DRAFT

FRANCHISE AGREEMENT

BETWEEN

City of Carlsbad

AND

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOR

RECYCLing, Organics, AND Solid Waste collection

and

RECYCLing Processing SERVICES

RFP Draft

June 17, 2020

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020

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DRAFT Franchise Agreement
between
City of Carlsbad
and
\_\_\_\_\_\_\_\_\_
for Recycling, Organics, and Solid Waste Collection
and Recycling Processing Services

THIS FRANCHISE AGREEMENT is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 between the City of Carlsbad, California, a municipal corporation (hereinafter “City”), and \_\_\_\_\_\_\_\_\_, (hereinafter referred to as the “Contractor”) (each a “Party” and collectively the “Parties”).

RECITALS

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

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

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

**WHEREAS**, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and,

**WHEREAS**, SB 1383 requires the City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to the Contractor, acting as the City’s designee, through this Agreement; and,

**WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive right be awarded to a qualified Contractor to provide for the Collection of Recyclable Materials, Organic Materials, and Solid Waste and other services related to meeting the City’s economic and environmental goals; and,

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

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

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

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

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

ARTICLE 1.
GRANT AND ACCEPTANCE OF FRANCHISE

## 1.1 Grant and Acceptance of Franchise

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

## 1.2 Limitations to the Franchise

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

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

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

C. **Construction and Demolition Debris (C&D).** Other Persons shall have the right to collect C&D, provided that such Persons maintain a City-issued permit granting such right, and the C&D was generated from a construction, demolition, alteration, or remodel projectpursuant to a permit issued by the City.

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

E. **Edible Food.** Edible food which is collected from a Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or which is Self-Hauled by the Generator to another Person(s), such as a Person from a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food.

F. **Food Scraps.** Food Scraps that are separated by the Generator and used by the Generator or distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled by another party.

G. **Materials That Contractor Does Not Divert.** Discarded Materials which the Contractor is not required to Process and Divert under this Agreement as of the Effective Date of this Agreement which subsequently, in the City’s reasonable judgment, become economically feasible to Divert. In such event, Contractor shall have the exclusive right to Collect and Process such materials if Contractor agrees to do so without any change in Rates. If Contractor is unwilling to Process and Divert such new materials at existing Rates, the City may provide for Collection, Processing, and Diversion of such materials in any manner it deems appropriate. Such materials may include, but not be limited to, Organic Materials which Contractor would otherwise Dispose. Contractor may not enforce its exclusive franchise rights in a manner that would prevent the Diversion of material that Contractor is unable or unwilling to Divert.

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

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

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

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

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

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

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

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

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

## 1.3 Obligations of Parties

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

1. Use their reasonable commercial efforts to enforce the exclusive nature of the franchise by the Contractor’s identification and documentation of violations of the franchise Agreement and the City’s notification of Generators and collection companies reasonably believed to be violating the franchise regarding the terms of this Agreement.

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

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

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

ARTICLE 2.
TERM OF AGREEMENT

## 2.1 Term and Option to Extend

The Term of this Agreement shall commence July 1, 2022 (Commencement Date) and continue in full force for a period of approximately ten (10) years, through and including June 26, 2032, unless the Agreement is extended in accordance with this Section or terminated pursuant to Section 10.2.

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

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

## 2.2 Conditions to Effectiveness of Agreement

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

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

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

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

 1. Materially adversely affect the performance by Contractor of its obligations hereunder;

 2. Adversely affect the validity or enforceability of this Agreement; or,

 3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

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

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

ARTICLE 3.
SCOPE OF AGREEMENT

## 3.1 Summary Scope of Services

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

A. For a three-Container system: Providing a three-Container Collection program for the separate Collection of Recyclable Materials, Organic Materials, and Solid Waste generated by and placed for Collection by Customers pursuant to the requirements of Article 4 and Exhibit B*.*

 For a four-Container system: Providing a four-Container Collection program for the separate Collection of Recyclable Materials, Yard Trimmings, Food Waste, and Solid Waste generated by and placed for Collection by Customers pursuant to the requirements of Article 4 and Exhibit B.

 {*Note to proposers: Proposers shall submit a proposal for a three-Container (base proposal) and a four-Container system (required proposal alternative). While some areas highlight the differences between a three- and four-Container system, the draft franchise Agreement is structured for a three-Container system, and additional customization will be necessary if a four-Container system is selected. The Agreement will be modified to match the proposed Container system based on the City’s selection.}*

B. Transporting Collected materials to the appropriate Approved Facilities pursuant to requirements of Article 4 and Exhibit B;

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

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

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

F. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees (including City Fees and Reimbursements), and utilities;

G. Performing or providing all services necessary to fulfill its obligations in full accordance with this Agreement at all times using best industry practice for comparable operations; and,

H. Complying with all Applicable Laws.

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

## 3.2 Use of Approved Facilities

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

## 3.3 Subcontracting

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

## 3.4 Responsibility for Materials

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

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

## 3.5 City-Directed Changes to Scope

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

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

ARTICLE 4.
SCOPE OF SERVICES

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

*{Note to Proposers: References to Subcontractors in this Article will be updated based on the proposed Processing Facility ownership.}*

## 4.1 Recyclable Materials

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

**B. Transfer.** *{Note to Proposers: If a Transfer Station will be used to consolidate Recyclable Materials for Transport to the Approved Recyclable Materials Processing Facility the following paragraph will be used. If no Transfer services will be required, the paragraph will be deleted.}* Contractor plans to Transport Recyclable Materials to the Approved Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Approved Recyclable Materials Processing Facility. Contractor shall keep all existing permits and approvals necessary for use of the Approved Transfer Facility in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to City Contract Manager. If the Contractor is unable to use the Approved Transfer Facility, then the Contractor shall be responsible for making other Transportation arrangements. In such event, Contractor shall not be compensated for any additional costs. If the Contractor plans to change its Transfer method, Contractor shall obtain written approval from the City prior to making the change.

