FRANCHISE AGREEMENT

BETWEEN

City of albany

AND

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

FOR

Recyclable Materials, Organic Materials, AND Solid Waste

Collection SERVICES

DRAFT FOR cITY Council REVIEW

July 19, 2021

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Franchise Agreement
between
City of Albany
and
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Recyclable Materials, Organic Materials, and Solid Waste Collection Services

THIS FRANCHISE AGREEMENT is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 between the City of Albany, California, a political subdivision of the State of California (hereinafter "City"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as the "Contractor").

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; and

**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,** the City has adopted local policies including a Climate Action and Adaptation Plan which include policy goals that this Agreement serves as a vehicle to fulfill; and

**WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2), and Section 15-2.3 of the City’s Charter, 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 Recyclable 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 15-2.6, the City is obliged to enter into a contract for the Collection, removal and Disposal of all refuse in and from the City and the collection of Rates therefore, 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, and Solid Waste 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.** Collection and Transport of Recyclable Materials and Organic Materials other than Edible Food that have been Source Separated from Solid Waste by the Generator and that: (1) Generator sells or donates to any other Person, provided that there is no net payment made by the Generator to such other Person; or, (2) have a value equal to or more than the cost of Collection.

B. **Self-Hauled Materials**. A Commercial Business Owner or Resident may Dispose of Recyclable Materials, Organic Materials, Solid Waste, and Construction and Demolition Debris generated in or on their own Premises with their own vehicle. However, the Owner or Resident shall be required to subscribe to and pay for the minimum required level of Solid Waste, Recyclable Materials, and Organic Materials Collection services provided by the Contractor in accordance with Exhibit B.

C. **Construction and Demolition Debris (C&D).** Collection and Transport of mixed material Construction and Demolition Debris (C&D) by a licensed construction or demolition contractor as part of a total service offered by that contractor when removal is performed by an employee of the contractor using equipment owned by the contractor, rather than as a hauling service, and consistent with the Municipal Code and other Applicable Law. C&D materials Source Separated for the purpose of Recycling are considered Recyclable Materials.

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 that 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 transported 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 from the Generator.

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

H. **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.

I. **On-Site Composting or Community Composting**. Organic Materials Composted on a Residential Premise or otherwise legally managed at the site where it is generated or at a Community Composting site.

J. **Animal and Grease Waste**. Animal waste and remains from slaughterhouse or butcher shops, or grease.

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

M. **Excluded Materials**. Excluded Materials 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 Albany Unified School District, provided that the Generator Self-Hauls, has arranged services with other Persons, or has arranged services with the Contractor through a separate agreement. *{Proposers: The City may request that the selected contractor collect from the schools and or federal facilities under this 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 in violation of Contractor’s rights under this Agreement, and Contractor shall have the right to take legal action to enforce its 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 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:

A. Use their reasonable 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.

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

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

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

ARTICLE 2.
TERM OF AGREEMENT

## 2.1 Term and Option to Extend

The Term of this Agreement shall commence April 1, 2023 (Commencement Date) and continue in full force for a period of ten (10) years, through and including April 30, 2033, 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 (1) time without amendment for a period of up to five (5) years. 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. 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 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 Contract Manager reasonably determines that (i) 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 (ii) the deadline to initiate any additional Legal Challenges has expired To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its Mayor, Council, officers, representatives, agents, employees and volunteers, harmless against any and all liability, claims, losses, damages, or expenses including reasonable attorney’s fees, arising from any Legal Challenges. In the event of any election regarding a Legal Challenge, City shall meet and confer with Contractor to determine if the City will hold an election on the Legal Challenge. If City decides to conduct an election, Contractor shall reimburse City for its reasonable costs of doing so.

ARTICLE 3.
SCOPE OF AGREEMENT

## 3.1 Summary Scope of Services

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

A. Collecting Recyclable Materials, Organic Materials, and Solid Waste (with the exception of materials excluded under Article 1) generated by and placed for Collection by Customers pursuant to the requirements of Article 4 and Exhibit B;

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

C. Compensating Processing and Disposal Contractor on a per-Ton basis for all delivered Discarded Materials at the then applicable City-approved per-Ton rates for each Rate Year. The initial per-Ton rates are as shown in Exhibit G2, subject to annual adjustment as provided in Section 6.01.1 of the Processing and Disposal Agreement;

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

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 Reimbursements and Franchise Fees), and utilities;

G. Performing or providing all services necessary to fulfill its obligations in substantial conformance with the Contractor’s Proposal, and in full accordance with this Agreement, and the performance standards contained within, 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 Transport all materials Collected under this Agreement to the Approved Facility(ies) described in this Agreement for the purposes of Transfer, Processing and/or Disposal. 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 is solely responsible for management and oversight of the activities of all Subcontractors and subcontractors. Contractor shall be considered to be in breach or default should the activities of any Subcontractor constitute a breach or event of default under this Agreement.

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, which may be granted in their sole discretion. As of the Effective Date of this Agreement, City has approved Contractor’s use of those Subcontractors and subcontractors identified in Contractor’s Proposal, included herein as Exhibit G4. If the Contractor plans to engage an Affiliate as a Subcontractor 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. Contractor shall require that all Subcontractors file an insurance certificate with the City describing such Subcontractor’s (or subcontractor’s) insurance coverage, and name City as an additional insured. The City Contract Manager may waive or excuse these insurance requirements in its sole discretion. Contractor shall require that all Subcontractors that are Affiliates 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 Materials if the Contractor can identify the Generator pursuant to Section 5.3.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 with the exception of Excluded Materials pursuant to Section 5.3.

Responsibility for Excluded Materials that have 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 shall require a proposal from Contractor to establish the scope of any modification to existing services (which may include use of Approved Facilities) that City wishes to have 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, including adjustments in Contractor’s Compensation (“Contractor’s proposal”). City shall review the Contractor’s proposal for the change in scope of services. City and Contractor will 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, Construction and Demolition, and Bulky Item Collection and Transport services described in this Article 4. This Article 4 describes the general requirements for the services to be provided. More specific requirements for how each service shall be provided to each Customer Type are described in Exhibit B. Failure to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

## 4.1 Recyclable Materials

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

**B. Delivery to Approved Facility.** Contractor shall Transport and deliver all Source Separated Recyclable Materials placed by Customers in Recyclable Material Containers in the City to the Approved Recyclable Materials Processing Facility. Tipping fees associated with use of the Approved Facility shall be paid by Contractor to the Post-Collection Services Contractor as provided in Article 8 and Exhibit E.

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 delivered to the Processing Facility remains below any limits established under the Post-Collection Services Agreement with the Approved Recyclable Materials Processing Facility and Applicable Law.

**C.** **Alternative Facilities.** If Contractor is unable to use the Approved Recyclable Materials Processing Facility due to an emergency or sudden and unforeseen closure of the Approved Recyclable Materials Processing Facility that is outside the control of the Contractor, Contractor may use an alternative Processing Facility as consistent with the provisions of the Post-Collection Services Agreement and 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. During such time, to the extent feasible, Contractor shall continue to comply with the requirements of Article 6. 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. In the event that 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 need to use the alternative Processing Facility is discretionary or for reasons within Contractor’s reasonable control, Contractor’s Compensation shall not be adjusted for any change in Transportation and Processing costs associated with use of the alternative Processing Facility. If the need to use the alternative Processing Facility results from reasons beyond Contractor’s, or its Subcontractor’s, reasonable control, City shall adjust, either up or down, Contractor’s Compensation for changes in Transportation and Processing costs associated with use of the alternative Processing Facility. In the event that a change in the Processing Facility results in increased costs, City may identify and direct Contractor to an alternative Processing Facility that results in less cost than the Contractor-identified alternative.

**D.** **Minimizing Prohibited Container Contaminants.** Contractor shall make best efforts, including those measures specifically identified in this Agreement as well as effective industry practices that may be identified during the Term of this Agreement, to reduce Prohibited Container Contaminants. Contractor shall use information resulting from the Prohibited Container Contaminant monitoring program and any material characterization studies performed on City Discarded Materials to propose education and outreach campaigns, as required in Exhibit C, that target specific problem materials.

## 4.2 Organic Materials

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

**B. Delivery to Approved Facility.** Contractor shall Transport and deliver all Source Separated Organic Materials placed by Single-Family Customers in Organic Material Containers in the City to the Approved Organic Materials Processing Facility. Tipping fees associated with use of the Approved Facility shall be paid by Contractor to the Post-Collection Services Contractor as provided in Article 8 and Exhibit E.

Contractor shall observe and comply with all regulations in effect at the Approved 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 delivered to the Processing Facility remains below any limits established under the Post-Collection Services Agreement with the Approved Organic Materials Processing Facility and Applicable Law.

**C.** **Alternative Facilities.** If Contractor is unable to use the Approved Organic Materials Processing Facility due to an emergency or sudden and unforeseen closure of the Approved Organic Materials Facility that is outside the control of the Contractor, Contractor may use an alternative Processing Facility as consistent with the provisions of the Post-Collection Services Agreement and 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 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. In the event that 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 need to use the alternative Processing Facility is discretionary or for reasons within Contractor’s reasonable control, Contractor’s Compensation shall not be adjusted for any change in Transportation and Processing costs associated with use of the alternative Processing Facility. If the need to use the alternative Processing Facility results from reasons beyond Contractor’s, or its Subcontractor’s, reasonable control, City shall adjust, either up or down, Contractor’s Compensation for changes in Transportation and Processing costs associated with use of the alternative Processing Facility. In the event that a change in the Processing Facility results in increased costs, City may identify and direct Contractor to an alternative Processing Facility that results in less cost than the Contractor-identified alternative.

**D. Minimizing Prohibited Container Contaminants.** Contractor shall make best efforts, including those measures specifically identified in this Agreement as well as effective industry practices that may be identified during the Term of this Agreement, to reduce Prohibited Container Contaminants. Contractor shall use information resulting from the Prohibited Container Contaminant monitoring program and any material characterization studies performed on City Discarded Materials to propose education and outreach campaigns, as required in Exhibit C, that target specific problem materials.

## 4.3 Solid Waste

**A. Collection.** Contractor shall provide Solid Waste Collection services as described in Exhibit B.

**B. Delivery to Approved Facility.** Contractor shall Transport and deliver all Solid Waste placed by Single-Family Customers in Solid Waste Containers in the City to the Approved Solid Waste Facility. Tipping fees associated with use of the Approved Facility shall be paid by Contractor to the Post-Collection Services Contractor as provided in Article 8 and Exhibit E. Contractor shall observe and comply with all regulations in effect at the Approved Solid Waste Facility and cooperate with and take direction from the operator thereof with respect to delivery of Solid Waste.

