurrences annually:
 2711 \$100 per day per occurrence
- 2712 4. **Failure to Submit Reports or Allow Access to Records.** For each failure to submit any
 2713 individual report or provide access to records in compliance with and in the timeframe
 2714 specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a
 2715 failure to submit until such time as all information in the report has been provided in a
 2716 complete and accurate form. In the event City determines a report to be errant or
 2717 incomplete more than ten (10) Business Days after submittal by Contractor, Contractor
 2718 shall be given ten (10) Business Days to complete and correct and any pending Liquidated
 2719 Damages shall be tolled during that period.
- 2720 a. Monthly Reports: \$50 per day
 2721 b. Quarterly Reports: \$50 per day
 2722 c. Annual Reports: \$100 per day
- 2723 5. **Accuracy of Billing.**
- 2724 a. Each Customer invoice that is not prepared in accordance with the City's approved
 2725 Rate schedule, in excess of ten (10) annually:
 2726 \$25 per invoice not to exceed \$2,500 per Billing run
- 2727 b. For each instance or invoice in which Contractor imposes a special service fee not in
 2728 accordance with the approved Rate schedule and not approved in advance in writing
 2729 by City, or not requested by the service recipient which exceeds ten (10) such
 2730 occurrences annually: \$50 per occurrence
- 2731 c. Failure to provide a Customer with a response, including an explanation and/or
 2732 correction, to a Billing Complaint within seven (7) Business Days from the Complaint:
 2733 \$100.00 per occurrence
 2734 Each additional day response not provided: \$50.00

- 2735 6. **Public Education and Outreach.**
- 2736 a. Failure to perform public education and outreach activities:
- 2737 1st violation - \$50 per occurrence
- 2738 2nd violation - \$100 per occurrence
- 2739 3rd and subsequent violations - \$250 per occurrence
- 2740 7. **Cooperation with Service Provider Transition.**
- 2741 a. For each day routing information requested by City in accordance with Section 13.10
- 2742 is received after City-established due dates, both for preparation of a request for
- 2743 proposals and for new service provider's implementation of service: \$1,000 per day
- 2744 b. For each day delivery of keys, access codes, remote controls, or other means of
- 2745 access to Discarded Materials Containers is delayed beyond one (1) day prior to new
- 2746 service provider servicing Customers with access issues, as described in Section
- 2747 13.10: \$1,000 per day
- 2748 c. For delay in not meeting the requirements contained in Section 13.10 in a timely
- 2749 manner, in addition to the daily Liquidated Damages for breach under 7(a) and 7(b)
- 2750 above, Liquidated Damages of: \$20,000 per occurrence
- 2751 8. **Diversions Efforts.**
- 2752 a. For each Rate Period (January 1, 2023 to December 31, 2024, considered the first
- 2753 Rate Period) in which Contractor fails to provide support to the City within thirty (30)
- 2754 days of year-end, documenting that it Diverted at least twenty percent (20%) of the
- 2755 Discarded Materials Contractor Collected under this Agreement per Section 5.10:
- 2756 \$25 for each Ton below Tonnage level necessary to meet twenty percent (20%)
- 2757 Diversions goal
- 2758 9. **SB 1383 Requirements.** Failure to meet SB 1383 requirements set forth below:
- 2759 a. Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded
- 2760 Materials to a Facility other than an Approved Facility(ies) for each Discarded
- 2761 Material type under this Agreement.
- 2762 1st violation - \$50 per Ton per offence
- 2763 2nd violation - \$100 per Ton per offence
- 2764 3rd and subsequent violations - \$250 per Ton per offence
- 2765 b. Failure to Implement three- /three-plus Container System. For each occurrence of
- 2766 failing to provide Customers with the three- /three-plus Container system required
- 2767 by and compliant with SB 1383 excluding Generators and Customers granted waivers
- 2768 pursuant to this Agreement and excluding Generators and Customers that
- 2769 demonstrate compliance with Recycling and Organic Waste Self-Hauling
- 2770 requirements pursuant to Section 5.10.080 of District's Code of Regulations and 14
- 2771 CCR Division 7, Article 12, Article 7. Minor, moderate and major violations have the
- 2772 same meaning as defined in 14 CCR Section 18997.3
- 2773 Damages are per Generator or Customer per occurrence:

2774	\$500 – Minor violation
2775	\$4,000 – Moderate violation
2776	\$7,500 – Major violation
2777	c. Failure of Approved Facility(ies) to Meet Limits on Incompatible Materials (if Applicable). For each Ton of Mixed Waste, Source Separated Recyclable Materials Source Separated Blue Container Organic Waste, Source Separated Green Container Organic Waste, or Organic Materials received at the Facility(ies) in a quarterly reporting period when Organic Waste recovered after Processing exceeds Incompatible Material thresholds included in SB 1383 if limits on Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.
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2785	1st violation - \$50 per Ton per offence
2786	2nd violation - \$100 per Ton per offence
2787	3rd and subsequent violations - \$250 per Ton per offence
2788	d. Failure of Approved Facility(ies) to Meet Limits on Organic Waste in Materials Sent to Disposal. For each Ton of Mixed Waste, Source Separate Recyclable Materials, Source Separated Blue Container Organic Waste, Source Separated Green Container Organic Waste, or Organic Materials received at the Facility(ies) in a quarterly reporting period when Organic Waste in the materials sent to Disposal exceeds the thresholds included in SB 1383 if limits on Organic Waste in materials sent to Disposal apply. Liquidated damages are assessed in the quarterly reporting period when the failure occurred.
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2796	1st violation - \$50 per Ton per offence
2797	2nd violation - \$100 per Ton per offence
2798	3rd and subsequent violations - \$250 per Ton per offence
2799	e. Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring in accordance with Section 4.10 of this Agreement:
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2802	1st violation - \$50 per route per occurrence
2803	2nd violation - \$100 per route per occurrence
2804	3rd and subsequent violations - \$250 per route per occurrence
2805	f. Failure to Comply with Container Labeling and Colors. For each occurrence of Contractor’s failure to comply with Container labeling and color requirements pursuant to SB 1383.
2806	
2807	
2808	
2808	1st violation - \$50 per Container occurrence
2809	2nd violation - \$100 per Container occurrence
2810	3rd and subsequent violations - \$250 per Container occurrence

- 2811 g. Failure to Conduct Compliance Tasks. For each failure to conduct any compliance
 2812 review, Discarded Materials evaluations pursuant to SB 1383, and/or other
 2813 inspection required by this Agreement.
- 2814 1st violation - \$50 per occurrence
- 2815 2nd violation - \$100 per occurrence
- 2816 3rd and subsequent violations - \$250 per occurrence
- 2817 h. Failure to Issue Contamination Processing Fee Notices. For each failure of Contractor
 2818 Collection personnel to issue contamination notices and Contamination Processing
 2819 Fee Notices and maintain documentation of issuance as required by Section 4.10 of
 2820 this Agreement.
- 2821 1st violation - \$50 per route per day
- 2822 2nd violation - \$100 per route per day
- 2823 3rd and subsequent violations - \$250 per route per day
- 2824 i. Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up
 2825 inspection as required by Section 4.7.C of this Agreement.
- 2826 1st violation - \$50 per occurrence
- 2827 2nd violation - \$100 per occurrence
- 2828 3rd and subsequent violations - \$250 per occurrence
- 2829 j. Failure to Maintain and/or Provide Access to Information Systems
- 2830 \$500 per day
- 2831 10. **General Contract Adherence.**
- 2832 a. For each day that Contractor fails to provide services required under the Agreement,
 2833 or comply with terms of the Agreement, five (5) Business Days after receipt of
 2834 written notification from City that such services are not being provided or terms are
 2835 not being met: \$100.00/day
- 2836 b. Before assessing Liquidated Damages, City Manager shall give Contractor notice of
 2837 City's intention to do so. The notice will include a brief description of the incident(s)
 2838 and non-performance. City Manager may review (and make copies at City's own
 2839 expense) all information in the possession of Contractor relating to incident(s) and/or
 2840 non-performance. City Manager may, within ten (10) Business Days after issuing the
 2841 notice, request a meeting with Contractor. City Manager may present evidence of
 2842 non-performance in writing and through testimony of City's employees and others
 2843 relevant to the incident(s) and non-performance. City Manager will provide
 2844 Contractor with a written explanation of their determination on each incident(s) and
 2845 non-performance prior to authorizing the assessment of Liquidated Damages under
 2846 this Section 11.6. The decision of City Manager may be appealed by Contractor to the
 2847 Deputy City Manager.
- 2848 C. **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that
 2849 Contractor is determined to be liable in accordance with this Agreement.