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

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

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

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

 If the use of an alternative Processing Facility is for reasons within Contractor’s, or its Processing Facility Subcontractor’s control, Contractor’s Compensation shall not be adjusted for any change in Transportation and Processing costs associated with use of the alternative Processing Facility. However, if the use of an alternative Processing Facility is due to reasons beyond Contractor’s or its Subcontractor’s control, then City shall adjust, either up or down, Contractor’s Compensation for changes in Transportation and Processing costs associated with the use of the alternative Processing Facility. The performance of Recyclable Materials commodity markets shall not be considered an acceptable basis for use an alternative Processing Facility nor shall it serve as the basis for any adjustment in Contractor’s Compensation under this Agreement, other than as specifically contemplated in Exhibit E to this Agreement. If the change in the Processing Facility results in increased costs, City may identify and direct Contractor to an alternative Processing Facility, without additional compensation to Contractor, which results in less cost than the Contractor-identified alternative.

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

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

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

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

## 4.2 Organic Materials

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

**B. Transfer.** *{Note to Proposers: If a Transfer Station will be used to consolidate Residential or Commercial Organic Materials for Transport to the Approved Organic Materials Processing Facility the following paragraph will be used. If no Transfer services will be required, the paragraph will be deleted.}* Contractor plans to Transport {Residential/Commercial} Organic Materials to the Designated Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Approved Organic Materials Processing Facility. Contractor shall keep all existing permits and approvals necessary for use of the Designated Transfer Facility in full regulatory compliance.

**C. Processing.** {*Note to proposers: Proposers shall submit a proposal for a three-Container (base proposal) and a four-Container system (required alternative proposal). Organics Processing Proposers may propose one or both of two (2) Organic Material Processing options: (1) Organic Processing Facility(ies) to Process Source Separated Food Waste and Yard Trimmings separately (Collected in a four Container system); and, (2) Organic Processing Facility to Process commingled Food Waste and Yard Trimmings (Collected in a three Container system). While some areas highlight the differences between a three- and four-Container system, the draft franchise Agreement is structured for a three-Container system, and additional customization will be necessary if a four-Container system is selected. The Agreement will be modified to match the proposed Container system based on the City’s selection.}*

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

1. **Capacity Guarantee.** Contractor guarantees sufficient capacity at the Approved Organic Materials Processing Facility to Process all Source Separated Commercial Organic Materials Collected by Contractor under this Agreement throughout the Term of the Agreement.
2. **Compliance with Regulatory Requirements and Applicable Law.** Contractor shall keep all existing permits and approvals necessary for use of the Approved Organic Materials Processing Facility in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor if necessary) to City Contract Manager.
3. **Notification of Emergency Conditions.** Each Approved Facility shall notify the City of any unforeseen operational restrictions that have been imposed upon the Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Facility from Processing the Discarded Materials Collected under this Agreement.
4. **Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).** If Contractor is unable to use the Approved Organic Materials Processing Facility due to an event that meets the requirements for excusing Contractor from performance of this specific obligation as described in Section 10.7, Contractor shall use an alternative Processing Facility provided that the Contractor provides written notice to City Contract Manager. Within forty-eight (48) hours of emergency or sudden and unforeseen closure, the Contractor shall provide a written description of the reasons the use of the Approved Commercial Organic Materials Processing Facility is not feasible and the period of time Contractor proposes to use the alternative Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such time as the City Contract Manager is able to consider and respond to the use of the proposed alternative Processing Facility. If the use of the proposed alternative Processing Facility is anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such Processing Facility shall be subject to approval by the City Contract Manager. The City Contract Manager may, in their sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed alternative Processing Facility. If the City disapproves the use of the proposed alternative Processing Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

If the use of an alternative Processing Facility is for reasons within Contractor’s, or its Processing Facility Subcontractor’s control, Contractor’s Compensation shall not be adjusted for any change in Transportation and Processing costs associated with use of the alternative Processing Facility. However, if the use of an alternative Processing Facility is due to reasons beyond Contractor’s or its Subcontractor’s control, then City shall adjust, either up or down, Contractor’s Compensation for changes in Transportation and Processing costs associated with the use of the alternative Processing Facility. In the event that the change in the Processing Facility results in increased costs, City may identify and direct Contractor to an alternative Processing Facility, at the contractor’s expense, which results in less cost than the Contractor-identified alternative.

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

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

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

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

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

## 4.3 Solid Waste

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

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

Contractor plans to Transport Solid Waste to the Designated Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Designated Disposal Facility. Contractor shall keep all existing permits and approvals necessary for use of the Approved Transfer Facility in full regulatory compliance. Upon request, Contractor shall provide copies of facility permits and/or notices of violations (obtained from its Transfer Facility Subcontractor if necessary) to City Contract Manager. If the Contractor is unable to use the Designated Transfer Facility, then the Contractor shall be responsible for making other Transportation arrangements. In such event, Contractor shall not be compensated for any additional costs. If the Contractor plans to change its Transfer method, Contractor shall obtain written approval from the City prior to making the change.

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

## 4.4 Bulky Items and Reusable Materials

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

## 4.5 Special Events

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

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

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

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

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

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

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

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

## 4.6 Public Education and Outreach

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

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

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

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

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

## 4.7 Billing

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

*{Note to Proposer: The City currently performs Residential billing. The City’s intent is to transition all billing to the Contractor. The language below describes the desired future system. Some language may need to be added to describe the billing transition and obligations of the parties around that.}*

Contractor shall bill all Single-Family Residential Customers monthly in advance of services provided. Contractor shall bill all Commercial and Multi-Family Customers for scheduled and regularly recurring services on a monthly basis in advance of services provided. Contractor shall bill Customers for any on-call and/or non-recurring services no more frequently than monthly and may only bill for services provided during the previous month. Contractor shall remit invoices to Customers no earlier than the twentieth (20th) day of the month proceeding the period for which service is being billed.

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

1. Customer name;
2. Phone number;
3. Service address;
4. Email address; and,
5. Customer Service Levels, including:
	1. Customer Service Levels exceptions, and,
	2. Customer service waivers.

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

*{Note to Proposer: The City prefers that Customers are billed electronically. Contractor to propose incentivized electronic billing options.}*

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

Up to twelve (12) times per calendar year, City may direct Contractor to attach inserts to Customer invoices. Contractor shall provide electronic bill inserts to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for such attachments, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.

