

**FRANCHISE AGREEMENT BETWEEN  
THE CITY OF HAYWARD  
AND  
WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.  
FOR SOLID WASTE, RECYCLABLE MATERIALS AND ORGANIC  
MATERIALS SERVICES**

THIS FRANCHISE AGREEMENT is made and entered into as of December 6, 2022, between the City of Hayward, a California municipal corporation, (hereinafter the “**City**”) and Waste Management of Alameda County, Inc., a California corporation, (hereinafter referred to as the “**Contractor**”).

**RECITALS**

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

**WHEREAS**, Contractor is currently providing residents and businesses with Solid Waste Collection and Disposal services, as well as Collection and Processing of Recyclable Materials and Organic Materials in the City, pursuant to a January 27, 2015 Franchise Agreement (the “**2015 Franchise Agreement**”); and,

**WHEREAS**, the parties wish to amend the Franchise Agreement in its entirety and enter into a new agreement with a Commencement Date of March 1, 2023, in order to allow City to better meet the needs of City rate payers, and to meet the goals and requirements of SB 1383, the California Integrated Waste Management Act (“**AB 939**”) and California Jobs and Recycling Act (“**AB 341**”) (California Public Resources Code §§ 40000, et seq.), Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D), and the City’s own goals; and,

**WHEREAS**, upon the Commencement Date of this Agreement, all terms contemplated under this Agreement shall supersede all prior agreements between the parties; and

**WHEREAS**, the Legislature of the State of California, by enactment of AB 939 and subsequent additions and amendments (codified at 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 Solid Waste generated in California, coupled with diminishing landfill space 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 various regulations, directed the responsible State agency, and all local agencies, to promote Disposal Site Diversion and to

maximize the use of feasible Solid Waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of Solid Waste that must be Disposed of in Disposal sites; and,

**WHEREAS**, under the City’s Municipal Code, the City has the authority to provide for the Collection and Disposal of Solid Waste, through a contract with a solid waste collection provider; and,

**WHEREAS**, pursuant to California Public Resources Code Section 40059(a) as may be amended from time to time, the City has determined that the public health, safety, and well-being require that a qualified contractor provide for the Collection of Solid Waste, Recyclable Materials, Organic Materials, and Construction and Demolition Debris, and other services (except for Collection of materials excluded in the City’s Municipal Code) related to meeting the Diversion goals established by AB 341 and AB 939, as they may be amended from time to time; and,

**WHEREAS**, the City declares its intent to regulate, pursuant to the Hayward Municipal Code, as it may be amended from time to time, Contractor’s setting and collection of reasonable Rates that Contractor will charge Customers for the Collection, Transportation, Processing, Recycling, Composting, and/or Disposal of Solid Waste, Recyclable Materials, Organic Materials Services, and Construction and Demolition Debris; and,

**WHEREAS**, this Agreement has been developed by and is satisfactory to the Parties,

**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. DEFINITIONS**

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

- 1.1. **“AB 341”** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 (Chesbro, AB 341), also commonly referred to as “AB 341”, as amended, supplemented, superseded, and replaced from time to time.
- 1.2. **“AB 939”** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.
- 1.3. **“ACWMA”** means the Alameda County Waste Management Authority.
- 1.4. **“Adequate Commercial Recycling Program”** means the definition and process used by the ACWMA to assess the existence of an “adequate commercial recycling program” for

the purpose of determining municipal eligibility to receive per capita Recycling Fund monies beginning July 1, 2013. A copy of the documents describing the provisions is included as Exhibit N.

- 1.5. **“Affiliate”** means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor has a direct or indirect Ownership interest; a business which has a direct or indirect Ownership interest in Contractor; and/or a business which is also Owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For the purposes of this definition, “Ownership” means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986 (26 U.S.C. §318), as in effect on the Effective Date, provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest of value which the ownership interest represents, whichever is greater.
- 1.6. **“Agreement”** means this Franchise Agreement between the City of Hayward and Waste Management of Alameda County, Inc. for Solid Waste, Recyclable Materials and Organic Materials Services, including all exhibits, and any future amendments hereto.
- 1.7. **“Alternative Daily Cover (ADC)”** means cover material, other than earthen material, used to cover compacted solid wastes in a disposal site with at least six (6) inches of material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of Regulations, as may be amended from time to time.
- 1.8. **“Alternative Intermediate Cover (AIC)”** means materials other than soil used at a landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred eighty (180) days, as defined in Section 20164 of the California Code of Regulations, as may be amended from time to time. Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide breeding grounds for insects and vermin.
- 1.9. **“Applicable Law”** means all Federal, State, local and foreign laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transfer, Transportation, Processing, Recycling, and/or Disposal of Solid Waste, Recyclable Materials and Organic Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the Term of this Agreement.

- 1.10. **“Approved Construction and Demolition Debris Processing Site”** means the facility used to Process Construction and Demolition Debris located at the Davis Street Transfer Station in San Leandro, California, which is owned and operated by Contractor.
- 1.11. **“Approved Disposal Location”** means the Altamont Landfill outside of Livermore, California, which is owned and operated by Contractor.
- 1.12. **“Approved Dry Waste Processing Site”** means the Materials Recovery Facility at the Davis Street Transfer Station in San Leandro, California, which is owned and Operated by Contractor.
- 1.13. **“Approved Organic Materials Processing Site”** means Davis Street Resource Recovery Complex, Redwood Landfill, Altamont Landfill, Cedar Avenue Recycling and Transfer Station (CARTS), or other approved sites which were selected by Contractor and approved by the Contract Administrator. Redwood Landfill and Altamont Landfill may be approved sites provided that each has sufficient Processing capacity and that no Organic Materials be used as Alternative Daily Cover, with prior approval by Contract Administrator.
- 1.14. **“Approved Recyclable Materials Processing Site”** means Tri-CED Community Recycling in Union City, a subcontractor of Contractor, Davis Street Resource Recovery Complex, and Lodi Recycling in Lodi, California. Other facilities owned by Contractor or an Affiliate may be acceptable, subject to prior approval by Contract Administrator.
- 1.15. **“Approved Transfer Station”** means the Davis Street Resource Recovery Complex.
- 1.16. **“Tag-it Tags”** means tags purchased by a Customer and attached to bagged Solid Waste for Collection by the Contractor.
- 1.17. **“Batteries”** means single-use or rechargeable batteries and all other batteries identified by the California Department of Resources Recycling and Recovery as Universal Waste. Examples include AAA, AA, C, D, button cell, and 9-volt batteries. Car batteries are excluded.
- 1.18. **“Billings”** means any and all statements of charges for services rendered, howsoever made, described, or designated by Contractor, presented to Customers served by Contractor for the Collection of Solid Waste, Recyclable Materials, Organic Materials and C&D in the City.
- 1.19. **“Bin”** means a Container with capacity of approximately one to seven cubic yards, with a hinged lid, with or without wheels, that is serviced by a front-end and/or rear-end loading collection vehicle.
- 1.20. **“Biosolids”** means solid, semi-solid or liquid Residues generated during primary, secondary, or advanced treatment of domestic sanitary sewage.