2850 D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within ten (10)
2851 days after they are assessed. If they are not paid within the ten (10) day period, City may proceed
2852 against the performance bond required by the Agreement or find Contractor in default and
2853 terminate this Agreement pursuant to Section 11.1, or both.

2854 **11.7 Excuse from Performance**

2855 A. **Force Majeure.** A Party shall be excused from performing their obligations hereunder and from
2856 any obligation to pay Liquidated Damages and Contractor shall not be in default under this
2857 Agreement if Contractor is prevented from performing the Collection, Transportation and/or
2858 Disposal services for any of the following reasons: riots; wars; sabotage; civil disturbances,
2859 pandemics, epidemics; government restrictions and orders; insurrections; explosion; natural
2860 disasters such as floods, earthquakes, landslides and fires; strikes; lockouts and other labor
2861 disturbances; and other similar catastrophic events which are beyond the control of and not the
2862 fault of the Party claiming excuse from performance hereunder. The Party claiming excuse from
2863 performance shall, within two (2) calendar days after such Party has notice of such cause, give the
2864 other Party notice of the facts constituting such cause and asserting its claim to excuse under this
2865 Section 11.7. If either Party validly exercises its rights under this Section 11.7, the Parties hereby
2866 waive any claim against each other for any damages sustained thereby.

2867 The partial or complete interruption or discontinuance of Contractor's services caused by one (1)
2868 or more of the events described in this Section 11.7 shall not constitute a default by Contractor
2869 under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from
2870 performing its obligations hereunder for any of the causes listed in this Section 11.7 for a period of
2871 thirty (30) calendar days or more, City shall nevertheless have the right, in its sole discretion, to
2872 terminate this Agreement by giving ten (10) Business Days' notice to Contractor, in which case the
2873 provisions of Section 11.4 shall apply.

2874 In the event of a labor disturbance that interrupts Collection, Transportation and/or Disposal of
2875 Discarded Materials by Contractor as required under this Agreement, the provisions of Section
2876 11.7.B below shall apply.

2877 B. **Labor Disputes.**

2878 1. **Labor Unrest Directed at Third Party.** In the case of labor unrest or job action directed at
2879 a third party over whom Contractor has no control, the inability of Contractor to provide
2880 services in accordance with this Agreement due to the unwillingness or failure of the third
2881 party to: (i) provide reasonable assurance of the safety of Contractor's employees while
2882 providing such services; or, (ii) make reasonable accommodations with respect to
2883 Container placement and point of delivery, time of Collection, or other operating
2884 circumstances to minimize any confrontation with pickets or the number of Persons
2885 necessary to make Collections shall, to that limited extent, excuse performance. The
2886 foregoing excuse shall be conditioned on Contractor's cooperation in performing
2887 Collection services at different times and in different locations.

2888 2. **Contractor Labor Disruptions.** Contractor must notify the City in writing within twenty-
2889 four (24) hours of a notice from a labor union of a possible work stoppage. Contractor
2890 agrees that in the event Service is disrupted due to a labor dispute, Contractor shall place
2891 a minimum of twelve (12), forty (40) yard Roll-Off Boxes or other Containers of equivalent

2892 capacity at locations designated by the City Manager or their designees to serve as
 2893 Collection points for the Customers within two (2) days of said Service interruption.
 2894 Containers shall be Collected by Contractor for no additional charge as necessary to
 2895 accommodate the waste volume Disposed in such Containers.