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

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

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

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

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

## 4.8 Customer Service Program

### 4.8.1 Program Requirements

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

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

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

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

### 4.8.2 Service Requests, Compliments, Complaints

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

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

### 4.8.3 Missed Collections

**A. Missed Collection Complaints.** When handling Customer Complaints related to missed or incomplete Collections, Contractor shall not question or contest the Customer’s claim that the Collection was missed or incomplete, even in cases where the route driver recorded the Container(s) in question as already “Collected” or “not out.” If Contractor believes a Customer has pattern of inaccurately reporting missed Collections, Contractor may submit a request to the City Contract Manager that the Customer be disqualified from receiving future Missed Collection Rebates for a period to be determined by the City Contract Manager. Such application shall include, but not be limited to: a statement explaining why Contractor believes the missed Collections were inaccurately reported; documentation of the Customer’s prior Complaints and resolution thereof; and, call center notes taken during the Complaint calls.

**B. Schedule for Resolution.** Contractor shall resolve every Customer Complaint of a missed or incomplete Collection by returning to the Customer address and completing the Collection. For all Complaints related to missed Collections that are received by 3:00 p.m. on a Working Day, the Contractor shall return to the Customer address and Collect the missed materials on the same Working Day on which the missed Collection was reported. For those Complaints related to missed Collections that are received after 3:00 p.m. on a Working Day, the Contractor shall have until the end of the following Working Day to resolve the Complaint. Contractor shall pay Customer rebates for late Collections in accordance with Section 5.12. Contractor’s failure to comply with this Section 4.8.3 may result in Liquidated Damages, in accordance with Exhibit F.

Contractor shall not be required to return and complete a Collection in response to a Complaint if the Contractor’s driver has left a non-Collection notice in accordance with Section 5.8.

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

### 4.8.4 SB 1383 Non-Compliance Complaints

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

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

## 4.9 Access to Customer Service and Billing Systems

Contractor shall provide access and any necessary training to one (1) or more City employee(s) (as designated by the City) regarding the use of Contractor information systems as described in this Section. Contractor shall designate one (1) member of Contractor staff to work directly with such City employee. Contractor shall provide such City employee with access to Customer service, call center, and operations information systems in order to validate Contractor performance standards, verify that Customer rebates have been issued in accordance with Section 5.12, and recommend changes to Customer Service Levels to resolve service issues or otherwise address Customer needs. If recommended Service Level changes are made, the designated City staff will work with Contractor’s route manager to make such changes, which shall not be denied by Contractor except for reasons related to Customer, route driver, and/or equipment safety. Contractor shall also provide access to Customer contact information (including email addresses) for purposes of City-provided public education and outreach activities. In addition, Contractor shall ensure that the City Contract Manager and any other City staff, as requested by the City, have read-only access to all service order, billing, and Customer service records in Contractor’s internal information systems. Such read-only access is intended to provide the City the ability to review notes related to Customer service and/or billing issues.

## 4.10 Service Exemptions

### 4.10.1 General Exemptions

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

### 4.10.2 Commercial and Multi-Family Customer Waivers

**A. General.** The City may grant waivers described in this Section to Commercial or Multi-Family Generators that impact the scope of Contractor’s provision of service for those Customers. Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the City.

**B. Types of Generator Waivers**

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

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

b. The Commercial or Multi-Family Generator’s total Discarded Materials Collection service is less than two (2) cubic yards per week, and Organic Waste subject to Collection in a Recyclable Materials Container or Organic Materials Container comprises less than ten (10) gallons per week, per applicable Container, of the Commercial business’ total waste.

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

**C. Contractor Review of Waiver Requests.** Generators may submit requests for de minimis waivers and physical space waivers to the City, and the City may request the Contractor’s assistance in reviewing such waivers. Upon the request of the City, Contractor shall within seven (7) days of receipt of the City’s request, inspect the Generator’s Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the date of the inspection, Customer name and address, a description of the Premises, evaluation of each criterion of the relevant waiver type, and photographic evidence. The Contractor shall send this information and documentation to the City in a timely manner, not to exceed three (3) days after the date of inspection. The City ultimately retains the right to approve or deny any application, regardless of the information provided by the Contractor. Contractor shall report information regarding waivers reviewed within the month, if any, in accordance with Exhibit D and Section 4.7.

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

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

### 4.10.3 Contractor Service Exemptions

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

**B. Removal of Material from Homeless Encampments and Illegal Disposal Sites.** The Contractor may, but is not required to, separate or recover Organic Waste that City removes from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety. Contractor shall report the amount of Discarded Materials removed for Disposal from homeless encampments and illegal disposal sites, in accordance with Exhibit D.

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

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

## 4.11 Contamination Monitoring

### 4.11.1 Annual Route Reviews

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

 {Note to proposers: This section assumes a three- Container system. If using a four-Container system, all four Container types (Recyclable Materials, Yard Trimmings, Food Waste, and Solid Waste) would need to be inspected, and this Section of the Agreement would be modified accordingly.}

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

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

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

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

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

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

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

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

**B. Contamination Notification.** Upon identification of Prohibited Container Contaminants in a Customer’s Container, Contractor shall provide the Customer with a notice of contamination in the form of either a courtesy pick-up notice or a non-Collection notice as determined by the route auditor.

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

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

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

 The format of the courtesy pick-up notice shall be approved by the City Contract Manager and must be a distinct color from the non-Collection notices.

 Contractor shall Collect the contaminated Recyclable Materials and/or Organic Materials Containers and either Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with the Solid Waste and Transport the contaminated materials to the Approved Disposal Facility. A Courtesy Collection of contaminated Recyclable Materials or Organic Materials where the materials are sent to the Approved Disposal Facility may be made with a Solid Waste Collection vehicle, provided that the contaminants may safely and lawfully be Collected as Solid Waste.