**C.** **Alternative Facilities.** If Contractor is unable to use the Approved Solid Waste Facility due to an emergency or sudden and unforeseen closure of the Approved Solid Waste Facility that is outside the control of the Contractor, Contractor may use an alternative Solid Waste Facility as consistent with the provisions of the Post-Collection Services Agreement and 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 Solid Waste Facility is not feasible and the period of time Contractor proposes to use the alternative Solid Waste 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 Solid Waste 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 Solid Waste 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 Solid Waste Facility. In the event that the City disapproves the use of the proposed alternative Solid Waste Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

If the need to use the alternative Solid Waste Facility is discretionary or for reasons within Contractor’s reasonable control, Contractor’s Compensation shall not be adjusted for any change in Transportation and Solid Waste Facility costs associated with use of the alternative Processing Facility. If the need to use the alternative Solid Waste Facility results from reasons beyond Contractor’s, or its Subcontractor’s, reasonable control, City shall adjust, either up or down, Contractor’s Compensation for changes in Transportation and Solid Waste Facility costs associated with use of the alternative Solid Waste Facility. In the event that a change in the Solid Waste Facility results in increased costs, City may identify and direct Contractor to an alternative Solid Waste Facility that results in less cost than the Contractor-identified alternative.

**D. Diversion from Disposal.** Contractor acknowledges that City is committed to Diverting materials from Disposal through the implementation of Source Reduction, reuse, Recycling, and other programs, and that City may implement new programs, with the involvement of the Contractor, subject to the provisions of Section 3.5, or without the Contractor (which would not be subject to the provisions of Section 3.5) 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.

## 4.4 Construction and Demolition Material Collection

Contractor shall provide C&D Collection services as described in Exhibit B3 for direct Transport to the Approved Facility. In providing such services, Contractor shall:

A. Comply with the City’s Construction and Demolition Debris ordinances and regulations.

B. Educate C&D Customers on the requirement to Source Separate Organic Materials generated during construction and demolition projects and have them Collected separately from other C&D and Transported for Processing to the Approved Facility.

C. Cause any C&D Processor that is a Subcontractor (including Affiliates) of Contractor to comply with CalRecycle and California Building Standards Code including Part 11 California Green Building Standards Code (CALGreen) requirements for the Processing and Recycling of C&D including Organic Waste.

D. Provide in-person site visits at large C&D Collection Sites within the City to train staff on proper sorting for C&D Containers to assist them in achieving Diversion targets as required by California Building Standards Code Part 11 California Green Building Standards Code (CALGreen) requirements.

## 4.5 Bulky Item and Abandoned Waste Collection

**A. Bulky Items and Reusable Materials.** Contractor shall offer Bulky Item and Reusable Materials Collection services for Single-Family Customers, Multi-Family Customers, and City facilities, as described in Exhibit B. On-call Bulky Item and Reusable Materials Collection services shall be offered to Customers within five (5) Working Days 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. Pursuant to the provisions of Exhibit B, Contractor shall handle Reusable Materials in such a way as to preserve such items for reuse, and Transport all Bulky Items and Reusable Materials Collected under this Agreement to the Approved Facility or re-use vendor(s) as applicable. 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 Facility or re-use vendor(s), and cooperate with and take direction from the operator(s) thereof with respect to delivery of Bulky Items and/or Reusable Materials.

**B. Abandoned Waste.** Contractor shall Collect Solid Waste and Bulky Items abandoned by Generators in the City. Contractor shall dispatch a truck to Collect Abandoned Waste at locations in the City identified by Contractor or at locations identified by the City. In instances when the Contractor has received verbal or written request from the City to Collect Abandoned Waste at a specific location, Contractor shall Collect Abandoned Waste from such location within twenty-four (24) hours of receiving the verbal or written request (on Monday for requests received Friday) unless special circumstances warrant a longer period, in which case Contractor shall notify the City of such circumstances and the need for additional time to Collect materials within twenty-four (24) hours of the City’s notice to Collect Abandoned Waste. Contractor shall be responsible for Collection, Transportation, and Disposal of such material. Contractor shall record the date, time, location, and description of material Collected including estimated volume of such material; location where such material was Disposed; and cost of Disposal. Copies of receipts from Disposal site for Disposal of Abandoned Waste shall be made available by Contractor upon request by the City. Tonnage or volume of material Collected shall be separately recorded and reported to the City as described in Exhibit D.

## 4.6 Special Events

Contractor shall provide Recyclable Materials, Organic Materials, and Solid Waste services as described in Exhibit B 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. If so directed by City, Contractor shall coordinate and cooperate with City or its designees as necessary to facilitate recovery of Edible Food from special events.

Contractor shall Transport all Discarded Materials from special events to the Approved Facility. Tipping fees associated with use of the Approved Facility shall be paid by Contractor to the Post-Collection Services Contractor as provided in Article 8 and Exhibit E.

## 4.7 Public Litter Modules

Contractor shall provide the public litter module Collection services as provided in Exhibit B4. City shall purchase, install, and maintain all public litter modules.

## 4.8 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. As further described in Exhibit C, Contractor shall prepare and distribute public education and outreach materials. If so directed by City, Contractor shall coordinate and cooperate with StopWaste as necessary to facilitate public education and outreach efforts related to SB 1383.

**A. Program Objectives.** Contractor’s public education and outreach strategy shall focus on improving Customer understanding of the benefits of and opportunities for Source Reduction, reuse, Recycling, and Composting. In general, Contractor-provided public education and outreach should: (i) inform Customers 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) instruct Customers 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 and Organic Materials; (iii) clearly define Excluded Materials and educate Customers about the hazards of such materials and their opportunities for proper handling; (iv) discourage Customers from buying products if the product and its packaging are not readily reusable, Recyclable, or Compostable; (v) encourage Customers to recover Edible Food for consumption by humans or animals; (vi) encourage the use of Compost; (vii) encourage use of drought tolerant landscaping that generates less plant trimmings; and (viii) encourage Customers to purchase products/packaging made with Recycled content materials.

**B. Coordination with City Educational Efforts.** 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 public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

## 4.9 Billing

Contractor shall bill all Customers and be solely responsible for collecting billings at City approved Rates as established under this Agreement and 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 unless otherwise approved in writing by the City Contract Manager on a case by case basis.

1. **Low Income and Senior Residents Rate.** Contractor shall establish discounted Rates for Low Income Residents and Senior Residents. Contractor shall determine that a Customer qualifies for the Low Income Resident discounted Rate or Senior Resident discounted Rate if Contractor obtains documentation of age and confirms that the Customer has met established criteria reasonably satisfactory to the City and is consistent with the definition of Low Income Resident or Senior Resident provided in Exhibit A. The Contractor’s review of all applications shall be completed within fifteen (15) Business Days of receipt of each application, upon which Contractor shall charge the Low Income Residents Rate or Senior Residents Rate to successful applicants. Contractor shall also assist the City with administration of other special Rate programs it may establish. *{Proposers: Final language will be modified as necessary to reflect agreed-upon method for determining low income eligibility.}*
2. **Billing Schedule.** Contractor shall bill all Single-Family and Multi-Family Cart Customers quarterly in advance of services provided. Contractor shall bill all Commercial and Multi-Family Bin Customers for scheduled and regularly recurring services on a monthly basis in arrears of services provided. Contractor shall bill Customers for any on-call and/or non-recurring services no more frequently than monthly and may only proactively invoice for services provided during the previous billing period. Contractor may require pre-payment arrangements for Drop Box service. Contractor shall remit invoices to Customers no earlier than the twentieth (20th) day of the month preceding the period for which service is being billed. Quarterly billing shall be on the calendar quarter (January-March, April-June, July-September, October-December). Contractor shall notify Customers of Rate changes thirty (30) days prior to the effective date of new City-approved Rates.
3. **Customer Database and Documentation.** Contractor shall develop and maintain a database of Customer contact information, which shall include an email address for each Customer account. Contractor shall maintain, and make such database available upon request from the City Contract Manager, in accordance with Section 6.1.

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.

1. **Invoicing and Payment.** 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 (printed) 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. Customers that pay using credit cards shall be reminded by Contractor two (2) months before their credit card is to expire to update their billing information. 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.
2. **Bill Inserts.** Up to four (4) times per calendar year City may direct Contractor to attach mailer inserts (which shall be a sheet of paper no larger than eight and one half (8.5) inches by eleven (11) inches, that may trifold), relating to service with the Customer invoices. The mailers shall be printed on double-sided, post-consumer-content paper and shall fit in standard envelopes. Contractor also agrees to insert with the billings, mailers describing City activities. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. 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). City will provide not less than thirty (30) calendar days’ notice to Contractor before the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of the City’s materials. City will provide Contractor the mailers at least fifteen (15) calendar days before the mailing date. Contractor shall comply with such request during its next billing cycle for the targeted Customer group. The cost of such inserts and any additional postage shall be paid for by Contractor.
3. **Collection of Payment.** Contractor shall be responsible for collection of payment from Customers with past due accounts (“bad debt”) in accordance with this Section 4.9. Contractor shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, telephone requests for payments, assistance from collection agencies, and filing collection actions.
4. **Late Payments and Bad Debt.** Quarterly Customer invoices shall be due thirty (30) calendar days after the end of the billing period. Monthly Customer invoices shall be due thirty (30) calendar days after 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 that become more than forty-five (45) calendar days delinquent may be assessed late fees approved by the City in Exhibit G. Contractor shall provide a second written notice of delinquency to any account that becomes more than sixty (60) calendar days past due, and a third written notice of delinquency to any account that becomes more than ninety (90) calendar days past due.

In the event Contractor’s efforts for a one (1) year period to collect monies due from a Customer fail and Contractor can demonstrates to the City Contract Manager that Contractor attempted on at least five (5) documented occasions to solicit monies due from each delinquent account to encourage Customer’s payment, then Contractor shall provide the City Contract Manager with the name and address of each delinquent account and amount due, and assign its rights to collection to the City shall. The City, in its discretion, may then initiate any collection procedures authorized by law, including those special assessment procedures authorized by Albany Municipal Code Sections 15-2.4 and 15-2.8 of Chapter 15. The City shall remit the applicable past due amount to the Contractor within ninety (90) days of City collection through the special assessment procedures specified in Municipal Code Sections 15-2.4 and 15-2.8 of Chapter 15 of monies due to Contractor for delinquent accounts.

**H.** **Reimbursements and Under-Charges.** If Contractor fails to invoice a Customer, or otherwise under-charges a Customer for services provided for more than twelve (12) months, Contractor may not subsequently attempt to collect the under-charged amount for more than twelve (12) months of service. If Contractor over-charges a Customer for a period of more than twelve (12) months, Contractor shall reimburse or credit the Customer for at least twelve (12) months of the over-charged service, but is not required by this Agreement to reimburse or credit the Customer for more than twelve (12) months of overcharges. This Agreement also does not prohibit Contractor from reimbursing or crediting a Customer for more than twelve (12) months of overcharges.