2896 A. Labor unrest including, but not limited to, strike, work stoppage or slowdown, sick-out;
 2897 picketing, or other concerted job action conducted by Contractor's employees or
 2898 directed at Contractor is excused from performance only to the extent that the
 2899 following requirements are met:

2900 i. Contractor provides a contingency plan to the City within ninety (90) days of
 2901 commencement of services under this Agreement demonstrating how services
 2902 will be provided during the period of labor unrest. The contingency plan is
 2903 subject to City approval and Contractor shall amend the plan until it meets City
 2904 requirements, including reasonably demonstrating how City's basic Collection
 2905 and sanitary needs will be met to the City's satisfaction.

2906 ii. Contractor shall meet all requirements of this plan or City may revoke this excuse
 2907 from performance offered under this Agreement and may choose to use
 2908 enforcement provisions under this Agreement in which case Contractor is not
 2909 excused from performance and Contractor shall be obligated to continue to
 2910 provide service notwithstanding the occurrence of any or all of such events.

2911 3. **Collection During Labor Disruption.** Contractor shall prioritize those Collection activities it
 2912 is able to perform during the pendency of the labor disruption, with hospitals, essential
 2913 services, restaurants and other six (6) services days per week Customers prioritized for
 2914 Collection on the basis of health and sanitation. In the event that a labor strike or
 2915 disruption to Collection services should last longer than seven (7) consecutive days, City
 2916 may contract with a third party to provide Collection services for the period of time
 2917 limited to the time Contractor is unable to provide such services until the labor strike or
 2918 disruption has concluded. Contractor shall notify City when the labor disruption has
 2919 ended, and the date Contractor will resume Collection services.

2920 **11.8 Right to Demand Assurances of Performance**

2921 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those
 2922 members of the public residing or doing business within City who will be adversely affected by
 2923 interrupted waste management service, that there be no material interruption in services provided
 2924 under this Agreement.

2925 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
 2926 picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to
 2927 regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order
 2928 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes
 2929 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in
 2930 substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have,
 2931 demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in
 2932 such form and substance as City believes in good faith is reasonably necessary in the circumstances to
 2933 evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide

2934 satisfactory assurances of timely and proper performance in the form and by the date required by City,
2935 such failure or refusal shall be an event of default for purposes of Section 11.1.

2936 **11.9 Dispute Resolution**

2937 In the event of dispute between the City Manager and the Contractor regarding the interpretation of or
2938 the performance of services under this Agreement which results in a material impact to the Contractor's
2939 revenue and/or cost of operations the provisions of this Section 11.9 shall apply.

2940 A. **Meet and Confer.** In the event of disputes regarding the performance of any obligation under this
2941 Agreement which results in a material impact to the Contractor's revenue and/or cost of
2942 operations, the City and Contractor agree that they promptly will meet and confer to attempt to
2943 resolve the matter between themselves.

2944 B. **Mediation.** If disputes which arise under this Agreement cannot be resolved satisfactorily
2945 between the Parties in accordance with Section 11.9.A, the City and Contractor agree that such
2946 disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon
2947 independent third party.

2948 C. **Period of Time.** Insofar as allowed by Applicable Law, the period otherwise applicable for filing
2949 claims against the City under Applicable Law shall be tolled during the period of time for which
2950 meet and confer or mediation procedures are pending, in accordance with Sections 11.9.A and
2951 11.9.B.

2952 D. **Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the dispute(s)
2953 pursuant to Sections 11.9.A, 11.9.B, and 11.9.C have failed and any necessary claim(s) have been
2954 denied.

2955 **ARTICLE 12.**

2956 **REPRESENTATIONS AND WARRANTIES OF**

2957 **THE PARTIES**

2958 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented in this
2959 Article 12.

2960 **12.1 Contractor's Corporate Status**

2961 Contractor, or parent company, is a corporation duly organized, validly existing and in good standing
2962 under the laws of the State. It is qualified to transact business in the State and has the power to own its
2963 properties and to carry on its business as now owned and operated and as required by this Agreement.

2964 **12.2 Contractor's Corporate Authorization**

2965 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
2966 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by
2967 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
2968 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
2969 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

2970 12.3 Agreement Will Not Cause Breach

2971 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or
2972 delivery of this Agreement or the performance by either Party of their obligations hereunder does not
2973 conflict with, violate, or result in a breach of: (i) any Applicable Law; or, (ii) any term or condition of any
2974 judgment, order, or decree of any court, administrative agency or other governmental authority, or any
2975 agreement or instrument to which Contractor or City is a Party or by which Contractor or any of its
2976 properties or assets are bound, or constitutes a default hereunder.