**D. Non-Collection Notices**

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

The non-Collection notice shall, at a minimum:

1. Inform the Customer of the reason(s) for non-Collection;
2. Include the date and time the notice was left or issued;
3. Describe the premium charge to Customer for Contractor to return and Collect the Container after Customer removes the Contamination;
4. Provide a warning statement that a contamination Processing fee may be assessed; and,
5. Include photographic evidence of the violation(s).
6. Communications with Customer. Whenever a Container at the Premises of a Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the scheduled Collection day or within \_\_\_(\_\_) hours of the scheduled Collection day by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss, and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.
7. Contractor Return for Collection. Upon request from Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of Customer’s request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill Customer for the extra Collection service event (“extra pick-up”) at the applicable City-approved Rates only if Contractor notifies Customer of the premium Rate for this service at the time the request is made by Customer.

**E. Assessment of Contamination Processing Fees.** If the Contractor observes twenty percent (20%) or more Prohibited Container Contaminants and has issued a Courtesy notice or Non-Collection notice, as appropriate, the Contractor may impose a contamination Rate approved by the City for that Customer’s Service Level. The intent of Contamination Fees is to provide a behavioral tool to educate and prevent Customers from placing Source Separated Discarded Material into the improper designated Container(s). To ensure that assessment of fees are to be used for the intended purposes and not as a form of revenue generation, Contractor agrees that Contamination fees shall not exceed one percent (1%) of Contractor’s Gross Receipts in any calendar quarter. In the event that Contamination fees exceed one percent (1%) of Contractor’s Gross Receipts in any calendar quarter, the assessment of Contamination fees shall be suspended immediately and indefinitely pending a program assessment by the City and Contractor. Upon program suspension or at the request of the City at any time during the Term of the Agreement, City and Contractor shall meet and confer regarding the application and effectiveness of Contamination fees in accomplishing the behavior change. If the program is suspended due to excessive revenue generation, the City may require Contractor to either: i) modify the program parameters; ii) modify the amount of the Contamination fee; or, iii) return to the City any funds generated by the Contamination fee which exceed one percent (1%) of Contractor’s Gross Receipts for a given period of time.

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

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

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

 Each Contamination Processing Fee Notice shall, at a minimum:

1. Describe the specific material(s) of issue;
2. Explain how to correct future set outs; and,
3. Indicate that the Customer will be charged a contamination Processing fee on their next bill.

**F. Reporting Requirements.**

1. **Container Contaminant Log:** The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including, but not limited to: date, time, Customer’s address, type of Container, and maintain photographic evidence.
2. **Contaminant Fees Assessment Report:** Additionally, on no less than a weekly basis, Contractors Contract Administrator shall update the Customer’s account records to note the contaminant event(s) as identified by driver(s). Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, consistent with the submittal timing and content requirements of Exhibit D. Failure to meet the requirements of this Section 4.11.1(F)(2), shall equate to Liquidated Damages as identified in Exhibit F.
3. **Monthly Report:** The monthly report shall include, but is not limited to: list of Customers that were assessed charges; photographic evidence of each contamination event(s) where a fee(s) was assessed; verification processes to assure accurate fee assessment; date of notification, form(s) of notification given to Customer; list of efforts made in educating the Customer that was assessed a fee; list of Customer Complaints in response to fee assessment; Contractor’s response and actions taken in response to Customer Complaints; and, the dollar amount of Contamination Fees assessed during the reporting period. Failure to meet the requirements of this Section 4.11.1(F)(3), shall equate to Liquidated Damages as identified in Exhibit F.

### 4.11.2 Waste Characterization Studies

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

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

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

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

 The Contractor shall Transport all of the material Collected for sampling to a sorting area at an Approved Facility, where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:

1. The Contractor shall take one sample of at least a two hundred (200) pounds from the material Collected from each material stream for sampling. For example, Contractor shall take a two hundred (200) pound sample taken from the combined contents of the Organic Materials Container samples.
2. The two hundred (200) pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.
3. For each two hundred (200) pound sample, the Contractor shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.
4. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.
5. All weights shall be recorded in pounds.

**C. Scheduling and Observation of Studies.** Contractor shall, no later than January 15 of each calendar year, provide the City with a proposed methodology for each type of study and a schedule of studies for the calendar year for review and approval by the City. The City shall be notified at least thirty (30) days in advance of each study and the City, or the City’s designated third party, maintains the right to observe all aspects of the study. The studies shall be scheduled within the City’s normal business hours, and the City Contract Manager may request, and Contractor shall accept, modifications to the schedule to permit observation by the City.

**D.** **Recordkeeping and Reporting.** Contractor shall maintain records of each study conducted and report results directly to the City within fourteen (14) days of completing the study as well as include the results in the Contractors annual report, in accordance with Exhibit D.

**E. General.** Pursuant to the requirements of SB 1383, 14 CCR, Division 7, Chapter 12, Article 10, the City is responsible for developing and implementing a Food Recovery program in the City. The Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery program efforts in the City.

**F. Identification of Commercial Edible Food Generators.** Contractor shall assist the City with identifying Tier One and Tier Two Commercial Edible Food Generators for the purpose of the Food Recovery program. No later than six (6) months after the Effective Date of the Agreement, and annually thereafter, the Contractor shall identify and provide a list to the City of Commercial Customers that qualify, or appear to qualify, as Tier One or Tier Two Commercial Edible Food Generators, as defined by this Agreement. The list shall include, at a minimum: the Customer name; service address; contact information; Tier One or Tier Two classification; and, type of business as it relates to the categories of entities specified under the definitions of Tier One and Tier Two Commercial Edible Food Generators. The Contractor shall update this information annually; maintain an up-to-date database; and include this information in the Contractor’s annual report, in accordance with Exhibit D.

 ARTICLE 5.
STANDARD OF PERFORMANCE

## 5.1 General

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

## 5.2 Operating Hours and Schedules

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

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

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

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

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

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

## 5.3 Collection Standards

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

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

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

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

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

1. A template Non-Collection Notice, for use in instances of acceptable non-Collection of Discarded Materials; and,
2. A template Courtesy Notice, for use in instances of improper set-out of Discarded Materials, which the Contractor, at its sole option, elects to Collect as a courtesy to the Customer.