- 1.21. **“Bulky Items”** means large, discarded items including, but not limited to, Major Appliances, furniture, tires, carpets, mattresses, E-Scrap Items, clothing, Yard Trimmings, and other oversize materials whose large size precludes or complicates their handling by normal Collection, Processing, or Disposal methods, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating collection vehicle legal load limits. Bulky Items do not include abandoned automobiles, large auto parts, Construction and Demolition Debris or Unacceptable Waste.
- 1.22. **“Business Days”** mean days during which City offices are open to do business with the public.
- 1.23. **“Cart”** means a plastic, two-wheeled Container with a hinged lid that is serviced by an automated or semi-automated collection vehicle. A Cart has capacity of 20, 35, 64, or 96 gallons (or similar sizes approved by Contractor and the City).
- 1.24. **“Change in Law”** means any of the following events or conditions which has a material and adverse effect on the performance by either Party of its respective obligations under this Agreement:
- A. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or
  - B. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission, or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith, or the failure in good faith, to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission, or lack of reasonable diligence.
- 1.25 **“City”** means the City of Hayward, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement. For the purposes of this Agreement, City boundaries shall not include the area currently within the City municipal boundaries that are serviced under a separate agreement with the Oro Loma Sanitary District.
- 1.26 **“Collect” or “Collection”** means the act of collecting Solid Waste, Recyclable Materials, Organic Materials, C&D and other material at the place of generation in the City.
- 1.27 **“Commencement Date”** means the date specified in Section 3.1 when Collection, Transportation, Processing, Composting, and Disposal services required by this Agreement shall be provided.
- 1.28 **“Commercial”** shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale

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

- 1.29** **“Compactor”** means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include one- to seven-cubic-yard Bin compactors serviced by front-end loader Collection vehicles and 6 to 50-cubic-yard Roll-off Compactors serviced by Roll-off Collection vehicles.
- 1.30** **“Complaint”** means written or orally communicated statements made by members of the public, Customers, Owners, or Occupants of properties served by Contractor, or officers, employees or agents of City, alleging non-performance or deficiencies in Contractor’s performance, or otherwise alleging a violation by Contractor of the provisions of this Agreement.
- 1.31** **“Composting”** includes a controlled biological decomposition of organic materials yielding a safe and nuisance-free “Compost” product.
- 1.32** **“Compost Product”** means the product resulting from the controlled biological decomposition of organic materials that are source separated from the municipal solid waste stream, or which are separated at a centralized facility.
- 1.33** **“Construction and Demolition Debris” or “C&D”** means used or discarded materials removed from the premises during demolition, excavation, construction or renovation of a structure resulting from construction, remodeling, repair, improvement, or demolition operations on any pavement, street, driveway, house, building, or other structure or improvement regardless of the nature of such structure or improvement.
- 1.34** **“Container”** mean Bins, Carts, Compactors, and Roll-off Boxes.
- 1.35** **“Contamination”** refers to materials placed in a Recyclable Materials Container other than Recyclable Materials, or material placed in an Organic Materials Container other than Organic Materials. With respect to Solid Waste Containers, Contamination includes Recyclable Materials, Organic Materials and Unacceptable Waste. Section 5.6 of this Agreement sets forth the consequences of Customers placing Contamination in Containers.
- 1.36** **“Contract Administrator”** means the City Manager or his/her designee.
- 1.37** **“Contractor”** means Waste Management of Alameda County, Inc., an Affiliate of Waste Management, Inc. and a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.
- 1.38** **“Contractor’s Compensation”** means the Rate Revenue received by Contractor in return for providing services in accordance with this Agreement as described in Article 11.

- 1.39** **“Contractor Party(ies)”** means Contractor, officers, directors, or management or fiscal employees, where “management employee” means any employee with direct or indirect responsibility for direction and control over the Contractor’s activities under this Agreement and “fiscal employee” means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement.
- 1.40** **“Criminal Activity”** means those activities described in Section 14.11.
- 1.41** **“Curbside”** means the placement of a Collection Container for pickup no more than six (6) feet from any traveled street or alleyway, but not in such traveled street or alleyway, or as designated by the Contract Administrator.
- 1.42** **“Customer”** means the Person to whom Contractor submits its billing invoice and from whom it collects payment for Collection services provided to a Premises. The Customer may be the Occupant or Owner of the Premises. If an Occupant, who is also the Customer, fails to make timely payments for Collection services, then the Owner of the Premises shall be responsible for such payment, as established in the Municipal Code. Contractor is authorized to pursue receipt of all delinquent payments.
- 1.43** **“Designated Waste”** means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of California, in California Code of Regulations Title 23, Section 2522, as may be amended from time to time.
- 1.44** **“Discarded Materials”** means Solid Waste, Recyclable Materials, Organic Materials, or Construction and Demolition Debris placed by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to the City's Municipal Code.
- 1.45** **“Disposal” or “Dispose”** (or variation thereof) means the final disposition of Solid Waste at a Disposal Site.
- 1.46** **“Disposal Site”** means a facility for ultimate Disposal of Solid Waste.
- 1.47** **“Diversions”** means activities which reduce or eliminate the amount of Solid Waste from Solid Waste Disposal as recognized by State law, as may be amended from time to time. Such activities include, but are not limited to, Recycling and Composting.
- 1.48** **“Dry Waste”** means Solid Waste which is comprised of a significant percentage of Recyclable Materials. Dry Waste is not source separated from Solid Waste. Dry Waste or Rubbish includes, but is not limited to, non-putrescible Solid Waste, such as paper, cardboard, tin cans, wood, glass, plastics, rubber by-products or litter, pursuant to the California Code of Regulations, Title 14, Natural Resources, Division 7, Chapter 3, Section 17225.59, as may be amended from time to time.

- 1.49 **“Dwelling Unit”** means any type of structure or building unit, designed or used for occupancy by one family, which meets the applicable City codes for residential living. Dwelling Unit does not include a hotel or motel unit.
- 1.50 **“Effective Date”** means the date on which the latter of the two Parties signs the Agreement and the date on which Contractor may begin to take actions and incur costs in order to provide Collection, Transportation, Processing, and Disposal services required by this Agreement.
- 1.51 **“E-Scrap Items”** means discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external computer hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, DVDs, VCRs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Scrap Items or components may include Hazardous Substances and require special Processing or Disposal.
- 1.52 **“Federal”** means belonging to or pertaining to the national general government of the United States; or founded on or organized under the constitution of the United States.
- 1.53 **“Food Scraps”** means Discarded Organic Materials that will decompose and/or putrefy, including: (i) all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs, and (ii) food-soiled paper. Food Scraps does not include plastic items or compostable food ware, unless otherwise agreed by Contractor. Food Scraps is a subset of Organic Materials. This list of Food Scraps may be reviewed annually on Contractor’s request based on the industry standards established at that time.
- 1.54 **“Franchise”** is the exclusive right and privilege of Contractor to Collect, Transfer, Transport, and Process Solid Waste, Recyclable Materials, Organic Materials, and Construction and Demolition Debris, and to Dispose of Solid Waste, in accordance with the terms and conditions of this Agreement.
- 1.55 **“Franchise Fee”** means the fee paid by Contractor to City for the privilege to hold the rights granted by this Agreement.
- 1.56 **“Generator”** means any Person as defined by the Public Resources Code or Municipal Code, whose act or process produces Solid Waste, Recyclable Materials or Organic Materials as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.
- 1.57 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)



of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

- 1.58** **“Hazardous Waste”** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.
- 1.59** **“Holidays”** are defined as New Year’s Day (January 1), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25). On these days, no Collection services will be provided, and regular Collection services will resume the following day. Regular Collection services will be delayed by one day so that, for example, services regularly scheduled on Friday shall be provided on Saturday.
- 1.60** **“Household Hazardous Waste”** means any Hazardous Waste generated at Single-Family or Multi-Family Residential Premises or City Premises within the City, pursuant to State regulations, as may be amended from time to time. Such waste includes, but is not limited to, cleaning products, automotive products, fuel, lubricants, E-Scrap Items, paints, painting supplies, fluorescent lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers, automobile batteries, household batteries, adhesives, and Universal Waste, except those items defined herein as Recyclable Materials, including Used Oil or Used Oil Filters, and dry cell household batteries when placed for Collection as set forth in this Agreement or as directed by City.
- 1.61** **“Infectious Waste”** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.
- 1.62** **“Legislation”** means any code, ordinance, resolution, or any other formal enactment of the governing body of the City, which now exists or which may hereafter be adopted, which constitutes law or regulation governing the operation of the Contractor.