## 4.10 Customer Service Program

### 4.10.1 Program Requirements

**A. Availability of Representatives.** A representative of the Contractor who is knowledgeable of the service area, services, and Rates shall be available during business office hours to communicate with the public by telephone, virtual method (including email, live chat, or other electronic method as mutually agreed between City and Contractor), and the City’s authorized online or other customer relationship management system (as further described in Section 4.11). 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. Contractor’s primary Customer service center shall be located no more than thirty (30) miles from the City. Contractor shall maintain Customer service staffing levels consistent with the levels stated in Exhibit G, unless otherwise approved by the City Contract Manager.

**B. Telephone.** Contractor shall secure, use, pay all costs incurred by, and maintain during the Term of this Agreement, a local toll-free phone number which shall serve as the primary point of contact between Contractor and the public during normal business hours. 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 with 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 7:00 a.m. to 5:00 p.m. and shall have sufficient equipment in place and staff a representative, or an answering service 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 the option of leaving a voice message, rather than remaining on-hold. In the event that Contractor’s telephone customer service performance falls below the performance standards established in Exhibit F, the City and Contractor shall meet and confer regarding existing staffing levels and customer service system capacities. Following such meet and confer period, 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 5:00 p.m. and 7:00 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 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. Website and Email Access.** Contractor shall develop and maintain an Albany specific section of Contractor’s web site that is accessible by the public. Contractor’s Albany web page(s) shall include all public education and outreach materials described in Exhibit C and provide the public the ability to e-mail Contractor questions, service requests, or Complaints. The site shall have a link from the City’s web site. Substantive changes to the website shall be pre-approved by the City, and changes requested by the City shall be made within twenty-four (24) hours of the City’s request. 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. (for purposes of this Section 4.10.1.C, Saturdays shall be excluded from the definition of “Working Day”). Contractor may respond to Customer e-mails either via e-mail or phone. In the event that during the Term of this Agreement Contractor obtains or develops a mobile device web application which may be used by Customers, Contractor shall notify City, and shall make such application available for Customer use.

**D. Training.** Customer service representatives shall receive training during each quarter of the calendar year on City-specific Collection programs and service requirements. During the training, a City-specific Collection service and Rate information sheet, training agenda, and associated documentation shall be provided to and discussed with employees. Information sheet, training agenda, and associated documentation shall be forwarded by Contractor to the City Contract Manager each quarter after the training in accordance with quarterly reporting requirements of Section 6.2. The City Contract Manager may review the training materials and request changes.

The Contractor shall notify the City Contract Manager of the date and time of the scheduled Customer service training sessions and the City Contract Manager may, at its option, attend the meetings.

Upon request by the City Contract Manager but not more than two (2) times per Rate Period, Contractor shall arrange and host a meeting to include the City Contract Manager, Contractor’s contract manager, Contractor’s customer service representatives, and any other City staff requested by the City Contract Manager. The purpose of such meeting shall be to discuss topics including (by way of example but not limitation): Customer questions, Complaints, and/or service issues, or other topics identified by the City Contract Manager.

### 4.10.2 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. 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 4.10.1.B, and 4.10.1.C. Complaints related to missed Collections shall be addressed in accordance with Section 4.10.3. Complaints related to repair or replacement of Carts or Bins, shall be addressed in accordance with Section 5.6.E.

Contractor shall separately address any Complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements, in accordance with the procedure in Section 4.14.D.

### 4.10.3 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.” In the event that Contractor believes a Customer has a pattern of inaccurately reporting missed Collections, Contractor may submit a request to 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 each and every Customer Complaint of a missed or incomplete Collection by returning to the Customer address and completing the Collection. For all Complaints related to missed Collections that are received by 12:00 p.m. from Bin or Drop Box Customers, or that are received by 3:00 p.m. from Cart Customers 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 12:00 p.m. from Bin or Drop Box Customers, or after 3:00 p.m. from Cart Customers on a Working Day, the Contractor shall have until the end of the following Working Day to resolve the Complaint.

Contractor shall not be required to return and complete a Collection in response to a Complaint if the Contractor’s driver has left a Non-Collection Notice due to Unpermitted Materials, or if Customer had not placed their Container out in a timely manner, as evidenced by Contractor’s records.

**C. Courtesy Collections for Late Set-Outs**. In the event that a Customer places their Container for Collection after Contractor’s Collection vehicle has already passed the Premises for regularly scheduled Collection, 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 one (1) Courtesy Collection for 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. 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.

**D**. **Disposal of Contaminated Discarded Materials**. In the event a Discarded Materials Container is not Collected due to presence of Prohibited Container Contaminants, as identified pursuant to the approved methodology under Section 4.13.A, Contractor shall Transport Discarded Materials to the Approved Facility for Disposal in accordance with Section 4.13.

## 4.11 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. Such City employee and Contractor employee shall cooperate to ensure that the Contractor’s information systems are integrated with the City’s customer service systems, or are otherwise able to receive information from such City systems on a daily basis (e.g., through manual input by Contractor staff). Contractor shall have access to the City’s automated Customer Response Management System (CRM) or any subsequent similar system and shall respond to Customer requests transmitted to Contractor through the City’s CRM system and enter resolutions to Customer requests directly into the City’s CRM system. Contractor shall provide such City employee with access to Contractor’s Customer service, call center, and operations information systems in order to validate Contractor performance standards, and recommend changes to Customer Service Levels to resolve service issues or otherwise address Customer needs. In the event that recommended Service Level changes are made, the designated City staff will work with Contractor’s designated representative to make such changes, which shall not be denied by Contractor except for reasons related to Customer, Route driver, and/or equipment safety, in which cases Contractor shall provide similar volumes of service by material type to the Customer in some alternate configuration. Contractor shall provide read-only 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.

## 4.12 Service Exemptions

**A. Generator Waivers.** City may elect to provide for one or more of the following types of Generator waivers to the Collection requirements of this Agreement as described in this Section to Generators that impact the scope of Contractor’s provision of services for those Customers. Waivers shall be subject to compliance with SB 1383 Regulatory requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the City. Contractor shall verify Multi-Family and Commercial Generator de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver and verify Collection frequency waivers at least once every two (2) years from the date of issuance of the waiver. Contractor shall maintain records and report the information specified in Exhibit D.1 regarding Customer exemptions. Granting of waivers shall be done by the City.

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

a. The Multi-Family’s or Commercial Business’ total Solid Waste Collection service is two (2) or more per week, and Recyclable Materials or Organic Materials comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family’s or Commercial Business’ total waste; or,

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

1. **Physical Space Waivers.** The City may waive a Multi-Family’s, Commercial Business’, or its property Owner’s obligation to comply with some or all of the Recyclable Materials or Organic Materials service requirements set forth in this Agreement and SB 1383 Regulations, if the Multi-Family, Commercial Business, or its property Owner provides documentation, or the City has evidence from its staff, the Contractor, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for Recyclable Materials or Organic Materials Containers.
2. **Collection Frequency Waivers.** The City may allow Contractor to provide Collection of Recyclable Materials Containers, Solid Waste Containers, or both once every fourteen (14) days, rather than once per week, for Customers that have been granted a Collection frequency waiver from the City.

**B.** **Vacancy Exemptions.** Upon Customer request 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, 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.

**C**. **Service Location Exemptions**. The City’s Municipal Code allows for Persons that have a disability in compliance with the American Disabilities Act that are Occupants of Single-Family Premises or Multi-Plex Premises to receive Collection services at a location other than Curbside at no extra charge. Contractor shall be required to review all applications made by Customers to determine conformance with the exemption provisions in the City’s Municipal Code and shall grant exemptions if applicable. With regards to all requirements of this subsection, the Contractor shall make reasonable accommodations with regards to Container and Collection requirements (e.g., with regards to the Container size and type, placement of Containers for Collection, etc.) for any individual with a disability in compliance with the American Disabilities Act at no additional cost to the Customer, provided that Contractor shall not be required to service Containers from locations on a Customer Premises determined to be unsafe for Collection.

## 4.13 Contamination Minimization Program

*{Note to proposer: this section may be modified as necessary to reflect City review of proposed approaches to contamination monitoring services.}*

Contractor shall assist in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials, by monitoring the contents of Collection Containers, and by refusing to Collect Containers with visible Prohibited Container Contaminants as provided in this Section.

1. **Hauler Route Reviews, Methodology and Frequency**. Contractor shall, at its sole expense, conduct annual Hauler Route reviews each calendar year for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor, is approved by the City, and is conducted in a manner that results in all Hauler Routes being reviewed annually.

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

2. **Route Review Methodology.** Contractor shall develop a Hauler Route review methodology that complies with the requirements of 14 CCR Section 18984.5(b) and this Section. Contractor shall submit its proposed Hauler Route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Hauler Route’s annual review. Contractor’s proposed Hauler Route review methodology shall include its plan for conducting Container inspections in compliance with the Section, the Contractor’s process for identifying Prohibited Container Contaminants, and its plan for prioritizing the inspection process to reflect any pattern of contamination on specific routes or portions of routes. City shall review, comment on, and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval. If the City notifies the Contractor that the methodology is inadequate to meet the requirements of SB 1383 or this Agreement, Contractor shall, at its sole expense, revise the methodology and, after obtaining City approval, conduct additional Hauler Route reviews, increased Container inspections, or implement other changes using the revised procedure.

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

4. **Documentation and Assessment.** Contractor shall document Prohibited Container Contaminants with still pictures or video, and shall notify the Customer in accordance with Section 4.13..C. Contractor may, at its discretion Collect the Container as Recyclable Materials, Organic Materials, or as Solid Waste. .

 Within six (6) months of the Commencement Date, the Parties shall meet and confer to review the Contamination program as described in this Section, including assessing the effectiveness of the program in deterring Generators from included Prohibited Container Contaminants in Discarded Materials Containers set-out for Collection and determining whether the increased Solid Waste Rate charge or contamination fees are being used, and are set at a level that provides an adequate deterrent without generating significant revenue for the Contractor.

1. **Identification of Prohibited Container Contaminants.** If Contractor observes Prohibited Container Contaminants in Discarded Materials Containers set out for Collection, Contractor shall Collect materials and communicate with the Customer, as follows:.
2. **Courtesy Collection.** For the first three (3) instances of identified Prohibited Container Contaminants within a calendar year, Contractor shall Collect the materials as a courtesy to the Customer, and leave a Courtesy Collection Notice in accordance with Section 4.13.D. 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.
3. **Continued Contamination.** On the fourth (4th) or subsequent instance within a calendar year of identified Prohibited Container Contaminants, the Contractor shall Collect the Container(s) and leave a Contamination Charge Notice, in accordance with Section 4.13.D. Contractor may either adjust the Customer’s billing statement to charge an additional Solid Waste Container Rate and/or charge a contamination fee, as approved by the City. Contractor shall notify the City in its monthly report of Customers that were charged an additional Solid Waste Rate or a contamination fee, pursuant to Exhibit D. *{Note to proposers: This language may be modified based on proposers’ approach to contamination fees described in its proposal; and, the whether the customer will pay a higher solid waste rate and/or a contamination fee, to be determined by the City during negotiations.}*

3. Contractor shall inform the City Contract Manager of Customers with chronic instances of Containers with Prohibited Container Contaminants and shall describe the steps taken by the Contractor to address the issue and support Customer compliance, as specified in Exhibit D.