Per the requirements identified in Section 4.11.1, in the event that Contractor encounters circumstances at a Customer Premises which prevents the Contractor from Collecting Discarded Materials which have been placed for Collection, Contractor shall leave a Non-Collection Notice at the Customer Premises clearly explaining Contractor’s reason for refusal to Collect the Discarded Materials. Contractor shall not be required to Collect Discarded Materials which are reasonably believed to contain Excluded Waste, pursuant to the requirements of Section 5.8. If Contractor intentionally refuses to Collect Discarded Materials (including Cardboard overages), but does not leave a Non-Collection notice, it shall be considered a Missed Collection per Section 4.8.3., and provisions of Section 5.12 shall apply. Contractor may propose an alternative to a paper Non-Collection Notice left at Customer Premises (e.g. Customer notification via a phone call or e-mail) subject to City approval. Such an alternative must involve pro-active communication with Customer, initiated by Contractor. *{Note to Proposers: This section may be revised in the event that an alternative method of addressing non-Collection is approved by the City. Proposers should note that no alternatives will be accepted unless they involve direct, pro-active communication with the Customer.}*.

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

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

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

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

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

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

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

1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers with Courtesy Notices, which will serve as outreach and education to the Customer. Photos of the Container will be taken by drivers, attached to the Customer’s account, and will be available to outreach and Customer service staff in order to demonstrate to the Customer where a problem exists.
2. Outreach to Customer on importance of bagging lightweight materials such as plastic bags, film plastics, foam peanuts, and other materials that can easily become litter due to their lightweight nature.
3. Driver training on litter reduction techniques and litter removal best management practices.
4. Affixing signage to the back of Contractor trucks which provides a phone number for residents to report material spills.

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

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

## 5.4 Transfer and Processing Standards

### 5.4.1 Equipment and Supplies

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

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

### 5.4.2 Scales and Weighing

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

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

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

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

**D. Records.** Contractor shall maintain computerized scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, and vehicle identification number. Contractor shall also maintain computerized scale records and reports providing historical vehicle tare weights for each vehicle and the date and location for each tare weight recorded.

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

## 5.5 Collection Vehicle Requirements

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

1. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall meet On-Road Heavy Duty Vehicle emissions requirements for model year 2020, regardless of the actual model year of Contractor’s vehicles, and generally comply with all Federal, State, and local laws and regulations. Contractor’s vehicles shall utilize Recycled motor oil to the extent practicable.
2. All Collection vehicles used by Contractor under this Agreement shall be powered by Renewable Natural Gas (RNG) generated by the {insert name of publicly-owned treatment works in-vessel digestion facility} or powered by RNG that is purchased through a wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase of gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by 14 CCR to Recycle Organic Waste and meets SB 1383 requirements. Contractor shall comply with this requirement no later than insert date. Upon City’s request, Contractor shall obtain and provide the City with a written certification by an authorized representative of the publicly-owned treatment works or the wheeling agreement service provider certifying that the in-vessel digestion Facility produces the RNG consistent with the requirements of 14 CCR Section 18993.1(h). Contractor shall maintain records of the amount of RNG purchased and shall report this information in accordance with Exhibit D. Contractor shall agree to the City the right to report this RNG usage toward the City’s fulfilment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.
3. Collection vehicles shall have the capability of carrying and safely Transporting empty and full Used Oil Recovery Kits, as well as the capacity to Collect and Transport loose Cardboard overages, to ensure that Contractor is capable of complying with Exhibit B.
4. Collection vehicles shall present a clean appearance while providing service under this Agreement.

**B. Vehicle Display.** Contractor’s name and local telephone number shall be displayed on all vehicles in at least four (4) inch characters. Vehicles shall be equipped with sign board holders or other hardware to allow public education signage of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides of the vehicle.

**C. Vehicle Inspection.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall repair, or arrange for the repair of all its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. City Contract Manager may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with sanitation requirements.

**D. Vehicle Operations.** All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County, and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed sixty (60) decibels with the exception of sixty-five (65) decibels for one (1) minute duration. All decibel readings shall be based on a distance of ten (10) feet from any part of the Vehicle. The City may request Contractor to check any piece of equipment for conformance with the noise limits in response to Complaints and/or when the City Contract Manager believes it is reasonable to do so.

## 5.6 Container Requirements

**A. Containers Provided to Customers.** On or before the Commencement Date, Contractor shall provide Customers (including Single-Family, Multi-Family, Commercial, and City facility Customers) with new Collection Containers as requested by the Customer to meet its desired Service Level. Contractor shall provide Containers to new Customers requesting service initiation, or existing Customers requesting a Used Oil Recovery Kit within three (3) Working Days of Contractor’s first receipt of the Customer request. Contractor-provided Containers shall be new, and shall comply with the Container standards set forth in the Section. All Containers shall display the City’s name, logo, telephone number described in Section 4.8.1, website, capacity (yards or gallons) and some identifying inventory or serial number. Contractor shall cooperate with the previous City Collection contractor to ensure that all existing Containers are replaced with Contractor-provided Containers within thirty (30) calendar days following the Commencement Date.

**B.** **Container Standards**

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

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

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

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

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

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

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

a. Prevents the intrusion of rainwater and vectors;

b. Prevents the emissions on odors;

c. Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;

d. Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable life of the Cart;

e. Hinges to the Cart body in such a manner to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Cart body;

f. Prevents damage to the Container body, the lid itself, or any component parts through repeated opening and closing of the lid by Generators or in the dumping process as intended;

g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two (2) extremes; and,

h. Designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.

8. Containers shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position. Containers shall be capable of maintaining upright position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from any direction.

9. Containers shall be capable of being easily moved and maneuvered, if applicable, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

10. All such Containers shall be one hundred percent (100%) recyclable at the end of their useful life.

11. All Containers shall be designed and constructed to be watertight and prevent the leakage of liquids.

**C. Container Colors.** Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section 5.6, or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation; and the lids and bodies shall be uniform for each Container type, as follows:

For a three- Container system:

1. Recyclable Materials Container bodies and lids shall be blue;

2. Organic Materials Container bodies and lids shall be green; and,

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

For a four-Container system:

1. Recyclable Materials Container bodies and lids shall be blue;

2. Yard Trimmings Container bodies and lids shall be green;

3. Food Waste Container bodies and lids shall be brown; and,

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

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

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

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

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

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

 Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer requests for service, requests for change in Service Levels (size, type, or number of Containers) from current subscribers, and requests for replacement due to damage.