- 1.63 **“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific quantifiable standards of performance and the timeframe for that failure, as described in Section 13.5 and Exhibit J.
- 1.64 **“Major Appliances”** means any discarded residential device, including, but not limited to, washing machines, clothes dryers, hot water heaters, dehumidifiers, conventional ovens, microwave ovens, countertop ovens, stoves, refrigerators, freezers, air-conditioners, trash compactors, residential furnaces discarded by Residential Generators, and CFCs and other refrigerants contained in any of these items.
- 1.65 **“Mandatory Recycling Ordinance (Ordinance 2012-1)”** means the Ordinance authored and enforced by the Alameda County Waste Management Authority.
- 1.66 **“Material Type”** means each of the following: Solid Waste, Recyclable Materials, Yard Trimmings, Organic Materials, Used Motor Oil, Used Motor Oil Filters, Batteries, Construction and Demolition Debris, Dry Waste, Major Appliances, passenger tires, mattresses, and E-Scrap Items.
- 1.67 **“Multi-Family”** means, notwithstanding any contrary definition in the City’s Municipal Code, any Residential Premises with more than four permanent Dwelling Units.
- 1.68 **“Needles” or “Sharps”** means hypodermic needles, hypodermic needles with syringes, needles with attached tubing, syringes contaminated with biohazardous waste, acupuncture needles, lancets, broken glass items such as Pasteur pipettes, and blood vials generated by Residential Persons for home health care.
- 1.69 **“Occupant”** means the Person who occupies a Premises.
- 1.70 **“Organic Materials”** means Food Scraps and Yard Trimmings.
- 1.71 **“Organic Materials Processing Facility”** means any facility or site used for the purpose of sorting, treating or reconstituting Organic Materials under controlled biological conditions using aerobic and/or anaerobic digestion processes and/or pre-processing facilities, and yielding a Compost Product or other product that results in diversion.
- 1.72 **“Organics Reduction Recycling Ordinance (Ordinance 2021-01)”** means the Ordinance authored and enforced by the Alameda County Waste Management Authority.
- 1.73 **“Owner”** means the Person holding legal title to the land or building.
- 1.74 **“Overage”** means (i) Solid Waste, Recyclable Material or Organic Material exceeding its Container’s intended capacity such that the lid is lifted by at 12” (or would be lifted by at least 12” if there was a lid), and (ii) Solid Waste, Recyclable Materials or Organic Materials placed on top of or in the immediate vicinity of the Container, in bags or otherwise (except for Tag-It material).

- 1.75 **“Parent Company”** refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.
- 1.76 **“Party or Parties”** refers to the City and Contractor, individually or together.
- 1.77 **“Person(s)”** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Alameda, and special purpose districts.
- 1.78 **“Premises”** means any land or building in the City where Solid Waste, Recyclable Materials, Organic Materials or C&D are generated or accumulated.
- 1.79 **“Process” or “Processing”** means to sort, separate, prepare, treat, bale or otherwise package, Compost, cure, or to take other steps necessary to Recycle, Compost, and/or re-use materials.
- 1.80 **“Processing Site”** means any facility or site used for the purpose of Processing Recyclable Materials, Organic Materials or C&D for the purpose of making such material available for reuse. Such sites may include, but are not limited to, intermediate Processing facilities, facilities that chip or grind untreated wood, aerobic or anaerobic digester facilities, mixed materials Processing facilities, and transfer stations.
- 1.81 **“Public Litter Receptacles”** means the receptacles sited by City staff at various locations throughout the City and which Contractor is required to service pursuant to Section 5.9.2 of this Agreement.
- 1.82 **“Rate”** means the dollar unit the Contractor bills a Customer for providing Solid Waste Collection and Disposal, Recyclable Materials Collection and Processing services, and Organic Materials Collection and Processing services, where such dollar unit has been approved by City and adjusted from time to time in accordance with this Agreement.
- 1.83 **“Rate Period”** means a 12-month period, beginning with the Commencement Date and concluding twelve (12) months later, for which Contractor’s Compensation is calculated.
- 1.84 **“Rate Revenue”** means the actual monies received by Contractor from Rates charged to Customers.
- 1.85 **“Recyclable Materials”** means the materials on the “Statewide Recyclable List” published by the California Statewide Commission on Recycling Markets and Curbside Recycling. Recyclable Materials does not include bagged materials. The July 1, 2021 list of materials is provided below:

California (CA) Statewide Recyclable List  
15 Consumer Item types met the criteria requirements across the state and are recyclable statewide:

Paper Products (8):

1. Mail
2. Paper Mailing Pouches
3. Kraft Bags
4. Magazines
5. Newspaper
6. OCC (old corrugated cardboard)
7. Home Office Paper
8. Paperboard Boxes (e.g. cereal, tissue, not coated)

Glass (2):

9. Bottles
10. Jars

Metal (2):

11. Aluminum cans
12. Steel cans

Plastic (3):

13. #1 PET Bottles (Screw-type narrow neck tops – no non-recyclable shrink sleeves or other non-recyclable components)
14. #2 HDPE Bottles – Natural (Narrow necks – includes jugs – no non-recyclable shrink sleeves or other non-recyclable components)
15. #2 HDPE Bottles – Color (Narrow necks – includes jugs – no non-recyclable shrink sleeves or other non-recyclable components)

- 1.86** **“Recycle or Recycling”** means the process of sorting, cleansing, treating and reconstituting at a Recyclable Materials Processing Site materials for the purpose of returning such materials to the economy in the form of raw materials for new, reused or reconstituted products.
- 1.87** **“Residential”** shall mean of, from, or pertaining to a Single-Family Premises, Multi-Family Premises, or other Dwelling Unit, including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments, excluding hotels and motels.
- 1.88** **“Residue”** means materials that remain after Processing materials Collected by Contractor that require Disposal.
- 1.89** **“Re-use Vendor”** means a vendor that will collect used furniture and other re-usable items for purposes of reuse rather than Disposal. Such vendors may include, but are not limited to, St. Vincent DePaul, Goodwill Industries or other non-profit or for-profit organizations.

- 1.90** **“Roll-off”** means any Container with a capacity of 6 to 40 cubic yards that are detachable units and are serviced by a roll-off collection vehicle. A Roll-off may be an open top container, an enclosed container, or a Compactor container.
- 1.91** **“Salvageable Material”** means those Discarded Materials that may be reused in their existing form or may be reused after some form of Processing including, but not limited to, Organic Materials and Recyclable Materials.
- 1.92** **“Service Type”** refers to each of the following types of Collection services: Single-Family Premises Cart service, Multi-Family Premises Cart service, Multi-Family Premises Bin service, Multi-family Premises permanent Roll-off and Compactor service, Commercial Cart service, Commercial Bin service, Commercial permanent Roll-off and Compactor service, temporary Roll-off service, Bulky Items Collection service, Abandoned Waste Collection service, City Properties Bin service, City Properties Roll-Off service, Public Litter Receptacles service, City requests for Roll-Off service, City dirt and debris service, City dirt generated by City operations, and City Biosolids and grit service.
- 1.93** **“Sideyard Service”** means any physical location for the placement of Carts for Solid Waste, Single Stream Recyclable Materials, or Organic Materials Collection on the Occupant’s Premises intended for Single-Family Collection service that is not at the “Curb” or Curbside.
- 1.94** **“Single-Family”** means, notwithstanding any contrary definition in the City’s Municipal Code, any Residential Premises with less than five Dwelling Units.
- 1.95** **“Single Stream Recyclable Materials”** means those Recyclable Materials that are accepted for recycling through the Single-Family, Multi-family and Commercial Single Stream Recyclable Materials Collection services provided by Contractor pursuant to this Agreement. Single Stream Recyclable Materials shall be Source Separated from Solid Waste and Organic Materials. Single Stream Recyclable Materials may be commingled together in collection containers and vehicles.
- 1.96** **“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder that the City Code requires Generators within the City to set out for Collection. Excluded from the definition of Solid Waste are Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes Salvageable Materials only when such materials are included for Collection in a Solid Waste Container.

- 1.97 **“Source Separated”** means the segregation of materials, by the Generator, at the site of generation and designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.
- 1.98 **“Special Service”** means any Collection or Disposal service provided by Contractor to Customer which exceeds the standard billed level of service provided under Commercial, Residential or Multi-family service systems and for which a special charge is applied.
- 1.99 **“State”** means the State of California.
- 1.100 **“Subcontractor”** means a party who has entered into a contract, express or implied, with the Contractor for the performance of a primary Contractor function under this Agreement.
- 1.101 **“Term”** means the Term of this Agreement, including extension periods if granted by City, as provided for in Article 3.
- 1.102 **“Ton (or Tonnage)”** means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.
- 1.103 **“Transfer”** means the act of unloading Solid Waste, Organic Materials, or Recyclable Materials from Collection vehicles, loading such materials into Transfer vehicles, and Transporting them to approved facilities.
- 1.104 **“Transportation” or “Transport”** (or variations thereof) means the act of transporting or state of being transported.
- 1.105 **“Unacceptable Waste”** means any and all waste, including but not limited to, Hazardous Waste, Hazardous Substance, and Medical Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, substantial damage to Contractor’s equipment or facilities, or present a substantial endangerment to the health or safety of the public or Contractor’s employees, provided, that de minimis quantities or waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, Recycling, treatment and disposal of household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code shall not constitute Unacceptable Waste.
- 1.106 **“Used Motor Oil”** means used lubricating oils for vehicles.
- 1.107 **“Used Motor Oil Filter”** means the drained oil filter from a vehicle. Such filter may be placed curbside for weekly collection from Single-Family homes, when placed in a zip-lock bag.
- 1.108 **“Yard Trimmings”** means Discarded Materials that will decompose and/or putrefy, including but not limited to green trimmings, grass, weeds, leaves, prunings, small tree branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic

Materials. This list of Yard Trimmings may be reviewed annually on Contractor's request based on the industry standards established at that time.