1. **Communication with Customer.** Contractor shall leave a Courtesy Collection Notice or Contamination Charge Notice, as applicable, to Customers as instructed by this Section. Prior to the Commencement Date, Contractor shall provide its proposed format for the Courtesy Collection Notices and Contamination Charge Notices for approval by the City Contract Manager.

1. **Courtesy Collection Notice.** If applicable in accordance with Section 4.13.B.1, Contractor shall provide the Customer a Courtesy Collection Notice attached or adhered to the Customer’s Containers, door, or gate; or, subject to City’s approval, may deliver the notice by mail or electronic message. The format of the Courtesy Collection Notice shall be approved by the City Contract Manager and must be a distinct color from the Contamination Charge Notice.

 The Courtesy Collection Notice for Prohibited Container Contaminants shall, at a minimum:

a. Inform the Customer of the observed presence of Prohibited Container Contaminants;

b. Include the date and time the Prohibited Container Contaminants were observed;

c. 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;

d. Inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with a warning statement that the Contractor may charge an increased Solid Waste Rate and/or assess contamination fees for future instances of Prohibited Container Contaminants; and,

e. Include photographic evidence.

2. **Contamination Charge Notice**. If applicable in accordance with Section 4.13.B.2, Contractor shall provide the Customer with a Contamination Charge Notice attached or adhered to the Customer’s Containers, door, or gate. Contractor shall also deliver notice by mail to the bill-payer’s address within twenty-four (24) hours of assessing the contamination fee or charging the increased Solid Waste Rate; or, subject to City’s approval, may deliver the notice by electronic message. Contamination charge notices shall be in a format approved by the City Contract Manager and shall, at a minimum:

a. Inform the Customer of the observed presence of Prohibited Container Contaminants;

b. Include the date and time the Prohibited Container Contaminants were observed;

c. 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;

d. Inform the Customer that they have exceeded the allowable three (3) instances of Prohibited Container Contaminants for courtesy Collection, and that the Customer shall be charged an increased Solid Waste Rate and/or shall be assessed a contamination fee; and,

1. e. Include photographic evidence. **Disposal of Contaminated Materials.** Contractor may Transport contaminated materials observed in Customer’s Organic Materials Container or Recyclable Materials Container to the Approved Facility for Disposal, provided Contractor complies with the noticing requirements in this Section..
2. **Recordkeeping and Reporting Requirements.** Contractor 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. Contractor shall maintain records and report to the City on contamination monitoring activities and actions taken, in accordance with Exhibit D.

## 4.14 SB 1383 Monitoring and Inspections

Contractor shall perform Customer compliance reviews described in this Section annually, unless otherwise noted.

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

**B. Annual Hauler Route Review.** Annually the Contractor shall conduct annual Hauler Route reviews to determine Generator compliance with SB 1383, and these reviews may be performed concurrently with the Contamination monitoring Hauler Route reviews detailed in Section 4.13.

**C.** **Compliance Review Process.**  Contractor shall conduct inspections of entities described in this section at a minimum of once per year or as directed by City to adequately determine the entities’ overall compliance with SB 1383. City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.

**1. Non-Compliant Entities.** From the Commencement Date through December 31, 2023, when compliance reviews are performed by Contractor pursuant to this Section 4.14, Contractor shall provide City-approved educational materials, in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within two (2) Working Days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler Route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided and report such information to the City in accordance with Exhibit D. Beginning January 1, 2024, the Contractor shall document non-compliant Customers and Generators determined through Contractor’s compliance reviews pursuant to this Section 4.14, and shall report all Customers and Generators with SB 1383 violations to the City in accordance with Exhibit D. The City shall be responsible for subsequent enforcement action against the Generator or Customer.

**2.** **Documentation of Inspection Actions.** The Contractor shall generate a written or electronic record and maintain documentation for each inspection, Hauler Route review, and compliance review conducted.

**D.** **Documentation of SB 1383 Non-Compliance Incidents.** Contractor shall maintain a computer database of all oral and written SB 1383-related non-compliance incidents reported to Contractor from Customers or other Persons in accordance with Exhibit D.

**1. Reports of SB 1383-Noncompliance Incidents.** For reports received in which Customers or other Persons allege that an entity is in violation of SB 1383 requirements, Contractor shall document such incident investigations in accordance with Exhibit D. Contractor shall provide this information in a brief incident report to the City for each SB 1383-noncompliance incident within five (5) Working Days of receipt of such incident, and a quarterly summary report of SB 1383-noncompliance incidents in accordance with Exhibit D.

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

Contractor shall investigate the incident by:

i. Reviewing the Service Level of the Customer (if the entity is a Customer of the Contractor);

ii. Reviewing the waiver list, if applicable, to determine if the entity has a valid, City-approved de minimis, space constraint, or Collection frequency waiver;

iii. Reviewing the Self-Haul registration list, if applicable, to determine if the entity has registered and reviewing the entities reported Self-Haul information;

iv. Inspecting Premises of the entity identified in the incident notice, if warranted; and,

v. Contacting the entity to gather more information, if warranted;

vi. Affixing a City-approved notice of non-compliance incident report on the Customer’s Container that includes SB 1383 Generator requirements and, if applicable, provides a City-approved deadline for correction.

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

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

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

**E. Delegation Options.** This section in no way precludes the City or its designee, such as StopWaste, from performing the inspections specified in this Section in lieu of or in addition to the Contractor’s inspections. Contractor shall support any inspections or reviews conducted by the City or its designee through actions including, but not limited to, providing information or data requested by the City or its designee.

## 4.15 Climate and Disaster Resiliency

A. Climate and Disaster Resiliency Planning. No less than ninety (90) days prior to the Commencement Date, the Parties shall meet to discuss development of a Climate and Disaster Response Plan to address the role of the Contractor in addressing City needs related to wartime, natural, physical, or other disaster in, or proximate to the City resulting in the declaration of a State of Emergency by the City Manager or City Council, as well as any measures that may be necessary for the Contractor to take over time to address climate change.

B. **Disaster Response Protocol**. The Parties shall develop and finalize a Disaster Response Protocol prior to the Commencement Date that identifies specific communication and logistical actions, and such other coordination between the Parties and internal to each Party such that Contractor assistance can occur immediately following City declaration of an emergency. The protocol shall become part of the Climate and Disaster Response Plan to be developed by the Parties as provided in Section 4.15A. above. The Parties shall review the Protocol no less than annually and revise as warranted.

C. **Essential Service**. Contractor acknowledges that it provides an essential service, and that while provision of Collection service during or following a disaster may be affected by impacts to facilities, equipment, and/or public infrastructure, Contractor is obligated to take all measures necessary to provide such service in a timely and effective manner in compliance with this Agreement., Section 10.7 notwithstanding.

D. **Availability of Contractor’s Personnel and Equipment**. In event of a State of Emergency declared by the City Manager or City Council, Contractor shall provide, upon City request, all equipment, vehicles, and/or personnel normally performing services under this Agreement, for use by Contractor in conducting emergency operations under City direction.  City shall not be required to compensate Contractor for Contractor’s provision of Equipment, vehicles, or personnel normally performing services under this Agreement when made available during a declared State of Emergency for Contractor use under City direction.

E. **Contractor Reimbursement for Use of Additional Resources**. Should Contractor provide additional equipment, vehicles, and/or personnel during a declared State of Emergency beyond that normally required to perform services under this Agreement, Contractor shall submit to City detailed records of specific, additional, and reasonable costs and expenses borne by Contractor in providing such additional resources. City shall compensate Contractor for such documented, reasonable expenses within 90 days of receipt of state and/or federal emergency agency reimbursement specific to these expenses. Should such reimbursement not occur within five hundred and forty (540) days of Contractor’s complete submission as verified by the City, City shall compensate Contractor for such fully documented costs. Contractor shall promptly cooperate with City, state and/or federal reporting and documentation requirements related to City receipt of reimbursement, including if City is pursuing reimbursement after having reimbursed the Contractor. Contractor shall further comply with all applicable federal, state, or local funding and accounting requirements that may apply to expenses that will be reimbursed upon notice of the same from City.

ARTICLE 5.
STANDARD OF PERFORMANCE

## 5.1 General

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

## 5.2 Operating Hours and Schedules

**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 7:00 a.m. and 6:00 p.m., Monday through Friday.

**2. Commercial Premises.** Collection from Commercial Premises shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.

**3. Exceptions.** In the event of an unforeseen and/or extraordinary circumstance, the Contractor may Collect from Residential Premises or Commercial Premises that are two hundred (200) feet or less from Residential Premises between the hours of 5:00 a.m. and 10:00 p.m., Monday through Friday, upon prior written approval from the City Manager.

**B.** **Holiday Collection Schedule.** Contractor, at its sole discretion, may choose not to provide Collection services on a Holiday. In such event, Contractor shall provide 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, but in no case shall Contractor notice Customers three (3) weeks prior to the change.

**C.** **Collection Route Schedules**. Contractor shall provide City with Route maps and daily Collection schedules for each Collection service. Such maps and schedules shall be reviewed and approved by the City. Contractor may not change its regularly scheduled Residential Collection days without prior written approval from the City. Such written approval shall be obtained from the City thirty (30) calendar days before the effective date of the schedule change. Once approved, Contractor shall notify any Residential Customer four (4) weeks prior to any Collection schedule changes. Contractor shall not permit any Customer to go more than seven calendar days without service during a Collection schedule change.

## 5.3 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 Materials Identified During Collection.**  If Contractor determines that material placed in any Container for Collection is Excluded Materials 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 a 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 Materials or a phone number of an entity that can provide information on proper Disposal of the Excluded Materials. Under no circumstances shall Contractor’s employees knowingly Collect Excluded Materials or remove unsafe or poorly containerized Excluded Materials from a Collection Container.

If Excluded Materials 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.

## 5.4 Collection Standards

**A. Servicing Containers.**Contractor shall Collect and return each Container to the location where the Occupant properly placed the Container for Collection provided that Contractor shall not replace Containers in such a manner that blocks the public right-of-way or bicycle lanes, regardless of how the Containers were placed 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 shall direct its employees not to Collect Solid Waste beyond each Customer’s subscription level of service unless otherwise specified in this Agreement, or business office of Contractor has granted prior authorization to make such Collection.