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

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

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

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

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

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

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

## 5.7 Personnel

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

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

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

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

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

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

**E. Designated Staff.**

1. Contractor’s Contract Administrator. Contractor shall designate at least one (1) qualified employee as City’s primary point of contact with Contractor who is principally responsible for Collection operations and resolution of service requests and Complaints. Such individual shall be empowered to negotiate on behalf of and bind Contractor with respect to any changes in scope, dispute resolution, compensation adjustments, and service-related matters which may arise during the Term of this Agreement. Such individual is defined as Contractor’s *{To be completed based on Contractors Proposal}*
2. Field Supervisor.Contractor shall designate one (1) qualified full-time employee as supervisor of field operations. The designated field supervisor will devote at least fifty percent (50%) of his/her time in the City in the field checking on Collection operations, including responding to Customer requests, inquiries, and Complaints.
3. Diversion Coordinators. Contractor shall provide one (1) full-time Diversion Coordinators who are solely dedicated to the City and shall not perform any work related to other jurisdictions, proposals, or business functions of Contractor. Contractor shall hire the Diversion Coordinators in advance of the Commencement Date and the Diversion Coordinators shall assist in contacting all Multi-Family and Commercial Customers prior to the Commencement Date to determine Service Levels. The duties of the Diversion Coordinators will be focused on public education, community outreach, Commercial and Multi-Family site visits, and technical assistance, and will be substantially as proposed by Contractor in Exhibit G, Contractors Proposal and in Exhibit C Public Education and Outreach Requirements. Diversion Coordinators shall be full-time, regular, professional positions, compensated in accordance with the wages shown in Contractor’s Proposal for such positions. Contractor acknowledges that the Diversion Coordinator role is not intended to be an internship, or entry-level role. City shall have the option to participate in the hiring and training process of Contractor’s Diversion Coordinators. City may also employ corresponding staff member who will work in partnership with Contractor’s Diversion Coordinators and Contractor’s Diversion Coordinators shall cooperate and share information openly with such City employee.

 {Note to Proposers: The dollar amounts in this Section will be filled in based on Contractor’s Proposal and negotiations.} In the event that Contractor fails to provide the required number of full-time equivalent Diversion Coordinators for more than two (2) months, Contractor shall remit to the City \_\_\_\_\_\_\_\_\_ dollars ($\_ \_) per un-provided employee for every month (in excess of two months) such employee is not provided. Such amount shall be adjusted annually by the same percentage used to adjust Rates in accordance with Exhibit E. For example, if for six months Contractor provides only two public education staff, rather than the required three, Contractor would remit to the City a minimum of $\_\_\_\_\_\_ (assuming no annual adjustment of the amount has occurred). Contractor shall remit such payment within fifteen (15) Business Days of a written request by the City. The intent of this payment is for the City to utilize the funds to separately procure equivalent public education services and ensure the contractually agreed upon levels of technical assistance and outreach to Customers.

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

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

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

## 5.8 Hazardous Waste Inspection and Handling

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

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

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

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

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

## 5.9 Contract Management

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

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

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

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

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

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

## 5.10 Environmentally-PREFERABLE Purchasing

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

## 5.11 Local Purchasing Preference

Contractor shall, throughout the Term of this Agreement, give preference to purchasing materials and supplies used in connection with Agreement from local vendors within the County or State; and in that order of preference. At a minimum, Contractor shall purchase the following items from vendors within the County: vehicle supplies (e.g., fuel, fluids, tires, parts, etc.); printing and publishing services for any and all public education and outreach materials; uniforms, safety clothing/equipment, and work boots; and office supplies. Contractor shall submit an annual report to City identifying their compliance with this Section and as identified in Section 5.12 Diversion Requirements.

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

Contractor shall maintain at least fifty percent (50%) Diversion of all materials Collected in the City (including both materials Collected by Contractor under this Agreement, and Commercial Recyclable Materials, Organic Materials, and C&D Collected by other City-approved service providers in accordance with Section 1.2). The Diversion percentage shall be calculated as total Tons Diverted divided by total Tons Collected. Total Tons Diverted does not include Processing Residue that is Disposed. *{Note to Proposers: The fifty percent (50%) Diversion requirement is for the Base Proposals only. The final Diversion requirement will be determined following selection of the final service package. The City anticipates that the final Diversion requirements will reflect some degree or measure of year-over-year improvement in Diversion each year of the Term.}*

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

## 5.12 Customer Rebates for Failure to Provide Service

**A. General.** Contractor and City agree that Contractor’s failure to provide service in accordance with Articles 4 and 5 of this Agreement will result in the impacted Customer receiving a lower level of service than is anticipated by the Customer’s subscribed Rate, and creates additional burdens on the impacted Customer. To account for this, Contractor shall issue rebates to Customers for specific events of non-performance, in accordance with this Section 5.12. Such rebates shall be assessed for each calendar day the issue remains unresolved. Contractor shall issue such rebates automatically, regardless of whether or not the impacted Customer requests a rebate. Rebates as described in this Section 5.12 shall be in addition to any Liquidated Damages or other remedies associated with Contractor’s failure to perform.

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

**C. Late Container Delivery Rebate.** For each failure to deliver a Container to a new or existing Customer in accordance with the schedule provided in Section 5.6, Contractor shall remit to the Customer a Late Container Delivery Rebate. The Late Container Delivery Rebate amount shall be five dollars ($5.00) per calendar day per Container in Rate Period Zero and Rate Period One, and shall be adjusted annually thereafter by the same percentage used to adjust Rates in accordance with Exhibit E. Contractor shall continue to remit the Late Container Delivery Rebate each calendar day until the Container(s) in question have been delivered. The Late Container Delivery Rebate applies to all approved Containers, including but not limited to a Used Motor Oil Recovery Kits, if an empty Used Oil Recovery Kit is not left when the full kit is Collected, in accordance with Section 4 of Exhibit B1.