## **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR**

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

### **2.1 Corporate Status**

Contractor represents that it is a corporation duly organized, validly existing and in good standing under the laws of the State and that 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.

### **2.2 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, as confirmed by the Corporate Secretary's Certificate in Exhibit A.

### **2.3 Agreement will not Cause Breach**

To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach of: (i) any law or governmental regulation applicable to Contractor; 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 is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

Neither the execution and delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder will result in the creation or imposition, by any third party, of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor which will interfere materially with Contractor's performance hereunder.

### **2.4 No 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:

- A. Materially adversely affect the performance by Contractor 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.

## **2.5 No Adverse Judicial Decisions**

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

## **2.6 No Legal Prohibition**

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

## **2.7 Contractor's Statements**

The Contractor's documents and other supplementary information submitted to the City, which the City has relied on in awarding and entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

## **2.8 Contractor's Investigation**

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters into consideration in entering into this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

## **2.9 Ability to Perform**

Contractor possesses the business, professional, and technical expertise to Collect, Transport, and Process the Solid Waste, Recyclable Materials, Organic Materials, C&D and Bulky Items generated in the City, and to provide Special Services. Contractor possesses the ability to secure equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

## **2.10 Voluntary Use of Approved Disposal and Processing Sites**

The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use an Approved Disposal Location for the purposes of Disposing of all Solid Waste Collected in the City, Approved Organic Materials Processing Site for Composting all Organic Materials Collected in the City, Approved Dry Waste Processing Site for Dry Waste Collected in the City, and the Approved Recyclable Materials Processing Facility for Processing Single-Stream Recyclable Materials Collected in the City. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.



## **ARTICLE 3. TERM OF AGREEMENT**

### **3.1 Service Under Prior Agreement**

The City's franchisee, Waste Management of Alameda County, Inc., shall continue to provide service under the 2015 Franchise Agreement up to the Commencement Date.

### **3.2 Commencement Date**

All services described in this Agreement shall begin on March 1, 2023.

### **3.3 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 each and all of the conditions below, each of which may be waived, in written form, in whole or in part by City.

- A. **Accuracy of Representations.** The representations and warranties made by Contractor during the process of negotiating this Agreement, and Article 2 of this Agreement are true and correct in all material respects on and as of the Effective Date. Such representations shall exclude initial drafts of documents, typographic errors and corrections made in the future to documents submitted by Contractor.
- B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- C. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Article 12 that is satisfactory to the City.
- D. **Effectiveness of City Council Action.** The City Council shall have taken action approving this Agreement and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

### **3.4 Term**

The Term of this Agreement shall continue in full force for a period of ten (10) years, from 12:01 a.m. on March 1, 2023 (the "**Commencement Date**") to midnight February 28, 2033, unless the Agreement is extended by City pursuant to Section 3.5 or terminated in accordance with Section 13.2 or Exhibit I-2.

### **3.5 Option to Extend Term**

At the City's sole discretion, the City shall have the option to extend this Agreement up to thirty-six (36) months in periods of at least twelve (12) months each. If the City extends the Agreement, it shall give written notice to Contractor one hundred eighty (180) calendar days prior to the initial expiration date or, if an extension has been exercised, ninety (90) calendar days prior to the extended expiration date. The City's written notice shall specify the number of months by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement.

Each and all extensions shall be subject to the same Rate adjustment provisions as are established in this Agreement.

## **ARTICLE 4. SCOPE OF AGREEMENT**

### **4.1 Scope of Franchise Agreement**

Subject to the requirements and conditions of this Agreement, the City hereby grants to the Contractor the Franchise, privilege, and duty during the Term and any extension thereof the following, within the corporate limits of the City:

- A. to engage in the business of Collecting, Transporting, Processing, and effecting the ultimate Disposal of Solid Waste, and the use of City streets for this purpose;
- B. to engage in the business of Collecting, Transporting and Processing Construction and Demolition Debris, Recyclable Materials, and Organic Materials, and the use of City streets for this purpose.

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

- A. Collecting all Solid Waste, Construction and Demolition Debris, Recyclable Materials, and Organic Materials generated in the City and placed by Generator for Collection.
- B. Transporting Collected materials to the Approved Transfer Station, Approved Disposal Location, Approved Organic Materials Processing Site, Approved Recyclable Materials Processing Site, or Approved Dry Waste Processing Site.
- C. Processing and marketing Recyclable Materials Collected in the City by Contractor.
- D. Processing, Composting, and marketing Organic Materials Collected in the City by Contractor.
- E. Disposing Solid Waste Collected in the City by Contractor.
- F. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- G. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, utilities, etc.
- H. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all times.
- I. Perform all services in accordance with this Agreement at all times using best industry practice for comparable operations.
- J. Complying with Applicable Law.
- K. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary

to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not, unless excused in accordance with Section 13.6.

## **4.2 Limitations to Scope**

The materials listed below in this Section may be collected and Transported by other Persons. Such Persons shall do so in accordance with the City's Municipal Code.

### **4.2.1 Construction and Demolition Debris.**

Construction and Demolition Debris which is: (1) removed from a premise by a licensed contractor as an incidental part of a total construction, remodeling, or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using Roll-off boxes or similar apparatus; or (2) directly loaded onto a fixed body vehicle and hauled directly to a facility for Recycling, Composting or Disposal and that holds all applicable permits. When issuing construction permits, City will notify permit applicants of Contractor's rights with regard to Construction and Demolition Debris.

### **4.2.2 Yard Trimmings.**

Yard Trimmings which are: (1) removed from Residential premises by a contractor as an incidental part of a total gardening or landscaping service offered by that contractor, rather than separately contracted or subcontracted hauling service using debris boxes or similar apparatus; or (2) directly loaded onto a fixed body vehicle and hauled directly to a facility for Composting or Disposal that holds all applicable permits.

### **4.2.3 Source Separated Recyclable or Organic Materials.**

Source Separated Recyclable Materials or Source Separated Organic Materials generated by Commercial businesses, including City facilities, may be Collected by a Person through a private arrangement with the Commercial business pursuant to which the Person makes a net payment to the Commercial business for such materials; provided, however, that: (1) loads which consist of mixed paper shall not contain more than ten percent (10%) by weight of non-mixed paper; (2) loads which consist of commingled Source Separated Recyclable Materials other than mixed paper shall not contain more than five percent (5%) by weight of non-Recyclable Materials; and (3) loads which consist of Source Separated Organic Materials shall not contain more than five percent (5%) by weight of non-Organic Materials. Upon request by the City, the Commercial business shall provide to the City copies of all invoices, billings, payments, statements, and receipts documenting all financial transactions between the Commercial business and the Person providing the Collection service.

### **4.2.4 Self Haul.**

Solid Waste, Recyclable Materials, Organic Materials, or C&D hauled directly to a facility for Composting, Recycling, Disposal or to a Re-use Vendor provided that such material is hauled by the Generator or Generator's employees.

### **4.2.5 City Crews.**

Solid Waste, Organic Materials, or Recyclable Materials collected and Transported by City crews to facilities for Composting, Recycling, or Disposal.

**4.2.6 Containers Recycled.**

Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code, as may be amended from time to time.

**4.2.7 Donated Materials.**

Source Separated Recyclable Materials, Organic Materials, or Salvageable Materials Organic Materials Generated in the City that are donated by the Generator to youth, civic, charitable, or other nonprofit organizations.