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 provide hard-to-service Collection as necessary to safely and efficiently service 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. All Customers shall be charged uniform, City-approved Rates regardless of how service is provided. *{ Proposer: This paragraph will be modified based on the selected Contractor’s proposed method for servicing hard-to-service areas. }*

Contractor may require Customers on private roads to sign road damage liability waivers prior to operating on such private streets. Additionally, Contractor may require Customers (including groups of Customers and home owners’ associations) requesting Collection service from on-property motor-courts to sign damage liability waivers indicating the Customer’s choice to receive Collection services in such manner, prior to operating on such private streets or motor-courts. If Customers requesting service on private roads or on-property motor-courts 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. General Non-Collection and Courtesy Noticing.** Prior to the Commencement Date, Contractor shall develop, and submit to the City Contract Manager for review and approval: a template Non-Collection Notice, for use in instances of acceptable non-Collection of Discarded Materials; and, a template Courtesy Collection Notice, for use in instances of improper set-out of Discarded Materials, which the Contractor elects or is otherwise required by this Section to Collect as a courtesy to the Customer. Such notices shall be specific to the City of Albany, and at least 2” by 6” in size unless otherwise specified by the City Contract Manager.

1. **General Non-Collection Noticing**. 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 Materials, pursuant to the requirements of Section 5.3. If Contractor intentionally refuses to Collect Discarded Materials (including Cardboard overages not properly placed for Collection), but does not leave a Non-Collection Notice, it shall be considered a missed Collection per Section 4.10.3. 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 proactive communication with Customer, initiated by Contractor.

2. **General Courtesy Notice**. 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, over-full Containers, spills not caused by the Contractor, Carts placed too close together, Carts placed in front of one another, Carts placed too close to parked cars), Contractor shall Collect the material and leave a Courtesy Collection Notice at the Customer Premises clearly explaining how the Customer failed to comply with proper set-out procedures. In the event of identification of Prohibited Container Contaminants, Contractor shall follow the courtesy Collection process specified in Section 4.13.

3. **Container Set-Out.** 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 or garage. 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).

4. **Contamination Notices**. In the event of identification of Prohibited Container Contaminants, Contractor shall follow the Courtesy Collection Notice and Contamination Charge Notice process specified in Section 4.13.

**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’s vehicles shall be equipped at all times with spill kits, including but not limited to a broom, shovel, and absorbent. If spills or leaks enter City storm drains, Contractor must immediately notify the City Fire Department.

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 as part of the public outreach program. Such best management practices include, without limitation:

1. Closing Container lids and right sizing service: Contractor staff will tag overfull Containers with Courtesy Collection Notices, which will serve as outreach and education to the Customer. Photos of the Container will be taken by Contractor staff, 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 service Recyclable Materials, Organic Materials, and Solid Waste Containers safely and efficiently. Contractor’s Operations Manager or other appropriately qualified staff shall, upon request by the City Contract Manager, provide a review of plans for new Single-Family, Multi-Family, Commercial, or other 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 Charges, lock/unlock charges) 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 material 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).

## 5.5 Collection Vehicle Requirements

In accordance with the City’s Climate Action and Adaptation Plan, the City recognizes the importance of reducing reliance on vehicles that run on carbon-emitting fuels such as gasoline and natural gas, both in the public and private spheres. Collection operations shall, to the maximum extent feasible, maintain, plan for, and upon City direction implement a low-carbon or no-carbon footprint through transition of the vehicle fleet used to provide Collection services under this Agreement to reliance on SB 1383 qualified Renewable Natural Gas (RNG) and/or electricity. Contractor shall annually inform City on the status of this transition as provided in Exhibit D. As of the Effective Date, all Collection vehicles shall operate on compressed natural gas (CNG). The Contractor and City shall evaluate on an annual basis the feasibility of expanding the use of added or different Clean Alternative Fuel Vehicles including electric vehicles for regular on-Route or off-Route operations. The annual evaluation shall include review of the technical options, cost, documentation of savings in maintenance costs, and timing for expanding Contractor’s use of electric vehicles for light-duty and medium-duty applications to include heavy-duty Collection vehicles. *{Proposers: Final language will be revised as necessary to reflect the selected contractor’s approach to EV’s.}*

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. 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 2019, 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. Upon City approval, 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.

Vehicles used in the Collection of Solid Waste, Recyclable Materials and Organic Materials shall be thoroughly washed on a minimum of one (1) time per week or more frequently if necessary, so as to present a clean appearance of the exterior and interior compartment of the vehicle under this Agreement. 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. The City has right to promote events and programs on vehicles signs at no charge to City.

Contractor shall not place the City's logo on its vehicles. Contractor shall not use vehicles identified for use in the City in any other jurisdiction, or use vehicles labeled for use in other jurisdictions in the City without prior approval from the City, excluding incidental and weekend use.

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 of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. 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.

All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County, and City noise level regulations. 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. In the event that Contractor’s Collection activities are the subject of noise Complaints from Residents that are near non-Residential service locations, Contractor shall meet and confer with the City Contract Manager to identify whether alternative Collection times or methods could be used to mitigate the noise concerns.

Contractor shall furnish the City a written (electronic) inventory of all vehicles, including Collection vehicles, used in providing service, and shall update the inventory report annually. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, fuel type, capacity and decibel rating.

## 5.6 Container Requirements

**A. Containers Provided to Customers.** All Carts, Bins, and Drop Boxes shall be provided by Contractor to all Customers as part of services provided by Contractor, with the exception of public litter and public Recyclable Materials and Organic Materials cans that shall be provided by the City. Contractor shall adhere to the City-approved provisions for Container assembly, delivery, and swap-out as specified in Exhibit G3 Implementation Plan. Contractor shall provide Containers for storage and Collection of Solid Waste, Recyclable Materials, Organic Materials, and C&D. Contractor shall provide Containers to new Customers requesting service initiation, or existing Customers requesting a Used Oil Recovery Kit within five (5) Working Days of Contractor’s first receipt of the Customer request. Contractor-provided Containers shall be new or clean used Containers, and Carts and Bins shall be designed and constructed to be watertight and prevent the leakage of liquids.

All Containers shall display the City’s name, Container 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. Upon a Commercial Customer’s request, Contractor shall provide containers approximately twenty-three (23) gallons in capacity (“Slim Jims”) for indoor containment of Recyclable Materials and Organic Materials prior to Commercial Customer placement in Carts, Bins, or Drop Boxes. Such “Slim Jim” containers shall have dimensions of approximately twenty-two (22) inches long, eleven (11) inches wide, and thirty (30) inches tall. Contractor may charge Commercial Customers an amount up to Contractor’s actual cost of procuring such “Slim Jim” containers, and such revenues shall not be included in Gross Receipts. Contractor shall not be required to Collect from such “Slim Jim” containers.

Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. At least sixty (60) days in advance of Contractor Container purchases or repainting of metal Containers, Contractor shall present proposed colors to the City for review and approval. If an existing Container breaks or is otherwise rendered non-functional, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section.

**B.** **Container Color Requirements.** Contractor shall differentiate Discarded Materials Containers based on color with different colors for Solid Waste, Recyclable Materials, and Organic Materials Containers that are readily identifiable by Customers and Generators. Containers must be in bright, readily identifiable colors to facilitate Customers’ ready recognition of Solid Waste, Recyclable Materials, and Organic Materials, and subject to City’s written approval.

1. **Carts**. Solid Waste Carts provided to Customers shall have gray bodies and gray lids; Recyclable Materials Carts provided to Customers shall have blue bodies and blue lids; and, Organic Materials Carts provided to Customers shall have green bodies and green lids.

2. **Bins.** Solid Waste Bins shall have gray bodies and gray lids, Recyclable Materials Bins shall have blue bodies and gray lids, and Organic Materials Bins shall have green bodies and gray lids.

*{Note to Proposer: Alternative compliant color combinations, such as colored bodies and grey/black lids, may be proposed. The above paragraph will modified as necessary to reflect City approval of the selected contractor’s alternative compliant colors.}*

3. **Debris Boxes**. Solid Waste Debris Boxes shall have gray bodies; Recyclable Materials Debris Boxes shall have blue bodies; and, Organic Materials Debris Boxes shall have green bodies.

**4. C&D Containers.** Containers for Collection of C&D may be in any color, provided that the colors do not conflict with the Container color requirements of this Section and provided that the C&D Container colors are consistent for all C&D Containers. The C&D Container color shall be proposed by the Contractor and reviewed and approved by the City Contract Manager prior to Contractor’s procurement of such Containers.

**C. Container Standards**

1. All Carts shall be manufactured by injection or rotational molding methods and shall be of a standard that is greater or equivalent to that of the Carts currently in use. Contractor provided Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. Carts provided to Customer shall have a useful life of ten (10) or more years as evidenced by a manufacturer’s warranty or other documentation acceptable to the City, and shall be depreciated over ten (10) years.

2. All Containers with a capacity of one (1) cubic yard or more shall meet applicable Federal, State, and local regulations for Bin safety and be covered with industry-standard attached lids.

3. Contractor shall differentiate Solid Waste Containers, Recyclable Materials Containers and Organic Materials Containers from each other by providing Containers of different colors (blue for Recyclable Materials, green for Organic Materials, and grey for Solid Waste), unless approved otherwise by the City Contract Manager in accordance with Section 5.6.B and Applicable Law.

4. Contractor shall obtain the City’s written approval of Container specifications, colors, and labeling before acquisition, painting, and labeling occurs.

5. When purchasing plastic Collection Containers, Contractor shall purchase Containers that contain a minimum of 30% post-consumer Recycled plastic content.

6. All such Containers shall be 100% Recyclable at the end of their useful life.

7. Prior to ordering Containers for use under this Agreement, Contractor and City Contract Manager shall meet and confer to ensure the proposed Container specifications and labels comply with Applicable Law, including the final SB 1383 Regulations.

**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, Drop Box and Public Litter Module, 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, “ORGANICS” for Organic Materials (including Food Scraps, 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 always visible to the Customer. Each Cart shall be stamped with the City Logo, and no Container shall be stamped or labeled with Contractor’s name or logo, unless otherwise approved by City Contract Manager.

Subject to City approval, Contractor shall display City's name using labels, decals, hot stamp, or other approved method. Contractor shall be prohibited from including Contractor’s name and/or logo on any Containers utilized in the City unless otherwise approved by City Contract Manager.

All Containers shall be labeled in accordance with the requirements of SB 1383. Recyclable Materials and Organic Materials Container labels must include at least three (3) graphic examples of materials that are accepted in the Container, and at least two (2) graphic examples of materials that are prohibited from being placed in the Container, clearly displaying that the prohibited materials are prohibited (using recognizable symbols). Solid Waste Container labels must include at least two (2) graphic examples of materials that are prohibited from being placed in the Container, clearly displaying that the prohibited materials are prohibited (using recognizable symbols), and a statement that proper separation of Recyclable Materials and Organic Materials is mandatory.

All Carts shall include a high-quality educational information label using in-mold technology, such that all labeling shall be integral to the lid, through the use of injection molding, and shall not be affixed to any part of the Cart or lid with adhesives, unless otherwise approved in advance by the City Contract Manager. Notwithstanding the provisions of this Section, or the requirements of SB 1383, the in-mold lid label shall include: information about the Collection program; 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; and the City’s name and logo.