**D. Reporting Requirements:**

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

ARTICLE 6.
RECORD KEEPING AND REPORTING

## 6.1 Record Keeping

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

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

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

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

## 6.2 Report Submittal Requirements

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

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

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

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

## 6.3 Performance Review and Audit

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

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

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

ARTICLE 7.
CITY REIMBURSEMENT

## 7.1 Franchise Fee

The Contractor shall pay a Franchise Fee to City each month in exchange for the exclusive rights granted under this Agreement. The amount of the Franchise Fee shall be equal to \_\_\_\_\_\_\_\_ percent (X.X%) of Gross Receipts, paid out of Contractor’s Profit, for all services performed under this Agreement and shall be paid in monthly installments. *{Note to Proposer: The City intends to negotiate this amount with the selected proposer. The amount provided is the current fee received by the City.}*

## 7.2 AB 939/SB 1383 REIMBURSEMENT

The Contractor shall pay an AB 939/SB 1383 Reimbursement to City each month. The amount of the AB 939/SB 1383 Reimbursement shall be twenty-one thousand six hundred sixty-six dollars ($21,666) per month in Rate Period One and shall be paid in equal monthly installments. City shall use the AB 939/SB 1383 Reimbursement to refund expenses including but not limited to, staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, capacity planning, provision of special containers, or other activities involved in compliance with AB 939 and/or SB 1383. The City shall retain the sole right to set priorities for the use of its AB 939/SB 1383 Fee. This fee shall be a pass-through cost. *{Note to Proposer: The City intends to negotiate this amount with the selected proposer.}*

## 7.3 Vehicle Impact Mitigation REIMBURSEMENT

The Contractor shall pay a Vehicle Impact Mitigation Fee to City each month. The amount of the Vehicle Impact Mitigation Fee shall be zero dollars ($0) per month in Rate Period One. This fee is to reimburse the City for street maintenance costs incurred from Collection vehicles traveling on City streets. *{Note to Proposer: The City intends to negotiate this amount with the selected proposer.}*

## 7.4 Storm water REIMBURSEMENT

The Contractor shall pay a Storm Water Reimbursement to the City each month. The amount of the Storm Water Reimbursement shall equal $\_\_\_\_\_\_ in Rate Period One. This payment is to reimburse the City for the cost of providing certain storm water-related services and programs that are related to the provision of Solid Waste services. *{Note to Proposer: The City intends to negotiate this amount with the selected proposer.}*

## 7.5 Adjustment To REIMBURSEMENT

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

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

## 7.6 Payment Schedule and Late Fees

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

Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee paid; calculation of each fee; and, statement of Gross Receipts which separately identifies SB 1383 Fee eligible revenues, by Customer type for the period collected from all operations conducted or permitted by this Agreement. City Contract Manager may, at any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing period. Contractor shall maintain all supporting documents and calculations for each payment made to City as required by Section 6.1.

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

## 7.7 Procurement Reimbursement

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

ARTICLE 8.
CONTRACTOR’S COMPENSATION AND RATE SETTING

## 8.1 General

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

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

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

The Approved Recyclable Materials Processing Facility shall retain revenues received for the sale of Recyclable Materials including California Redemption Value revenues. Such revenues have been considered in the establishment of Rates for services provided under this Agreement. Neither Contractor nor the Approved Recyclable Materials Processing Facility are entitled to funds available through the Department of Resources Recycling and Recovery (CalRecycle) through its “City/County Payment Program” pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction Act.

## 8.2 Rates and Annual Adjustments

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

**B. Rates for Rate Period One.** Rates for Rate Period One, which are presented in Exhibit G3, were determined by Contractor and City and were approved along with the Agreement. The Rates for Rate Period One shall be effective from July 1, 2022 through June 30, 2023.

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

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

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

**D. Rate Structure.** The City may, at any time during the Term of this Agreement and in its sole discretion, change the relationship of individual Rates in comparison with other Rates. Any such changes would occur in conjunction with the annual Rate adjustment process described in Section 8.2.D or in conjunction with a Rate adjustment resulting from an extraordinary Rate adjustment in accordance with Section 8.3. Changes to the rates charged under the new structure shall be calculated in such a way that the revised Rate structure generates at least the same amount of total revenue when the current number of accounts at each Service Level are multiplied by the Rates charged for each Service Level and the total for all Service Levels are summed.

## 8.3 Extraordinary Rate Adjustments

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

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

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

The City Contract Manager shall have the right to request any other information that they, in their sole judgment, determine is necessary to establish the reasonableness or accuracy of Contractor’s request for an extraordinary Rate increase. Contractor’s failure to fully cooperate in a timely manner with any reasonable request for information by the City Contract Manager may result in either the denial of or a delay in the approval of the request for an extraordinary Rate increase

ARTICLE 9.
INDEMNITY, INSURANCE, AND PERFORMANCE BOND

## 9.1 Indemnification

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 9.2 Insurance

*{Note to Proposers: Final insurance provisions are subject to approval by City’s Risk Manager.}*

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

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

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

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

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

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

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

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

 **Technology Professional Liability Errors and Omissions Insurance (Cyber Liability)** appropriate to the Contractor’s profession and industry practice, with limits not less than $2,000,000 per occurrence. Coverage for cyber risks shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor under this Agreement and shall include, but not be limited to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response notification and remediation costs, regulatory fines and penalties, credit monitoring expenses, electronic funds transfer losses, electronic data restoration expenses, and business interruption costs with limits sufficient to respond to these obligations, in the sole discretion of the City’s Risk Manager. 2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as additional insured on all but the workers’ compensation and professional liability coverages.

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

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

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

6. Each insurance policy shall provide or be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to City Contract Manager ten (10) Business Days for delinquent insurance premium payments).