2977 12.4 No Litigation

2978 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,
2979 proceeding or investigation, at law or in equity, before or by any court or governmental authority,
2980 commission, board, agency, or instrumentality decided, pending, or threatened against either Party
2981 wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would:

- 2982 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 2983 B. Adversely affect the validity or enforceability of this Agreement; or,
- 2984 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity
2985 guaranteeing Contractor's performance under this Agreement.

2986 12.5 No Adverse Judicial Decisions

2987 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial
2988 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

2989 12.6 No Legal Prohibition

2990 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in
2991 effect on the date that Party signed this Agreement that would prohibit the performance of either their
2992 obligations under this Agreement and the transactions contemplated hereby.

2993 12.7 Contractor's Ability to Perform

2994 Contractor possesses the business, professional, and technical expertise to perform all services,
2995 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
2996 Contractor possesses the ability to secure equipment, facility, and employee resources required to
2997 perform its obligations under this Agreement.

2998 **Article 13.**
2999 **Other Agreements of the Parties**

3000 13.1 Relationship of Parties

3001 The Parties intend that Contractor shall perform the services required by this Agreement as an
3002 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner
3003 or agent of, or joint venture with, City. No employee or agent of Contractor shall be, or shall be deemed

3004 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and
3005 means of performing services under this Agreement, except as expressly provided herein. Contractor
3006 shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and
3007 agents. Neither Contractor nor its officers, employees, Subcontractors, and agents shall obtain any rights
3008 to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City
3009 employees by virtue of their employment with City.

3010 **13.2 Compliance with Law**

3011 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the
3012 United States, the State, County, and City and with all applicable regulations promulgated by Federal,
3013 State, regional or local administrative and regulatory agencies, now in force and as they may be enacted,
3014 issued, or amended during the Term.

3015 **13.3 Governing Law**

3016 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
3017 State.

3018 **13.4 Jurisdiction**

3019 Any lawsuits, at law or in equity, between the Parties arising out of this Agreement shall be filed in a
3020 court of competent jurisdiction in the County. With respect to venue, the Parties agree that this
3021 Agreement is made in and will be performed in the County. The Parties waive all provisions of law
3022 providing for a change of venue in these proceedings to any other county.

3023 **13.5 Binding on Successors**

3024 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
3025 permitted assigns of the Parties.

3026 **13.6 Assignment**

3027 Except as may be provided for in Article 10 (City's Right to Perform Service), neither Party shall assign its
3028 rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other
3029 Person without the prior written consent of the other Party. Any such assignment made without the
3030 consent of the other Party shall be void and the attempted assignment shall constitute a material breach
3031 of this Agreement.

3032 For purposes of this Section 13.6 when used in reference to Contractor, "assignment" shall include, but
3033 not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets
3034 dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of
3035 outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may
3036 result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger,
3037 re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,
3038 liquidation or other transaction to which results in a change of ownership or control of Contractor;
3039 (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the
3040 benefit of creditors, writ of attachment for an execution being levied against this Agreement,
3041 appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event

3042 of a probate proceeding; and, (v) any combination of the foregoing (whether or not in related or
3043 contemporaneous transactions) which has the effect of any such transfer or change of ownership, or
3044 change of control of Contractor.

3045 Contractor acknowledges that this Agreement involved rendering a vital service to City's residents and
3046 businesses, and that City has selected Contractor to perform the services specified herein based on:
3047 (1) Contractor's experience, skill and reputation for conducting its Discarded Materials management
3048 operations in a safe, effective, and responsible fashion, at all times in keeping with applicable laws
3049 pertaining to Excluded Waste, regulations and best Discarded Materials management practices, and, (2)
3050 Contractor's financial resources to maintain the required equipment and to support its indemnity
3051 obligations to City under this Agreement. City has relied on each of these factors, among others, in
3052 choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