Contractor shall provide Drop Boxes containing permanent, fully SB 1383 compliant labeling and color specifications to Customers subscribing to regular, ongoing Drop Box service.

*{Proposers: City reserves the right to modify Subsection D Container labeling requirements.}*

**E.** **Repair and** **Replacement of Containers; Inventory**.

1. 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 lost, stolen, missing, damaged or broken Containers within one (1) week of Customer or City request. Any such replacements are in addition to replacements requested by a Customer under Section 5.6.E.3 below. If Contractor has reason to believe that a Customer may be abusing the repair/replacement requirement of this Section, Contractor may present the basis for their belief to the City Contract Manager who may, in their sole discretion, modify the obligations of this Section with respect to such Customer.

2. 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 Customers, and requests for replacement due to damage.

3. 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, Customers may also request one Cart size exchange per Rate Period at no charge. All such Containers shall be provided on or before Customer’s next regular Collection date. Contractor’s failure to comply with the Container requirements may result in assessment of Liquidated Damages pursuant to Section 10.6 and Exhibit F.

4. Contractor shall, upon request replace one (1) gallon kitchen pails previously provided to Single-Family Premises. Contractor shall provide all Multi-Family Residential units a kitchen pail as part of initial service rollout.

**F.** **Maintenance,** **Cleaning, Painting**. All Containers shall be maintained in a safe, serviceable, and functional condition and present a clean appearance, with the exception of public litter and public Recycling and Organic Materials cans that shall be maintained by the City. Such maintenance shall include but not be limited to ensuring that Bins have operational wheels if equipped. Contractor shall repair or replace all Containers damaged by Collection operations in accordance with standards specified in Section 5.6.E, 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 to provide clean and repainted Containers as needed (other than Carts) to present a clean appearance. Contractor shall, or contract with a third party to, 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. Customers using Cans and Carts shall be responsible for cleaning such Cans and Carts.

Contractor shall remove graffiti from Containers within one (1) Working Day of identification by Contractor or notice by City or Customer if such graffiti includes any written or pictorial obscenities and otherwise within a forty-eight (48) hour 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 under this Agreement shall become property of the City at no cost to the City, if such Containers are fully depreciated. Upon expiration or early termination of Agreement, all Containers purchased under this 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 Depreciation for purposes of this Section 5.6.G. will be calculated as used for determining Contractor’s Compensation under this Agreement.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case, the Containers 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 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 removed from the City, provided that Contractor does not place Containers labeled for use in the City into service in any other jurisdiction without prior written approval from the City Contract Manager.

## 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 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.

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 number of staffing positions to be provided by Contractor to perform the services described herein to the City are identified in Exhibit G. Failure to consistently maintain these staffing levels, by position, during the Term of the Agreement shall be considered a material breach, provided that prior to such action being determined a breach, Contractor and City shall meet and confer to determine whether staffing levels may be adjusted. If City and Contractor agree to a reduction in Contractor staffing levels, the resulting cost savings shall be reflected as an “Other Adjustment” during the next scheduled Rate adjustment, in accordance with Exhibit E.

**C. Driver Qualifications.** All drivers must have in effect a valid driver’s 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 of its employees who operate Collection vehicles or equipment. Contractor shall train its employees involved in Collection to identify, and not to Collect, Excluded Materials. 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. Field Operations Supervisor.** Contractor shall designate a qualified full-time employee as supervisor of field operations. The designated field supervisor will devote at least \_\_\_\_\_\_ (\_\_%) of a forty (40) hour week to the City, in the field checking on Collection operations, including responding to Customer requests, inquiries, and Complaints The field operations supervisor shall provide their cell phone number to the City Contract Manager and shall be reachable by cell phone or text at any time during normal business hours. *{Proposer: Fill in proposed percentage of field supervisor time.}*

**E. 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, including the General Manager, Sustainability Specialist, and Customer Service Manager, 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 at all times ensure that its personnel fully comply with Applicable Law.

At any point during the Term of this Agreement, the City may request in writing, followed by a meet and confer with Contractor senior management, that any of Contractor’s employees be reassigned such that they no longer perform work directly relating to this Agreement. Such request by City shall provide a statement describing the reasonable cause for such request. Following such meet and confer period, if the Parties agree that such employee may be reassigned or legally terminated, Contractor shall remove the identified employee(s) from performing work directly 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. If during the process, the Contractor is unable to find a suitable replacement and the performance has been accurately performed, the City may waive Liquidated Damages.

**F.** **Diversion Coordinator.**

*{Note to Proposers: The selected contractors’ number of FTE and dollar amounts in this Section will be completed for the final agreement.}*

Contractor shall provide \_\_\_\_\_\_\_\_\_ (\_) full-time Diversion Coordinator(s) and maintain staff in such position through the Term of the Agreement. The duties of the Diversion Coordinator(s) will be focused on public education, community outreach, Commercial and Multi-Family site visits, and technical assistance, and will be substantially as described in Exhibit CPublic Education and Outreach Requirements. The Diversion Coordinator(s) shall be full-time, regular, professional positions, compensated in accordance with the wages shown in Contractor’s Proposal for such positions (which may also be called “Sustainability Specialists” or “Recycling Coordinators”). Contractor acknowledges that the Diversion Coordinator role is not intended to be an internship, or entry-level role, and that the role shall not include serving as regular support for other internal or administrative Contractor functions. City shall have the option to participate in the hiring and training process of Contractor’s Diversion Coordinator(s). City may designate a staff member to work in partnership with Contractor’s Diversion Coordinator(s).

In the event that Contractor fails to provide the required number of full-time equivalent Diversion Coordinators for more than two (2) months (nine (9) consecutive weeks), Contractor shall remit to the \_\_\_\_\_\_\_dollars ($\_) per un-provided Diversion Coordinator for every month (in excess of four 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 one employee, rather than the required two, 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.

## 5.8 Contract Management

City has designated staff, the City Contract Manager, to be responsible for the monitoring and administration of this Agreement, in consultation with other City staff as City deems necessary. 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. At any point during the Term of this Agreement, the City may require that Contractor’s Contract Manager 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 if Contractor’s Contract Manager is unable to devote the necessary time to Contractor’s obligations under this Agreement, provided that Contractor’s Contract Manager may be involved with up to (2) other communities in order to respond to temporary, short-term staffing turnover as needed. In such case, Contractor shall be responsible for notifying the City Contract Manager of such other community(ies), the length Contractor’s Contract Manager’s involvement therewith, and any change in assignments. In the event the Contactor’s Contract Manager(s) is not providing satisfactory responsiveness to City Contract Manager requests, City may require Contractor to designate a new Contactor Contract Manager at no additional cost to the City.

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.

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 5.8, “material impact” is an amount equal to or greater than fifty thousand dollars ($50,000) per year.

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 4.11.

## 5.9 Environmentally-Preferrable Purchasing

Contractor shall, prior to the Commencement Date, develop and implement an “Environmentally Preferable Purchasing Policy”. Contractor’s proposed draft Environmentally Preferable Purchasing Policy is included as Exhibit I. The policy shall be subject to review, request for modification, and approval by the City Contract Manager, which approval will not be unreasonably delayed or withheld. The policy shall, at a minimum, include provisions for: (1) purchasing materials with the highest available Recycled content without materially degrading the performance of the product; (2) purchasing materials that utilize non-toxic, non-polluting alternative chemistry; (3) a twenty percent (20%) price preference, relative to virgin or toxic content products, for purchasing environmentally preferable materials and supplies; and, (4) Source Reduction and pollution prevention strategies for Contractor’s operations. Contractor shall include a summary of their environmentally preferable purchasing activities in their Annual Report to City (e.g., volume of Recycled content paper purchased, Source Reduction strategies implemented during the year and the quantified results of that strategy, etc.).

## 5.10 Local Purchasing Preference

Contractor shall, throughout the Term of this Agreement, give preference to purchasing materials and supplies used in connection with this Agreement from local vendors within the County or State; and in that order of preference. At a minimum, upon mutual agreement with City, 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 (unless printing and publishing of outreach and education materials are elements of Contractor’s Billings, such as newsletters and inserts included with bills); uniforms, safety clothing/equipment, and work boots; and office supplies.

## 5.11 Diversion Requirements

Contractor shall perform services under this Agreement in a manner which supports the City’s environmental goals, including waste Diversion goals and innovative strategies to incentivize waste reduction that could impact upstream consumer habits, as suggested in the Climate Action and Adaptation Plan. 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 and overall environmental impact. Contractor is expected, wherever appropriate, 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 achieve the minimum Diversion targets provided in Figure 5.11. The Diversion targets relate only to Discarded Materials as Collected under the terms of this Agreement, excluding Residue. “Minimum Diversion Rate” is defined as the following ratio:

[Total Tons of Recyclable Materials Collected **+** total Tons of Organic Materials Collected + total Tons of Bulky Items/Reusable Materials Collected] / [Total Tons of Recyclable Materials Collected **+** total Tons of Organic Materials Collected + total Tons of Bulky Items/Reusable Materials Collected + total Tons of Solid Waste Collected]

The Minimum Diversion Rate for Rate Year One is based on Tonnage data from 2018 and 2019.

*{Proposers: Fill in your minimum proposed Diversion rates in the table below.}*

Figure 5.11: Minimum Diversion Rate

|  |  |
| --- | --- |
| **Rate Year** | **Minimum Diversion Rate** |
| 1 | 53% |
| 2 | \_\_\_\_\_% |
| 3 | \_\_\_\_\_% |
| 4 | \_\_\_\_\_% |
| 5 | \_\_\_\_\_% |
| 6 | \_\_\_\_\_% |
| 7 | \_\_\_\_\_% |
| 8 | \_\_\_\_\_% |
| 9 | \_\_\_\_\_% |
| 10 | \_\_\_\_\_% |

Failure to achieve the target presented in Figure 5.11 in any calendar year may result in assessment of Liquidated Damages as provided in Exhibit F.

*{Proposer: This section will be revised as necessary for the final Agreement to reflect any additional Diversion metrics as negotiated by the City and the selected Contractor. As described in the RFP, the City is interested in considering additional methods for measuring Diversion-related progress.}*

ARTICLE 6.
RECORD KEEPING AND REPORTING

## 6.1 Record Keeping

Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting under this Agreement, Applicable Law, and to demonstrate compliance with this Agreement. Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement in an accessible location and condition (which may include the cloud) for the Term of this Agreement plus three (3) years after its expiration or earlier termination. Records and data shall be in chronological and organized form and readily and easily interpreted. Upon request, any such records shall be retrieved within ten (10) Working Days of a request by the City Contract Manager and made available to the City Contract Manager. 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. 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.

Because it is not possible to accurately anticipate all of the conditions giving rise to the need for information, to the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define what the records and reports are to be and their content. Further, with the written direction by or approval of the City, the records, and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency, and if such adjustment results in additional costs to the Contractor over $50,000 per year, the City shall compensate Contractor for its increased record keeping and reporting costs. Records and reporting may be revised to reflect current record keeping and reporting requirements.