7. Insurance must be placed with insurers with a current A.M. Best’s rating of no less than A-VII, or with a surplus line carrier appearing on the List of Approved Surplus Line Insurers, (“LASLI”) with a Best’s Key Rating Guide of at least A: X. Insurers, and corresponding policies required by this Section, must also comply with all other aspects of City Council Policy # 70.

8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Contractor’s insurance coverage shall be primary, including as respects City, its officers, agents, employees, and volunteers. Any insurance maintained by City shall apply in excess of, and not contribute with, insurance provided by Contractor’s liability insurance policy.

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

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

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

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

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

## 9.3 Performance Bond

Within seven (7) calendar days of the City’s notification to Contractor that the City has executed this Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be *{Note to Proposer: Performance Bond amount to be set at an amount equaling twenty-five percent (25%) of proposed annual Gross Receipts}* and shall be adjusted every three (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period’s annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best’s Key Rating Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be in the form approved by the City’s Risk Manager.

ARTICLE 10.
DEFAULT AND REMEDIES

## 10.1 Events of Default

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

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

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

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

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

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

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

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

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

**I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement. Additionally, a default occurs if any Contractor-provided report contains a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.

**J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor’s operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility(ies), or any part thereof.

**K. Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Contractor related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar days.

**L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the City.

**M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the expressed written approval of the City unless the assignment is permitted without City approval pursuant to Section 12.6.

**N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a proposal for new services or changes to services or fails to implement a change in service as requested by the City as specified in Section 3.5.

**O.** **Failure to Complete Transition.** Contractor fails to complete the tasks identified in Contractor’s Implementation Plan as specified in Exhibit G4.

**P. Failure to Implement Collection Program.** Contractor fails to implement a Collection program that complies with the requirements of Article 4 and Exhibit B, which is essential for the City to achieve compliance with SB 1383.

**Q. Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity in accordance with Articles 4 and 5, which is essential for the City to achieve compliance with SB 1383.

**R. Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards specified in Articles 4 and 5 including achievement of minimum Organic Waste recovery rates, which are essential for the City to achieve SB 1383 compliance.

**S. Failure to Comply with Other Requirements of SB 1383.** Contractor fails to comply with other requirements of the Agreement including, but not limited to, public education, reporting, contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement that delegate the City’s responsibility and/or authority under SB 1383 to the Contractor.

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

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

## 10.2 CONTRACTOR’S RIGHT TO CURE; Right to Terminate Upon Event of Default

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

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

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

## 10.3 City’s Remedies In the Event of Default

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

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

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

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

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

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

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

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

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

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

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

## 10.4 Possession of Records Upon Termination

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

## 10.5 City's Remedies Cumulative; Specific Performance

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

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

## 10.6 Performance Standards and Liquidated Damages

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

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

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

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

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

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

## 10.7 Excuse from Performance

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

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

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

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

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

## 10.8 Right to Demand Assurances of Performance

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

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

## 10.9 Dispute Resolution

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

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

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

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

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

ARTICLE 11.
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

## 11.1 Contractor’s Corporate Status

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

## 11.2 Contractor’s Corporate Authorization

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

## 11.3 Agreement Will Not Cause Breach

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

## 11.4 No Litigation

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

A. Materially adversely affect the performance by Party of its obligations hereunder;

B. Adversely affect the validity or enforceability of this Agreement; or,

C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

## 11.5 No Adverse Judicial Decisions

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

## 11.6 No Legal Prohibition

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

## 11.7 Contractor’s Ability to Perform

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

ARTICLE 12.
OTHER AGREEMENTS OF THE PARTIES

## 12.1 Relationship of Parties

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

## 12.2 Compliance with Law

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

## 12.3 Governing Law

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

## 12.4 Jurisdiction

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

## 12.5 Binding on Successors

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

## 12.6 Assignment

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

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

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

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

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

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

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

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

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

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

## 12.7 No Third Party Beneficiaries

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

## 12.8 Waiver

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

## 12.9 Notice Procedures

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

If to City:

City of Carlsbad

Attn: City Manager

1200 Carlsbad Village Drive

Carlsbad, CA 92008

City of Carlsbad

Attn: Deputy City Manager, Public Works

1635 Faraday Avenue

Carlsbad, CA 92008

City of Carlsbad

Attn: Environmental Manager, Public Works

1635 Faraday Ave

Carlsbad, CA 92008

With a copy to:

 City of Carlsbad

 Attn: City Attorney

 1200 Carlsbad Village Drive

 Carlsbad, CA 92008

If to Contractor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

## 12.10 Representatives of the Parties

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

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

ARTICLE 13.
MISCELLANEOUS AGREEMENTS

## 13.1 Entire Agreement

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

## 13.2 Section Headings

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

## 13.3 References to Laws

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

## 13.4 Amendments

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

## 13.5 Severability

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

## 13.6 Counterparts

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

## 13.7 Exhibits

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

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

|  |  |  |  |
| --- | --- | --- | --- |
| **City of Carlsbad**A Municipal Corporation “CITY” |  |  |  “CONTRACTOR” |
|  |  |  |  |
| \_\_\_\_\_\_\_\_ DateMayor |  |  | Signature Date |
|  |  |  |  |
|  |  |  | Print Name of Signatory  |
|  |  |  |  |
| \_\_\_\_\_\_\_\_ DateCity Manager |  |  | Title of Signatory |
|  |  |  |  |
| **The Foregoing Agreement Has been Reviewed and Approval Is Recommended:** |  |  |  |
|  |  |  | Signature Date |
|  |  |  |  |
|  |  |  |  |
| \_\_\_\_\_\_\_\_ DateDirector, Public Works |  |  | Print Name of Signatory |
|  |  |  | Title of Signatory |
|  |  |  |  |
| **APPROVED AS TO FORM:** |  |  |  |
|  |  |  |  |
|  |  |  |  |
| \_\_\_\_\_\_\_\_ DateCity Attorney |  |  | \_\_City\_\_\_ Business License # |
|  |  |  | Resolution Number XXXX-XXX |
| **ATTEST:** |  |  | Approved by City Council |
|  |  |  |  |
|  |  |  |  |
| \_\_\_\_\_\_\_\_ Date City Clerk |  |  |  |
|  |  |  |  |