3053 If Contractor requests City's consideration of and consent to an assignment, City may deny or approve
3054 such request in its complete discretion. No request by Contractor for consent to an assignment need be
3055 considered by City unless and until Contractor has met the following requirements:

3056 A. Contractor shall undertake to pay City its reasonable expenses for attorney's fees and
3057 investigation costs necessary to investigate the suitability of any proposed assignee, and to
3058 review and finalize any documentation required as a condition for approving any such
3059 assignment;

3060 B. Contractor shall pay the City a transfer fee equal to one percent (1%) of the Gross Receipts
3061 times the number of years (pro-rated for partial years) remaining under this Agreement (based
3062 on actual Rate revenues for the prior twelve (12) months);

3063 C. Contractor shall furnish City with audited financial statements of the proposed assignee's
3064 operations for the immediately preceding three (3) operating years;

3065 D. A proforma financial statement (income statement and balance sheet) for the proposed
3066 assignee with the projected results of operations assuming that the assignment is completed.
3067 Such proforma financial statement shall reflect any debt to be incurred by the assignee as part
3068 of the acquisition of Contractor's operations; and,

3069 E. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least
3070 ten (10) years of Discarded Materials management experience on a scale equal to or exceeding
3071 the sale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5)
3072 years, the proposed assignee has not suffered any significant citations or other censure from
3073 any Federal, State, or local agency having jurisdiction over its Discarded Materials management
3074 operations due to any significant failure to comply with State, Federal, or local laws pertaining
3075 to Excluded Waste and that the assignee has provided City with a complete list of such citations
3076 and censures; (iii) that the proposed assignee has at all times conducted its operations in an
3077 environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its
3078 Discarded Materials management practices in accordance with sound Discarded Materials
3079 management practices in full compliance with all Federal, State, and local laws regulating the
3080 Collection and Disposal of Discarded Materials including Hazardous Waste; and, (v) of any other
3081 information required by City to ensure the proposed assignee can fulfill the Terms of this
3082 Agreement in a timely, safe and effective manner.

3083 Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor
3084 is in default at any time during the period of consideration.

3085 **13.7 No Third-Party Beneficiaries**

3086 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
3087 party to bring an action to enforce any of its terms.

3088 **13.8 Waiver**

3089 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
3090 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach
3091 of violation of the same or any other provision. The subsequent acceptance by either Party of any
3092 monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or
3093 concurrent breach or violation by the other Party of any provision of this Agreement.

3094 **13.9 Affiliated Companies**

3095 Contractor's accounting records shall be maintained on a basis showing the results of Contractor's
3096 operations under this Agreement separately from operations in other locations, as if Contractor were an
3097 independent entity providing service only to City. The costs and revenues associated with providing
3098 service to City shall not be combined, consolidated or in any other way incorporated with those of other
3099 operations conducted by Contractor in other locations, or with those of an Affiliate.

3100 If Contractor enters into any financial transactions with a Related Party Entity for the provision of labor,
3101 equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement,
3102 that relationship shall be disclosed to City, and in the financial reports submitted to City. In such event,
3103 City's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or
3104 entities.

3105 **13.10 Transition to Next Contractor**

3106 Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the
3107 end of the Term, Contractor shall cooperate fully with City and any subsequent Discarded Materials
3108 enterprise it designates to assure a smooth transition of Discarded Materials Handling Services.
3109 Contractor's cooperation shall include, but not be limited to, providing both the City and subsequent
3110 Discarded Materials enterprise with route lists, Billing information, lists of gate or other access codes
3111 and information needed for entry to service areas, Container placement areas by address, levels of
3112 service including any special needs or services required by each location, and other operating records
3113 needed to service all Premises covered by this Agreement. In recognition of the difficulty inherent in
3114 Customer's difficulty or inability to store two sets of Containers, Contractor shall remove its Containers
3115 in coordination with the distribution of Containers by the incoming service provider. Contractor shall
3116 cooperate with the City and incoming service provider in agreeing to the timing of Container removal; if
3117 Parties cannot agree on a phase-out schedule and Contractor does not remove Containers in a timely
3118 manner that requires Customers to store two (2) sets of Containers, City, incoming service provider, or
3119 another entity may remove Contractor's Containers and seek cost reimbursement from Contractor
3120 through its performance bond, letter of credit or other means. The failure to cooperate with City
3121 following termination shall be conclusively presumed to be grounds for specific performance of this
3122 covenant and/or other equitable relief necessary to enforce this covenant.