**4.2.8 On-Site Composting.**

Yard Trimmings Composted on a Residential Premises.

**4.2.9 Animal, Grease Waste, and Used Cooking Oil.**

Animal Waste and remains from slaughterhouse and butcher shops, Grease Waste for use as tallow or Used Cooking Oil from food manufacturing processes.

**4.2.10 Wastewater Treatment By-Product.**

By-products of wastewater treatment including sludge, sludge ash, grit, and screenings;

**4.2.11 Hazardous Wastes and Infectious Waste.**

Household Hazardous Waste, Hazardous Waste, Infectious Waste, and Designated Waste regardless of its source with the exception of materials Contractor is required to Collect in accordance with Section 5.8 of this Agreement.

**4.2.12 State Agency Wastes.**

Materials generated by State agencies located in the City, including public schools, colleges, and universities.

**4.2.13 General Limitations on Scope**

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 Solid Waste, Recyclable Materials, Construction and Demolition Debris, Organic Materials and/or Yard Trimmings in a manner that is not consistent with the City's Municipal Code, it shall report the location and the name of the Person or company to the City along with Contractor's evidence of the violation of the exclusiveness of this Franchise.

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 provide for the scope of services as specifically set forth herein, Contractor agrees, subject to Section 11.2.2, that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such

an event, subject to Section 11.2.2, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

Contractor hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

Contractor shall use reasonable efforts to enforce the exclusive rights and privileges granted to Contractor, pursuant to this Agreement, to prevent third parties from providing unauthorized services in City. In the event that Contractor reasonably believes a third party is providing such services in City, it shall notify City thereof, together with the basis of such belief and consult with City before pursuing its legal remedies to protect its exclusive rights and privileges under this Agreement. City may, but is not obligated to, assist the Contractor in protecting its exclusive rights and privileges under this Agreement.

### **4.3 Diversion Requirements**

#### **4.3.1 Annual Diversion Rate**

Contractor shall achieve the following “Annual Diversion Rates” over the term of the Agreement:

<b>Agreement Year</b>	<b>Annual Diversion Rate</b>
3/1/23 – 2/28/24	36%
3/1/24 – 2/28/25	37%
3/1/25 – 2/28/26	38%
3/1/26 – 2/28/27	40%
3/1/27 – 2/28/28	42%
3/1/28 – 2/28/29	44%
3/1/29 – 2/28/30	46%
3/1/30 – 2/28/31	48%
3/1/31 – 2/28/32	49%
3/1/32 – 2/28/33	50%

#### **4.3.2 Calculation of Annual Diversion Rate**

The Annual Diversion Rate will be calculated as follows:

((Recyclable Materials Collected under the Agreement and delivered to the Approved Recyclable Materials Processing Site, less residue) + (Organic Materials Collected under the Agreement and delivered to the Approved Organic Materials Processing Site, less residue) + (C&D Collected under the Agreement and delivered to the Approved Construction and Demolition Debris Processing Site, less residue) / ((Solid Waste Collected under the Agreement + Recyclable Materials Collected, including residue under the Agreement) + (Organic Materials Collected, including residue under the Agreement) + (C&D Collected, including residue under the Agreement))

### 4.3.3 Failure to Achieve Annual Diversion Rate

If Contractor fails to achieve an Annual Diversion Rate for a particular Agreement year, then liquidated damages as set forth in Exhibit J will apply, unless an exception below applies:

- Contractor may request a waiver or revision of one or more Annual Diversion Rate requirement. The parties agree to meet and confer, and negotiate in good faith regarding adjustments to the Annual Diversion Rate requirement based on waste characterization data provided by Agreement, trends in source reduction, the availability of permitted facilities that are capable of processing material to achieve the required levels of diversion, the availability of commercially viable markets for Recyclable Materials or Organic Waste, transportation constraints, embargoes, the impact of scavenging, the number and extent of exempt Customers, increasing producer responsibility requirements, restrictions on single-use plastics, and the passage of any other legislation that significantly impacts the waste stream mix, as well as other such relevant data or information related to diversion (the “**Diversion Meet and Confer**”).

### 4.4 Subcontracting

Contractor shall not engage any Subcontractors for Collection, Transportation, Processing, or Disposal of Solid Waste, Recyclable Materials, Organic Materials or C&D without the prior written consent of the City. City approves Tri-Cities Economic Development Corporation (“**Tri-CED**”) as a Subcontractor, and Contractor agrees to engage Tri-CED to Collect, Process and Transport Residential Single Stream Recyclable Materials placed in Carts and Roll-Off Containers and distribute the Used Motor Oil jugs zip-lock bags for Used Motor Oil Filters as provided by Section 5.2. Contractor shall be responsible to the City for any Subcontractor’s performance in accordance with the terms and conditions of this Agreement as though such performance was that of the Contractor.

The City’s rights with regard to the Contractor shall extend to any Subcontractor engaged by the Contractor. Except for a material breach on the part of the Subcontractor, Contractor shall not terminate its subcontract with Tri-CED without thirty (30) days written notice of its intent to do so. Such notice shall clearly describe the cause(s) for such termination. City shall have the option to contract directly with Tri-CED if terminated by Contractor. In such event, City and Contractor shall amend this Agreement.

### 4.5 Ownership of Materials

Once Solid Waste, Construction and Demolition Debris, Recyclable Materials, Organic Materials and Yard Trimmings are placed in Containers and at the Collection location, ownership and the right to possession of such materials shall transfer directly from the Generator to Contractor. Once Solid Waste, Recyclable Materials, Organic Materials or C&D are deposited by Contractor at a Transfer station, Disposal Site, or Processing Site, such materials shall become the property of the owner or operator of the facility.

In the event the City assumes collection and/or processing responsibility hereunder pursuant to

Section 4.7, the City may obtain ownership or possession of Solid Waste, Recyclable Materials, Organic Materials or C&D placed for Collection upon written notice to Contractor of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

#### **4.6 City-Directed Changes to Scope**

**4.6.1 Additional Material Types.** The City may request Contractor to modify its scope of service to include Collection of additional Material Types beyond those defined in Article 1. If the City requests Collection of such additional Material Types, the Contractor shall not receive additional compensation for Collection service if such materials are placed by Generator in the designated Container(s), unless Contractor can demonstrate that Collection of the additional material(s) requires or results in increased Processing or Collection costs. In such case, City will make an adjustment to Contractor's Compensation for changes in Processing costs or City will withdraw its request to modify Contractor's scope of service, in accordance with this Section.

**4.6.2 Additional or Modified Services** City may, by written notice, direct Contractor to perform additional services or modify existing services. For example, and without limitation, the City may request the following:

- A. Collection of certain materials, which were originally Solid Waste, but during the Term can, in the reasonable opinion of the City and Contractor, be economically Recycled or Composted;
- B. Inclusion of new Diversion programs;
- C. Expansion of public education activities;
- D. Elimination of programs;
- E. Modification of the manner in which Contractor performs existing services;
- F. Performance of pilot programs;
- G. Implementation of innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements for Generators;
- H. Performance of additional services, including billing services;
- I. Transportation of materials to an Approved Facility other than that specified on the Effective Date.

Such changes would be subject to other applicable provisions of this Agreement (e.g., Section 4.6.4) with regard to transportation of material to a facility other than an Approved Facility. Further, no changes may reduce Contractor's exclusive rights under this Agreement. For example, the City may not eliminate Organic Materials Collection from the Franchise and then allow another entity to perform such service.

#### **4.6.3 Procedure for Making Changes in Services**

Contractor shall present, within thirty (30) calendar days of the City's written request, a written proposal to provide modified or additional services. At a minimum, the proposal shall contain a complete description of the following:

- A. Collection methodology to be employed (equipment, manpower, etc.).
- B. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- C. Labor requirements (number of employees by classification).
- D. Type of materials to be Collected and Containers to be utilized.
- E. Provision for program publicity and public education.
- F. Projection of the financial results of the program's operations for the remainder of the Term in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.
- G. Plans for implementing the service change.

The City shall review the Contractor's proposal for the change of services. If the Contractor's proposal is desirable to the City, the City may negotiate with the Contractor to amend the Agreement to reflect the change in services.