To adjust Contractor’s Compensation in the event of City-directed changes in accordance with Section 3.5 or in the event of special Rate review in accordance with Section 8.3, Contractor must maintain accurate, detailed, financial and operational information in a consistent format, and must make such information available to the City in a timely fashion.

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 to establish delivery of loads to the Approved Facility(ies). 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 quarterly reports no later than thirty (30) calendar days after the end of the calendar quarter. Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of each calendar year (with the exception that Contractor shall coordinate with the City Contract Manager to ensure that any materials scheduled to be included in the annual report due in 2022 be provided earlier if necessary for the City to comply with the reporting requirements of SB 1383). Quarterly and annual reports shall, at a minimum, include all data and information as described in Exhibit D. Additionally, upon request by the City, Contractor shall provide any data, described in Exhibit D, required to respond to requests by local, regional, or State agencies within five (5) Business Days.

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 Contractor to maintain records and submit the reports required herein through use of a City-selected web-based software platform or cloud-based reporting system, at 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/or one (1) detailed financial and/or Franchise Fee audit at any point during the Term of this Agreement to verify Contractor has fulfilled its financial and operational obligations under this Agreement. The purpose of such review and audit shall be, without limitation, to review Complaints, billings, and fee payments to City, and to determine if Contractor has met the performance standards described in this Agreement (including, without limitation, performance standards established in Exhibit F). City may choose to enlist professional service providers to perform such review and audit, and Contractor shall be required to pay City’s actual costs for such services up to thirty thousand dollars ($30,000) per audit and up to seventy thousand dollars ($70,000) per performance review (such amounts 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. 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 and quality of service and provide for 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.

ARTICLE 7.
CITY FEES AND REIMBURSEMENTS

## 7.1 Franchise Fee

The Contractor shall pay a Franchise Fee to City each month. Contractor has proposed and City has agreed that the amount of the Franchise Fee shall be equal to \_\_\_\_\_\_\_\_ percent (\_\_\_\_%) of Gross Receipts for all services performed under this Agreement and shall be paid in equal monthly installments by ETF or check. Contractor and City agree the Franchise Fee is a negotiated amount that is reasonably related to the value of the rights granted to Contractor under this Agreement. City may use the Franchise Fee for any lawful purpose. The Franchise Fee shall be considered a reduction to Contractor’s profit in the calculations performed in Exhibit E. Accordingly, the Franchise Fee is a cost paid solely by Contractor. The Franchise Fee amount shall be increased annually by the same percentage as the Rate Adjustment Factor calculated for that Rate Period.

## 7.2 Administrative Reimbursement

The Contractor shall pay an Administrative reimbursement to the City each month equal to one percent (1%) of Gross Receipts for all services performed under this Agreement, in equal monthly installments. *{Proposers: Fee amount subject to change upon City review of services funded by the fee.}*

## 7.3 AB 939/SB 1383 Reimbursement

**A. Standard AB 939/SB 1383 Reimbursement.** The Contractor shall pay an AB 939/SB 1383 Fee to City each month. The amount of the AB 939/SB 1383 Fee shall be \_\_\_\_\_ dollars ($\_\_\_\_\_) per month in Rate Period Zero and Rate Period One and shall be paid in equal monthly installments. City shall use the AB 939/SB 1383 Fee to offset expenses including staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, 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 considered an allowable cost of business not subject to profit mark-up and included in the adjustment of Rates as described in Exhibit E. *{Note to Proposer: The City intends to negotiate this amount with the selected proposer.}*

## 7.4 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 \_\_\_\_\_ dollars ($\_\_\_\_\_) per month in Rate Period Zero and Rate Period One. This fee is to reimburse the City for street maintenance costs incurred from Collection vehicles traveling on City streets. This fee shall be considered an allowable cost of business not subject to profit mark-up and included in the adjustment of Rates as described in Exhibit E*. {Note to Proposer: (The final agreement will either reflect a fee of $0, or, should the City decide to have such as fee, will be revised to reflect the amount the City negotiates with the selected contractor.}*

## 7.5 Street Sweeping Reimbursement

The Contractor shall pay a Street Sweeping Fee to City each month. The amount of the Street Sweeping Fee shall be \_\_\_\_\_ dollars ($\_\_\_\_\_) per month in Rate Period Zero and Rate Period One. This fee shall be considered an allowable cost of business not subject to profit mark-up and included in the adjustment of Rates as described in Exhibit E*. {Note to Proposer: The City intends to negotiate this amount with the selected contractor.}*

## 7.6 Storm water REIMBURSEMENT

The Contractor shall pay a Storm Water Reimbursement to the City each month. The amount of the Storm Water Reimbursement shall be \_\_\_\_\_ dollars ($\_\_\_\_\_) per month in Rate Period Zero and 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 final agreement will either reflect a fee of $0, or, should the City decide to have such as fee, will be revised to reflect the amount the City negotiates with the selected contractor.}*

## 7.7 Other Reimbursements

The City reserves the right to set "other" reimbursements, as it deems necessary. The amount, time and method of payment and adjustment process will be set in a manner similar to that for other reimbursements described in this Article. This reimbursement shall be considered an allowable cost of business not subject to profit mark-up and included in the adjustment of Rates as described in Exhibit E*.*

## 7.8 Adjustment To Reimbursements

City may set other fees or adjust the fees established in this Article (other than the Franchise Fee) from time-to-time during the Term of this Agreement and such other fees and adjustments shall be considered an allowable cost of business not subject to profit mark-up and included in the adjustment of Rates as described in Exhibit E.

## 7.9 Payment Schedule and Late Fees

Within twenty-five (25) 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 twenty-fifth (25th) calendar day following the end of a calendar month, all fees due shall be subject to a delinquency penalty of two percent (2%), or maximum permitted by law, which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional two percent (2%), or maximum permitted by law, 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; and the calculation of each fee. 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 errors in payment of fees valued at one (1) percent or more for the period reviewed, Contractor shall, in addition to compensating City for lost fees, reimburse the City’s actual cost of the review.

## 7.10 Procurement Reimbursement

Within (5) Business Days of the Effective Date of this Agreement, Contractor shall pay the City \_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_) to reimburse the City for the cost of preparing the RFP, reviewing Contractor’s Proposal, and negotiating this Agreement. The Contractor may recover this payment through Contractor’s Compensation if the expense is amortized equally over ten (10) years. *{Proposers: City will provide guidance on the amount of this reimbursement.}*

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, for Post-Collection Services Contractor compensation for Transfer, Processing and Disposal fees, Franchise Fees, City Reimbursements, 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 Franchise Fees and City Reimbursements pursuant to Article 7.

Under this Agreement, Contractor shall have the right and obligation to charge and collect from Customers, Rates in Exhibit G2 that are approved by the City for provision of services to Customers. The Rates for Rate Period Zero were continued from the prior agreement. The Rates for Rate Period One are based on the Contractor’s Proposal. Contractor’s proposed costs and operating assumptions for Rate Period One are presented in Exhibit G1.

## 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 G2, Contractor shall immediately notify the City 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 may be made by the City Contract Manager.

**B. Rates for Rate Period One.** The Rates for Rate Period One, which are presented as an addendum to Exhibit G1, were determined by Contractor and City and were approved along with the Agreement. The Rates for Rate Period One shall be effective from April 1, 2023 through April30, 2024, a thirteen (13) month period.

**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 using the annualized Rate Period One costs, as presented in Exhibit G1. Rates for Rate Periods Two, Three, Five, Six, Seven, Nine, Ten, and Eleven, Thirteen, Fourteen, and Fifteen if applicable, shall be adjusted in accordance with Exhibit E1, Index-Based Rate Adjustment Methodology. Rates for Rate Periods Four, Eight, and Twelve if applicable, shall be adjusted in accordance with Exhibit E2, Cost-Based Rate Adjustment Methodology. Subsequent Rate Periods shall be adjusted annually in a method mutually agreed upon by the Parties.

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.

The cost-based methodology, which is described in Exhibit E2, 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 shall be performed instead of the index-based Rate adjustment for Rate Periods Four, Eight, and Twelve. 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.C 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 to make a determination of 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 reasonable 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.

Contractor may, at any time during the Term of this Agreement, present to City opportunities for reducing costs. Upon Contractor’s presentation of their cost saving proposal, City may request and Contractor shall provide such information as may be reasonably necessary to fully understand the proposed change. In no case shall Contractor undertake significant cost reduction efforts which, in the City’s reasonable determination, negatively impacts the services provided under this Agreement without the prior written approval of the City. Should Contractor propose and City accept an approach to reducing costs, the Parties shall establish the portion of the cost savings which will accrue to the benefit of the Contractor and the portion that will accrue to the benefit of the Customers through a reduction in the Rates. Should no other mutually acceptable apportionment be agreed upon, the Contractor shall retain fifty percent (50%) of the projected cost savings and the Customers shall gain the benefit of the other fifty percent (50%). Such cost savings shall be reflected as a negative value in the “Other Adjustment” portion of the Rate application submitted pursuant to Exhibit E1 or Exhibit E2, depending on the type of Rate adjustment procedure used in that Rate Period.

Contractor has assumed that the final regulations issued in November 2020 under SB 1383 apply, and Contractor’s Proposal (Exhibit G) assumes compliance with such regulations as they relate to: (i) specific requirements of SB 1383 placed on Contractor in its capacity as a regulated hauler; and, (ii) specific programmatic, monitoring, education, recordkeeping, reporting, and procurement-related responsibilities delegated to Contractor by City as described in this Agreement.

## 8.4 Compensation of Post-Collection Services Contractor

Contractor is solely responsible for compensating the Post-Collection Services Contractor for actual Tons of each type of Discarded Material delivered at the then-current per-Ton rate. The then-current per-Ton rate, as adjusted by the City as provided in the Post-Collections Services Agreement and as incorporated into the City-approved Rates as provided in Exhibit E, shall be the only form of compensation due to the Post-Collection Services Contractor, including for Disposal of Residue. Contractor shall be invoiced for, and shall pay for Processing and Disposal of actual Tons delivered to the Approved Facility regardless of material type; there are no minimum or maximum Tonnage requirements. Payment to the Post-Collection Services Contractor shall be limited to per-Ton compensation as approved by City as included in the rates, excluding the extent the City and/or Contractor agree on other one-time payments. Contractor and Post-Collection Services Contractor shall meet and confer no less than sixty (60) days prior to the Commencement Date to finalize the invoicing process. Contractor shall provide payment to Post-Collection Services Contractor within thirty (30) days of receipt of complete invoices.

ARTICLE 9.
INDEMNITY, INSURANCE, AND PERFORMANCE BOND

## 9.1 Indemnification

**A.** **General.** Contractor shall indemnify, defend with counsel reasonably 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 reasonable attorneys’ and expert witness fees) (collectively, “Damages”) of every nature arising out of or in connection with Contractor’s performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of City.