3123 Contractor shall, to the maximum extent feasible provide a new service provider with all keys, security
3124 codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible
3125 for coordinating Transfer immediately after Contractor's final pickups, so as not to disrupt service.
3126 Contractor shall provide City with detailed route sheets containing service names and addresses, Billing
3127 names and addresses, monthly Rate and Service Levels (quantity, material type, and size of Containers
3128 and pickup days) at least ninety (90) days prior to the transition date and provide an updated list two
3129 weeks before the transition and a final list of changes the day before the transition. Contractor shall
3130 provide means of access to the new service provider at least one (1) full calendar day (excluding
3131 Saturday, Sunday, and Holidays as defined in Exhibit A) prior to the first day of Collection by another
3132 party, and always within sufficient time so as not to impede in any way the new service provider from
3133 easily servicing all Containers.

3134 Contractor to provide documentation of any Customer declining request to provide keys, security codes,
3135 and/or remote controls used to access garages and Container enclosures.

3136 **13.11 Contractor's Investigation**

3137 Contractor has made an independent investigation (satisfactory to it) of the conditions and
3138 circumstances surrounding the Agreement and the work to be performed by it.

3139 **13.12 Condemnation**

3140 City fully reserves the rights to acquire Contractor's property utilized in the performance of this
3141 Agreement, by purchase or through the exercise of the right of eminent domain. This provision is
3142 additive, and not intended to alter the rights of the Parties set forth in Article 10.

3143 **13.13 Notice Procedures**

3144 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
3145 Agreement requires, authorizes, or contemplates, shall be in writing and shall either be personally
3146 delivered to a representative of the Parties at the address below or deposited in the United States mail,
3147 first class postage prepaid, addressed as follows:

3148 If to City:

3149 City of Garden Grove
3150 Attn: City Manager
3151 11222 Acacia Parkways
3152 Garden Grove, California 92840

3153
3154 If to Contractor:

3155 General Manager
3156 Republic Services
3157 1131 N. Blue Gum Street
3158 Anaheim, California 92806

3159
3160 The address to which communications may be delivered may be changed from time to time by a notice
3161 given in accordance with this Section 13.13. Notice shall be deemed given on the day it is personally

3162 delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail. Either Party may
3163 choose to provide email notification to the other Party that notice has been deposited in the mail;
3164 however, such email notification shall not constitute official notice.

3165 **13.14 Representatives of the Parties**

3166 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken
3167 by City except as otherwise provided in this Section 13.14. Each reference to an act performed by, or
3168 obligation of the City Manager in this Agreement is itself a delegation of authority from the City. The City
3169 may delegate, in writing, further authority to the City Manager and/or to other City officials and may
3170 permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers.
3171 The Contractor may rely upon actions taken by such delegates if they are within the scope of the
3172 authority properly delegated to them.

3173 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
3174 the representative of the Contractor in all matters related to the Agreement and shall inform City in
3175 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City
3176 may rely upon action taken by such designated representative as actions of the Contractor unless they
3177 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

3178 **13.15 Compliance with Municipal Code and Code of Regulations**

3179 Contractor shall comply with those provisions of the Municipal Code of City and District's Code of
3180 Regulations which are applicable, and with any and all amendments to such applicable provisions during
3181 the Term of this Agreement, which further constitutes a change in Applicable Law within the meaning of
3182 this Agreement.

3183 **13.16 Cooperation Following Termination**

3184 At the end of the Term or in the event this Agreement is terminated prior to the end of the Term,
3185 Contractor shall cooperate fully with City and any subsequent Contractor to assure a smooth transition
3186 of Discarded Materials management services. Contractor's cooperation shall include, but not be limited
3187 to, providing operating records needed to service all properties covered by this Agreement. City may
3188 further use Contractor's Customer information in the procurement of a new contract for Discarded
3189 Materials management services. The failure to cooperate with City following termination or in the
3190 procurement of a new contract shall be conclusively presumed to be grounds for specific performance
3191 of this covenant and/or other equitable relief necessary to enforce this covenant.