If the Contractor fails to submit its proposal as required herein, or if the Contractor and City do not reach an agreement regarding the change in scope within 45 days of Contractor's proposal, then the following shall apply: (1) if the change in services involve services and/or materials specified by this Agreement, then the City's request for changes in services will be withdrawn, and the City may not permit Persons other than Contractor to provide the change in services; and (2) if the change in services do not involve services or materials specified by this Agreement, the City may permit Persons other than the Contractor to provide the additional services, but only if such services would not reduce Contractor's exclusive rights hereunder, increase Contractor's costs, or reduce Contractor's revenue.

#### **4.6.4 Change in Approved Facilities**

City may require Contractor to use facilities other than those contemplated herein. If the City specifies use of a facility that is different from the approved facilities listed in Article 1, the City shall provide written notice to Contractor six months before the effective date of the change and the date Contractor shall commence use of the site directed by the City.

#### **4.6.5 Adjustment to Contractor's Compensation**

If the City directs a change in scope or change in Approved Facility(ies), Contractor may receive an adjustment in its compensation in accordance with Section 11.2.1. Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope of such services.

#### **4.6.6 Implementation of New Services**

The Contractor's implementation of the new services or change in the Approved Facility(ies) shall occur in a timely, smooth, and seamless manner such that Customers and/or Generators do not experience disruption in Collection services. Contractor shall be responsible for managing implementation of new Collection services or change in the approved facilities and other related services and shall do so in accordance with an approved implementation plan.

#### **4.6.7 Monitoring and Evaluation of Changes in Scope**



If the City requests, the Contractor shall meet with the City to describe the progress of each new service. If the City requests, Contractor shall document the results of the new programs on a monthly basis, including at a minimum the Tonnage Diverted by Material Type, the end use or processor of the Diverted materials and the price per Ton for Transporting and Processing each Material Type and other such information requested by the City in order to evaluate the performance of each program.

At each meeting, the City and Contractor shall have the opportunity to revise the program based on mutually agreed upon terms in accordance with provisions of this Section. The City shall have the right to terminate a program if, in its sole discretion, the program is not achieving the program's goals and objectives. Before such termination, the City shall meet and confer with the Contractor for a period not to exceed ninety (90) calendar days to resolve the City's concerns. Notwithstanding these changes, Contractor shall continue the program during the meet and confer period. If, for any reason, the City terminates the new program or programs prior to their scheduled termination date, except for Contractor's failure to meet the programs' agreed-to goals and objectives after sufficient notice and an opportunity to cure has expired, the City agrees that it shall compensate Contractor for all undepreciated capital expenses and other expenses directly resulting from termination of the program.

#### **4.7 City's Right to Perform Services and Possess Equipment**

##### **4.7.1 General**

The City, in its sole discretion, may determine a period of emergency if both of the following conditions occur: (i) Contractor, for any reason whatsoever, fails, refuses, or is unable to perform its Collection, Transportation, Processing, and Disposal obligations, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and (ii) the City finds that such failure, refusal, or inability endangers or menaces the public health, safety, or welfare. If the City determines a period of emergency, then the City shall have the right during the period of such emergency to; (i) perform, or cause to be performed, such services with its own or other personnel without liability to Contractor; and/or (ii) take possession of and use any or all of Contractor's equipment, and personal property used or useful in providing the Collection, Transportation, Processing, and Disposal, services under this Agreement. If the City chooses to exercise such rights, the City shall provide written notice to the Contractor twenty-four (24) hours prior to its plans to exercise its rights. The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and personal property while in its possession.

The City shall provide oral or written notice (via telephone, in-person or e-mail) to Contractor of the Contractor's failure, refusal, or inability to perform its Collection, Transportation, Processing, and Disposal obligations and of the City's intent to perform Collection services and/or possess Contractor's equipment. The City shall send written confirmation of such notification to Contractor, by certified mail, within twenty-four (24) hours of such notification, unless the twenty-four (24) hour deadline ends on a Sunday, City holiday, or U.S. Postal Service holiday, in which case confirmation of such notice shall be sent on the day following such day.

Contractor agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of personal property to the City for City's use.
- B. It will, if City so requests, keep in good repair and condition all of such personal property, provide all motor vehicles with fuel, oil and other preventative maintenance service, and provide such other service as may be necessary to maintain said personal property in satisfactory operational condition.
- C. Contractor shall provide the services of all or any personnel necessary or useful for the Collection, Transportation, Processing, and Disposal operations including, if City so desires, employees then employed by Contractor. Contractor further agrees, if City so requests, to furnish City with the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Collection, Transportation, Processing, and Disposal operations and for the billing and collection of fees for these services. Providing employees agree to transfer, City agrees to compensate Contractor's employees subject to provisions of any labor agreements then in effect between Contractor and its employees.

The City shall pay to Contractor a reasonable rental value for Collection vehicles, equipment and facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which Contractor has rendered Billings to Customers in advance of service. Such payment by City to Contractor shall be made if the interruption or discontinued service prevents Contractor from performing its duties by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots or acts of any governmental agency (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, as described in Section 13.6; however, such rental payments will not be made if the interruption or discontinued service is caused by labor unrest or job actions.

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of City to Contractor; and (iii) does not exempt Contractor from the indemnity provisions of Article 12, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify City against claims and damages arising from the negligence of City officers, employees, and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **4.7.2 Billing and Compensation to City During City's Possession**

During such time that City is providing Collection, Transportation, Processing, and Disposal services, as above provided, Contractor shall bill and collect payment from all users of the above-mentioned services. Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City in taking over possession of the abovementioned equipment and property for Collection, Transportation, Processing and Disposal services in such manner and to the extent as would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

#### **4.7.3 Duration of City's Possession**

City has no obligation to maintain possession of Contractor's personal property, and/or continue its use in Collection, Transportation, Processing, and Disposal operations for any period of time and may, at any time, in its sole discretion, relinquish possession to the Contractor and thereupon demand that Contractor resume the Collection services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

The City's right to retain temporary possession of Contractor's property, and to provide Collection services, shall continue until: (i) Contractor can demonstrate to the City's satisfaction that it is ready, willing and able to resume such services or for one hundred and eighty (180) calendar days, whichever occurs first; or (ii) other suitable arrangements can be made for the provision of Collection, Transportation, Processing and Disposal services, which may include the grant of a Franchise to another company.

#### **4.7.4 Condemnation**

The City fully reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain, subject to the Contractor's rights and defenses.

#### **4.8 Transition to Next Contractor at End of Agreement**

If applicable, before expiration, Assignment, or earlier termination of this Agreement, Contractor shall take direction from the City and subsequent contractor to assist in a timely and orderly transition of services from Contractor to subsequent contractor. Failure to comply with this Section may result in Liquidated Damages, as described in Exhibit J.

In response to the City's direction, Contractor shall provide accurate and complete route lists (which identify each customer on each route, its service level and scheduled Collection day, and any special Collection notes) and detailed, accurate, and complete Customer account and billing information. This information will be provided in electronic format compatible with Microsoft Excel and Access, as well as in hard copy. Contractor may, but shall not be obliged, to sell Collection vehicles, equipment, or facilities to the next contractor.

Contractor shall cooperate in the preparation of a schedule to service and remove its Containers so that the subsequent contractor can site and service its Containers according to a schedule approved by City. Contractor shall begin emptying and then removing its Containers thirty (30) calendar days prior to the commencement date of any new contract, and shall service subsequent contractor's Containers through the Term of this Agreement. Similarly, the subsequent contractor shall continue to service all Containers belonging to Contractor for thirty (30) days after the commencement date of its new contract. The subsequent contractor shall also remove any Containers that are Contractor's property within thirty (30) calendar days after its commencement date. This procedure allows for a total of sixty (60) days to transition to new Containers and does not allow for any costs to be charged either party or City. However, if the subsequent contractor fails to return all Containers to Contractor within thirty (30) days after its contract commencement date, that contractor shall pay City rental fees for each Container, and those fees will be remitted to Contractor.