**B. Excluded Materials.** 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 Materials except in strict compliance with all Applicable Laws.

In the event that Contractor negligently or willfully mishandles Excluded Materials 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 7.9. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

Notwithstanding the foregoing, Contractor’s duties under this subsection shall not extend to any claims arising from the Disposal of Solid Waste at the Approved Solid Waste 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, 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 reasonable attorneys’ fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded Materials.

**D. 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 City with respect to the waste stream Collected 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.

Notwithstanding any other provision in this Agreement, Contractor’s obligations in this Subsection D with respect to AB 939, AB 341, AB 1826, and/or SB 1383 shall be subject to the provisions of Section 40059.1 of the Public Resources Code, and Contractor shall not be liable for any indemnity obligations or penalties under this Agreement in respect of any such requirements except to the extent that indemnity obligations by Contractor are enforceable under said Section.

**E. Related to Proposition 13 and 218.** Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but not limited to, Article XIII A, C and D of the California Constitution (commonly known as 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. Any adjustment of Rates is contingent on City’s use of such Proposition 218 process as deemed necessary or advisable by the City.

If, at any time, the existing Rates or a Rate adjustment determined to be appropriate by both City and Contractor to compensate Contractor for costs or increases in costs as described in this Agreement cannot be maintained or 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 or 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 180 days’ 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 pursuant to this Agreement after the date of such termination. Should a court of competent jurisdiction determine that the Contractor cannot charge and/or increase its Rates for any amount of charges related to Franchise Fees and/or City Reimbursements and/or other charges, Contractor shall reduce the Rates it charges Customers by a corresponding amount and shall be relieved from paying the amount of such Franchise Fees and/or City Reimbursements and/or other charges, provided said Franchise Fees and/or City Reimbursements and/or other charges disallowed by the court were determined not to be lawful or 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.

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

**F. Hazardous Substance Indemnification.** Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, officers, employees, volunteers, and agents (collectively, “indemnitees”) from and against all claims, damages (including, but not limited to, special, consequential, natural resources and punitive damages), injuries, costs, (including, without limitation, any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, without limitation, attorneys’ expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, “Damages”) of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including, without limitation, damages arising from or attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Waste, Collected under this Agreement. Notwithstanding the foregoing, however, Contractor shall not be required to indemnify the City for the costs for any claims arising from the Disposal of Solid Waste at the Approved Solid Waste Facility, including, but not limited to, claims arising under the Comprehensive Environmental Response, Comprehensive and Liability Act (CERCLA. This indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitees, and as provided below. . The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability.

This provision is in addition to all other provisions in this Agreement and is intended to survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall prevent City from seeking indemnification or contribution from Persons or entities other than indemnitees, for any liabilities incurred by City, or the indemnitees.

**G. Measure D.** Contractor shall indemnify, defend and hold harmless City, its officers, employees, agents and volunteers, from and against any revenues withheld by the Alameda County Source Reduction and Recycling Board in the event the Source Reduction and Recycling goals or any other requirement of Section 64 of the Alameda County Charter (commonly known as Measure D) are not met by the Contractor with respect to the Recycling and Source Reduction programs under this Agreement and such failure is due to the failure of Contractor to meet its obligations under this Agreement or due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by Measure D in a timely manner.

## 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. 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 Legal Liability** – $5,000,000 for bodily injury, property damage, and remediation of contaminated site.

**Cyber Liability** – Contractor will maintain cyber liability insurance with a combined single limit of not less than $1,000,000 per event. Contractor’s cyber policy mut include language related to Contractor data breach.

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, in the event that 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. 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. In the event that the City’s Risk Manager requests a change in accordance with this Section 9.2.B.4 that results in increased costs to Contractor, such change shall be addressed in accordance with Section 3.5.

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 is to be placed with insurers with a current A.M. Best’s rating of no less than A-VII, unless otherwise approved by City Risk Manager.

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.

**B. 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.

**C. 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.

**D. 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 and in a format approved by 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 \_\_\_\_dollars ($\_\_\_\_\_), which is an amount set to equal twenty-five percent (25%) of Contractor’s proposed Rate Period One 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.

In lieu of a performance bond, City and Contractor may agree that Contractor will provide for the issuance of an irrevocable stand by letter of credit (the "Letter of Credit") by a bank approved by City in its sole discretion (the "Bank") for the benefit of City. Under the Letter of Credit, City may draw, in one or more drawings, an aggregate amount up to $\_\_\_\_\_\_ (the "Stated Amount", equivalent to that provided above in this Section 9.3 for a performance bond) upon the occurrence of (1) an Event of Default defined in Section 10.1, (2) Contractor's failure to timely pay any monies due City, (3) Contractor's inability to regularly pay its bills as they become due, or (4) Contractor's failure to timely pay any Solid Waste management facility for Recyclable Materials Processing, Composting or Disposal services provided under this Agreement, as evidenced to the satisfaction of City. City and Contractor may agree that Contractor will increase the aggregate amount of the Letter of Credit in conjunction with the adjustment of Rates in accordance with Article 8. Any incremental costs or savings incurred by Contractor to secure the increased aggregate amount will be included in the calculation of Rates for the next Rate Period.

The expiration date of the Letter of Credit must be sooner than the Term of this Agreement provided in Section 2.1 (the "Stated Expiration Date"), unless it provides that it will not be terminated, modified, or not renewed except after prior written notice by certified mail, return receipt requested, to City 60 days in advance of termination or failure to renew. The Letter of Credit may expire on the date on which the Bank receives a certificate from City saying that the Term has expired, or this Agreement has been terminated and Contractor owes City no money under this Agreement, or that Contractor has substituted an alternative letter of credit or other security document acceptable to City in City's sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of City in its sole discretion, following the notice procedures defined in Section 12.9. The Letter of Credit must be transferable to any successor or assignee of City.

ARTICLE 10.
DEFAULT AND REMEDIES

## 10.1 Events of Default

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

**A. Fraud or Deceit.** Contractor, its Affiliates, any Subcontractor, or any other Person employed by or with an ownership interest in Contractor, its Affiliates or any Subcontractor 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 entry of an order for relief in favor of Contractor in a bankruptcy proceeding.

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

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

**E. Violations of Applicable Law.**  Contractor has been found by a court of proper jurisdiction to be in violation of Applicable Law (other than criminal law) directly or indirectly related to the performance of this Agreement, provided that Contractor may contest any such allegation or finding by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.

**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 Franchise Fees or City Reimbursements 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 or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail 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; and, any Contractor-provided report containing 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 express 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 G3.

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

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

## 10.2 Right to Terminate Upon Event of Default

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

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

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

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

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

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

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

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

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

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 as to 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 shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. City may, within ten (10) Business Days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City Contract Manager will provide Contractor with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 10.6. Within ten (10) Business Days of receipt of such notice of intention to assess Liquidated Damages, or within forty (40) Business Days if the intended assessment totals over thirty thousand dollars ($30,000), no Liquidated Damages may be imposed on Contractor until Contractor has been given a reasonable opportunity to respond to allegations and to meet and confer with the City Manager. The City Manager’s decision shall be final subject to Contractor’s ability to pursue judicial relief in accordance with Section 10.9.

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

**D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City 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 may proceed against the performance bond required by the Agreement, order the termination of the rights or “franchise” granted by this Agreement, or all of the above.

## 10.7 Excuse from Performance

Notwithstanding any other provision in this Agreement, each Party shall be excused from performing its respective obligations hereunder and from any obligation to pay Liquidated Damages if it is prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder (each a “Force Majeure Event”). 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 Force Majeure Events 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 provided Contractor does not fully resume performance of its obligations hereunder within such ten (10) Business Days, 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 that results in a material impact to the Contractor’s revenue and/or cost of operations, as defined in Section 5.8, the provisions of Section 10.9 shall apply.

A. **Meet and Confer.** The City and Contractor agree that they promptly will meet and confer to attempt to resolve the matter between themselves.

B. **Mediation.** In the event that disputes arise under this Agreement and 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 of time 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 such Party of its respective 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 such 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 that Party’s 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 venturer 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 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 between the Parties arising out of this Agreement shall be brought and concluded in the courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Alameda 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 stock or ownership of Contractor to a Person (other than a transfer of shares in Contractor by the owner of such shares to members of the owner’s family or a trust for the benefit of the owner’s family, to Contractor or to another owner of shares in Contractor) except that no cumulative sale, exchange, or transfer of shares may exceed twenty (20) percent during the Term of the Agreement (other than a transfer of shares in Contractor by the owner of such shares to members of the owner’s family or a trust for the benefit of the owner’s family, to Contractor 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 (10) percent or more of the value or voting rights in the local, regional, and/or corporate stock of Contractor (excluding as the result of changes in ownership or control between an owner of shares in Contractor and Contractor, members of the owner’s family, or a trust for the benefit of the owner’s family); (iv) 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 (10) percent or more of the value or voting rights in the local, regional, and/or corporate stock of Contractor that results from changes in ownership or control between an owner of shares in Contractor and another owner of shares in Contractor unless Contractor engages a professional manager to oversee this Agreement; (v) 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 (vi) any combination of the foregoing (whether or not in related or contemporaneous transactions) that 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 and complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements. The City may, in its sole discretion, waive one (1) or more of these requirements.

A. On the date City approves Contractor’s written request for the City’s written consent to an assignment and the assignment occurs, Contractor shall pay the City a transfer fee in the amount of one (1) percent 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 documentation required as a condition for approving any such assignment. Such payment shall be required regardless of the ultimate determination of the City with regard to 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 review of the proposed assignment.

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

## 12.7 No Third Party Beneficiaries

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

## 12.8 Waiver

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach 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 Albany

Attn: City Manager

1000 San Pablo Avenue

Albany, CA 94706

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 provided below. The City may delegate, in writing, 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. 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 WITNESS WHEREOF, this Agreement is entered into by the Parties hereto in Alameda County, California on the day and year first above written.

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| --- | --- | --- | --- |
| **City of Albany** A Municipal Corporation “CITY” |  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_“CONTRACTOR” |
|  |  |  |  |
| By: Nicole Almaguer, City Manager |  |  | Signature  |
| Date |  |  | Date |
| **The Foregoing Agreement Has been Reviewed and Approval Is Recommended:** |  |  | Print Name of Signatory  |
|  |  |  |  |
|  |  |  | Signature Date |
|  |  |  |  |
|  |  |  | Title of Signatory |
|  |  |  |  |
| Erin Smith DateDirector, Public Works |  |  |  |
| **APPROVED AS TO FORM:** |  |  |  |
|  |  |  | Print Name of Signatory |
|  |  |  | Title of Signatory |
| Malathy Subramanian, City Attorney  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  | Albany Business License # Expiration Date |
|  |  |  |  |
| **ATTEST:** |  |  | Approved by City Council |
|  |  |  |  |
|  |  |  |  |
| Anne Hsu, City Clerk Date |  |  |  |
|  |  |  |  |