3192 **13.17 Compliance with Immigration Laws**

3193 Contractor shall be knowledgeable of and comply with all local, State, and Federal laws which may apply
3194 to the performance of this Agreement. Contractor warrants and represents that all of its employees,
3195 including any and all prospective employees hired to perform services for the City under this Agreement
3196 and the employees of any Subcontractor retained by the Contractor to perform a portion of the services
3197 under this Agreement, are and will be authorized to perform the services contemplated by this
3198 Agreement in full compliance with all applicable State and Federal laws, rules and regulations, including,
3199 but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of
3200 the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act
3201 of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor

3202 agrees to verify the legal status of all of its employees and provide documentation of such verification
3203 whenever requested by the City. If Contractor discovers that any employee it has retained is not in
3204 compliance with Immigration Laws, Contractor agrees to terminate such employee.

3205 **13.18 Guarantee of Contractor's Performance**

3206 Pursuant to a guarantee in substantially the form attached as Exhibit G, Republic Waste Services of
3207 Southern California, LLC, a corporation which owns all of the issued and outstanding common stock of
3208 Contractor, has agreed to guarantee Contractor's performance of this Agreement. The Guarantee is
3209 being provided no later than ten (10) days subsequent to the execution of this Agreement.

3210 **ARTICLE 14.** 3211 **MISCELLANEOUS AGREEMENTS**

3212 **14.1 Entire Agreement**

3213 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
3214 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party
3215 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
3216 construed against any Party on the basis of drafting. This Agreement may be amended only by an
3217 agreement in writing, signed by each of the Parties hereto.

3218 **14.2 Section Headings**

3219 The article headings and section headings in this Agreement are for convenience of reference only and
3220 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
3221 provisions.

3222 **14.3 References to Laws**

3223 All references in this Agreement to laws and regulations shall be understood to include such laws as
3224 they may be subsequently amended or recodified, unless otherwise specifically provided herein.

3225 **14.4 Interpretation**

3226 This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably
3227 and neither for nor against either Party, regardless of the degree to which either Party participated in its
3228 drafting.

3229 **14.5 Amendments**

3230 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

3231 **14.6 Severability**

3232 If any non-material provision of this Agreement is for any reason deemed to be invalid and
3233 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining
3234 provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had
3235 not been contained herein.

3236 14.7 Counterparts

3237 This Agreement may be executed in counterparts, each of which shall be considered an original.

3238 14.8 Exhibits

3239 **Each of the Exhibits identified as Exhibit "A" through "O" is attached hereto and incorporated herein
3240 and made a part hereof by this reference. In the event of a conflict between the terms of this
3241 Agreement and the terms of an Exhibit, the terms of this Agreement shall control. In the event of a
3242 conflict between Exhibit J, and any other Exhibit(s), such other Exhibit(s) shall control.

3243 14.9 Non-Waiver Provision

3244 Failure of either Party to exercise any of the remedies set forth herein within the time periods provided
3245 for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or
3246 subsequent failures to perform whether determined to be a breach, excused performance, or
3247 unexcused defaults by the other Party.

3248 14.10 Attorneys' Fees

3249 If either Party to this Agreement is required to initiate or defend or is made a Party to any action or
3250 proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding,
3251 in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to
3252 reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and, in addition,
3253 a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such
3254 action, taking depositions and discovery and all other necessary costs the court allows which are
3255 incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such
3256 action and shall be enforceable whether or not such action is prosecuted to judgment.

3257 IN WITNESS WHEREOF, this Agreement is entered by the Parties hereto in Orange County, California on
3258 the day and year first above written.

City of Garden Grove,
A Municipal Corporation

City Manager Date

Garden Grove Sanitary District, a California
special district

General Manager Date

APPROVED AS TO FORM:

City Attorney/General Counsel Date

ATTEST:

City Clerk/Secretary Date

“CONTRACTOR”

Signature Date

Print Name of Signatory

Title of Signatory

Signature Date

Print Name of Signatory

Title of Signatory

City Business License #

3259