#### **4.9 City Free to Negotiate with Third Parties**

The City may investigate all options for Collection, Transportation, Processing, and Disposal services that will be scheduled to commence after the expiration of the Term or earlier termination of this Agreement. Without limiting the generality of the foregoing, the City may solicit proposals from Contractor and from third parties for the provision of Collection, Transportation, Processing, or Disposal of Solid Waste, Recyclable Materials, Yard Trimmings, Organic Materials and C&D services, and any combination thereof. The City may negotiate and execute agreements for such services that will take effect upon the expiration or earlier termination of this Agreement.

## **ARTICLE 5. COLLECTION SERVICES**

### **5.1 Solid Waste Collection**

#### **5.1.1 General**

Contractor acknowledges that the City is committed to Diverting materials from Disposal through the implementation of source reduction, reuse, Recycling and Composting programs and that the City may at some time in the future implement, in accordance with Section 4.6, new programs that may impact the overall quantity or composition of Solid Waste to be Collected by Contractor.

#### **5.1.2 Single-Family Premises**

Contractor shall Collect Solid Waste from Single-Family Premises once per week from Contractor-provided Carts. For each Customer, Solid Waste shall be collected on the same day of the week as Single Stream Recyclable Materials and Organic Materials. Contractor shall provide each Dwelling Unit with a 20-, 35-, 64-, or 96-gallon Cart as requested by the Customer. A Customer may set out occasional excess Solid Waste for Collection in Tag-it Tags, as long as that Customer subscribes to at least the minimum level of service (i.e., 20-gallon Cart), and the Tag-it Tags are set out beside that Customer's Solid Waste Cart.

Contractor shall provide regular weekly Collection of all Solid Waste, Organic Materials and Recyclable Materials to all Single-Family Customers on a continuous basis even if the Customer is delinquent in its bill. Special Service pickups may be requested by Customers at an additional cost which shall be billed by the Contractor per Section 7.2.

Contractor shall provide:

#### **A. Curbside Service**

Solid Waste shall be Collected from Carts placed Curbside by the Generator. In the event an appropriate location for a particular Customer cannot be agreed upon, the Contract Administrator shall designate the location. Contractor shall instruct Customers regarding placement of Carts up on the curb (not in the street) to avoid interfering with street sweeping services. Contractor shall place Carts up on the curb (not in the street) after Collection. Where there is no curb, Contractor shall return Carts to the edge of the pavement of the traveled street or alleyway.

**B. Sideyard Service**

The Contractor shall provide Sideyard Service at no additional cost to any Occupant who requests the service and who has submitted the requisite documentation confirming their eligibility pursuant to Section 7.4.1.

**5.1.3 Multi-Family Premises**

Contractor shall Collect Solid Waste from Multi-Family Premises as frequently as scheduled by Customer, but not less than once per week. Contractor shall Collect Solid Waste from Carts, Bins, Roll-offs and Compactors at a location(s) agreed to by the Customer and Contractor. Where mutual agreement is not reached, the Contract Administrator shall designate the location.

Contractor shall provide regular Collection of all Solid Waste, Organic Materials and Recyclable Materials to all Multi-Family Customers on a continuous basis even if the Customer is delinquent in its bill.

Contractor shall allow each Multi-Family Customer to select a Collection service methodology that best suits the needs of its Premises. Specifically, the Contractor shall offer the following Collection service methodologies to Multi-family Customers:

**A. Individual Cart Service**

Contractor shall allow each Multi-Family Premises to use Carts for Solid Waste Collection that are assigned to individual Dwelling Units. Contractor shall provide each Dwelling Unit with a 20-, 35-, 64-, or 96-gallon Cart as requested by the Customer. A Customer may set out occasional excess Solid Waste for Collection in Bag-it Bags, as long as that Customer subscribes to at least the minimum level of service (i.e., 20-gallon Cart), and the Tag-it Tags are set out beside that Customer's full Solid Waste Cart.

**B. Centralized Bin or Cart Service**

Contractor shall allow each Multi-family Premises to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of Multi-Family Premises. In such case, Contractor shall provide one or more Carts or Bins as requested by Customer(s), provided that no less than sixty-four (64) gallons of Container capacity is provided for every two Dwelling Units. If Occupants request individual carts, Contractor shall provide each Customer with a choice of one or more Carts in the following capacities: 20-, 35-, 64-, or 96-gallons, or Bins with capacity ranging from 1 to 7 cubic yards (or similar sizes).

**C. Permanent Roll-offs and Compactors**

Contractor shall allow a Customer to use a Roll-off or Compactor for Solid Waste Collection to meet the Customer's permanent Disposal needs. In such case, Contractor shall provide Customer with a choice of Container capacities ranging from 6 to 50 cubic yards (or similar sizes). Contractor may offer Customers the option to purchase or lease Compactors through either the Contractor or an outside

vendor. All Roll-off containers other than Compactors or Compactor receiver boxes shall be provided by Contractor.

Customers may not permit third parties to mechanically compact materials placed in Contractor-provided containers.”

#### **5.1.4 Commercial Premises**

Contractor shall Collect Solid Waste from Commercial Premises as frequently as scheduled by the Customer, but not less than once per week. Contractor shall Collect Solid Waste from Carts, Bins, Roll-offs and Compactors at a location(s) selected by the Customer. Where mutual agreement is not reached, the Contract Administrator shall designate the location. Contractor shall allow each Commercial Customer to select a Collection service methodology that best suits the needs of its Premises. Specifically, the Contractor shall offer the following Collection service methodologies to Commercial Customers.

**A. Individual Cart or Bin Service**

Contractor shall allow each Commercial Premises to use Carts or Bins for Solid Waste Collection. Contractor shall provide each Customer with a choice of one or more Carts with the following capacities: 20, 35, 64 or 96 gallons, or Bins with capacity ranging from 1 to 7 cubic yards (or similar sizes).

**B. Centralized Bin or Cart Service**

Contractor shall allow each Commercial Premises to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of two or more adjacent Commercial Premises. In such case, Contractor shall provide one or more Carts or Bins as requested by Customer(s), provided that no less than sixty-four (64) gallons of Container capacity is provided for every two Commercial Premises. If Occupants request individual Carts, Contractor shall provide each Customer with a choice of one or more Carts with the following capacities: 20, 35, 64 or 96 gallons or Bins with capacity ranging from 1 to 7 cubic yards (or similar sizes).

**C. Permanent Roll-offs and Compactors**

Contractor shall allow a Customer to use a Roll-off or Compactor for Solid Waste Collection to meet the Customer’s permanent Disposal needs. In such case, Contractor shall provide Customer with a choice of Container capacities ranging from 6 to 50 cubic yards (or similar sizes). Contractor may offer Customers the option to purchase or lease Compactors through either the Contractor or an outside vendor. All Roll-off containers other than Compactors and Compactor receiver boxes shall be provided by Contractor.

Customers may not permit third parties to compact or otherwise interfere with materials placed in Contractor-provided containers.

## **5.2 Single Stream Recyclable Materials Collection**

### **5.2.1 Single-Family Premises**

Contractor shall Collect Single Stream Recyclable Materials from Single-Family Premises once each week on the same day as Solid Waste and Organic Materials collection. Such service shall also be provided to all Multi-Family Premises with individually billed Cart service for Solid Waste.

Contractor shall provide each Dwelling Unit with one 64-gallon Cart for Single Stream Recyclable Materials at no additional charge. Upon Customer request, Contractor shall provide a Dwelling Unit with a 35-gallon Cart in place of a 64-gallon Cart. Upon Customer request and with City approval, Contractor shall provide a Dwelling Unit with two 64-gallon carts.

Occupant shall place all Single-Stream Recyclable Materials inside the Cart, with the exception of the following items which must be set out next to the Cart for Collection: (i) large pieces of corrugated cardboard which may be flattened and set out in pieces no larger than 4 foot by 4 foot; (ii) up to two (2) one-gallon Used Motor Oil jugs and one clear plastic zip-lock bag for Used Motor Oil Filters provided by Contractor pursuant to Section 5.8, and (iii) clear plastic ziplock bags for Batteries provided by Customer.

Contractor shall provide:

**A. Curbside Service**

Single Stream Recyclable Materials for pickup by Contractor shall be placed at Curbside. In the event an appropriate location for a particular Customer cannot be agreed upon, the Contract Administrator shall designate the location. Customers will be instructed to place Carts up on the curb (not in the street) to avoid interfering with street sweeping services. Contractor shall place Carts up on the curb (not in the street) after collection. Where there is no curb, Contractor shall return Carts to the edge of the pavement of the traveled street or alleyway.

**B. Sideyard Service**

The Contractor shall provide Sideyard Service at no additional cost to any Occupant who requests the service and who has submitted the requisite documentation confirming their eligibility pursuant to Section 7.4.1.

Compensation to the Contractor for provision of Single Stream Recyclable Materials Collection service is included in the Solid Waste Rates for all Single-Family Customers.

With prior City approval, Contractor may temporarily discontinue Single Stream Recyclable Materials Collection service to an individual Customer for repeated Contamination of Single Stream Recyclable Materials pursuant to Section 5.6.1.

**5.2.2 Multi-Family Premises**

Contractor shall Collect Single Stream Recyclable Materials from Multi-Family Premises once each week pursuant to ACWMA Ordinance 2012-1 and Resolution 2012-025 adopted by the City Council in February 2012. Compensation to the Contractor for provision of Single Stream Recyclable Materials Collection service are set forth in the Rates for Multi-Family Customers.

Contractor shall Collect Single Stream Recyclable Materials from Multi-Family Premises at least once each week.

Contractor shall Collect Single Stream Recyclable Materials at the designated location agreed upon by Contractor and Customer. Where mutual agreement is not reached, the Contract Administrator shall designate the location.

Contractor shall implement decreases in Solid Waste Collection service levels required on behalf of a Multi-Family Premises Customer pursuant to Section 8.3.2 on or before the next scheduled service date, or within six (6) Business Days (whichever is later).

Contractor shall allow Multi-family Customers to select a Collection service method that best suits the needs of its Premises. Specifically, the Contractor shall offer the following choices to Multi-Family Customers:

**A. Individual Cart Service**

Contractor shall allow each Multi-Family Premises to use Carts for Single Stream Recyclable Materials Collection that are assigned to individual Dwelling Units. Contractor shall provide each Dwelling Unit with a 35- or 64-gallon Cart as requested by the Customer. Upon Customer request and with City approval, Contractor shall provide a Dwelling Unit with two 64-gallon carts. Occupant shall place all Single Stream Recyclable Materials inside of the Cart, with the exception of corrugated cardboard which may be flattened and set out next to the Cart for Collection, in pieces no larger than 4 foot by 4 foot.

**B. Centralized Cart or Bin Service**

Contractor shall allow each Multi-family Premises to use Carts or Bins for Single Stream Recyclables Collection that are shared by the Occupants of Multi-family Premises. In such case, Contractor shall provide:

1. Two 96-gallon Carts (or equivalent) for each Multi-family Premises of five (5) to ten (10) Dwelling Units, and one more 96-gallon cart for each additional increment of two (2) Dwelling Units. Contractor shall allow occupants to place flattened corrugated cardboard next to such Carts for Collection, in pieces no larger than 4 foot by 4 foot.

2. Bin(s) of the following sizes (or equivalent) are required: one (1), two (2), three (3), and four (4) cubic yards for Collection with service Monday, Wednesday and Friday of each week, if requested by Customer.

**C. Roll-Off Service**

Contractor shall allow for Multi-Family Customers to use enclosed, 14 cubic yard Rolloff Containers for Single Stream Recyclable Materials Collection on Multi-family Premises where it is not feasible to locate smaller Containers. Such Roll-off containers shall be provided by Contractor.



With prior City approval, Contractor may temporarily discontinue Single Stream Recyclable Materials Collection service to an individual Customer for repeated Contamination of Single Stream Recyclable Materials pursuant to Section 5.6.1.

- D. **BatteryTracker Program.** Property managers or owners may initiate an order of battery buckets as needed (via LampTacker) into which tenants may place Batteries; buckets returned via UPS and can be set-up for automatic replacement. City may also initiate Battery drop off buckets at City facilities for use by Multi-Family tenants.

### 5.2.3 Commercial Premises

Contractor shall Collect Single Stream Recyclable Materials from Commercial Premises as frequently as requested by Customer or Contract Administrator, and not less than once per week. Such service shall be offered up to five (5) times each week to ensure adequate service and where space constraints preclude a larger Container.

Contractor shall Collect Single Stream Recyclable Materials at the designated location agreed upon by Contractor and Customer. Where mutual agreement is not reached, the Contract Administrator shall designate the location.

Contractor shall expedite any resulting request for decreases in Solid Waste Collection service levels required on behalf of a Commercial Premises Customer pursuant to Section 8.3.2.

Contractor shall allow Commercial Customers to select a Collection service method that best suits the needs of its Premises. Specifically, the Contractor shall offer the following choices to Commercial Customers:

- A. **Cart or Bin Service**  
Contractor shall provide Commercial Customers Cart(s) and/or Bin(s) for Single Stream Recyclable Materials Collection. Contractor shall provide each Customer with a choice of a 20-, 35-, 64- or 96- gallon Cart, or one or more Bins with capacity ranging from 1 to 7 cubic yards (or similar sizes). Cart Customers shall place all Single Stream Recyclable Materials inside of the Cart, with the exception of corrugated cardboard which may be flattened and set out next to the Cart for Collection, in pieces no larger than 4 foot by 4 foot.
- B. **Centralized Cart or Bin Service**  
Contractor shall allow for Commercial Customers to use Cart(s) and/or Bin(s) for Recyclable Materials Collection that are shared by the Occupants of two or more Commercial Premises. In such case, Contractor shall provide one or more Carts or Bins to such Premises, as requested by Customer(s). Contractor shall provide each Customer with one or more 96-gallon Carts or one or more Bins with capacity ranging from 1 to 7 cubic yards (or similar sizes).

Contractor shall charge Commercial Customers for provision of Single Stream Recyclable Materials Collection service at Rates approved by the City.

Contractor shall not refuse to provide Single Stream Recyclable Materials Collection service to any individual Customer, provided Customer is no more than forty-five (45) days past due on its bills. With prior City approval, Contractor may temporarily discontinue Single Stream Recyclable Materials Collection service to an individual Customer for repeated Contamination of Single Stream Recyclable Materials pursuant to Section 5.6.1.

### **5.3 Organic Materials Collection**

#### **5.3.1 Single-Family Premises**

Contractor shall Collect Organic Materials from Single-Family Premises once per week pursuant to Sections 4 and 9 of the Alameda County Waste Management Authority 2021-01, except that materials will be limited “Organic Materials” as defined in this Agreement. Special Service pickups may be requested by Customers at an additional cost which shall be billed by the Contractor pursuant to Section 7.2. Contractor shall provide each Customer with a choice of a 35-, 64- or 96-gallon Cart, as requested by the Customer. Contractor shall, at no additional cost to Customers, provide Organic Materials Collection to Single-Family Customers and Multi-Family Customers with individually billed Cart service for Solid Waste Collection. The standard Cart size shall continue to be 64 gallons and Contractor shall deliver a 64-gallon Cart unless the Customer selects a 35- or 96-gallon cart.

Contractor shall provide:

#### **A. Curbside Service**

Organic Materials for pickup by Contractor shall be placed at Curbside. In the event an appropriate location for a particular Customer cannot be agreed upon, the Contract Administrator shall designate the location. Customers will be instructed to place Carts up on the curb (not in the street) to avoid interfering with street sweeping services. Contractor shall place Carts up on the curb (not in the street) after collection. Where there is no curb, Contractor shall return Carts to the edge of the pavement of the traveled street or alleyway.

#### **B. Sideyard Service**

The Contractor shall provide Sideyard Service at no additional cost to any Occupant who requests the service and who has submitted the requisite documentation confirming their eligibility pursuant to Section 7.4.1.

Compensation to the Contractor for provision of this service is included in the Solid Waste Rates, and Contractor shall provide this service at no additional charge. Special Service pickups may be requested by Customers at an additional cost which shall be billed by the Contractor, pursuant to Section 7.2. With prior City approval, Contractor may temporarily discontinue Organics Collection service to an individual Customer for repeated Contamination of Organic Materials pursuant to Section 5.6.1.

#### **5.3.2 Multi-Family Premises**

Contractor shall Collect Organic Materials from Multi-Family Premises once per week pursuant to Sections 5(a)(2) and 9 of the Alameda County Waste Management Authority 2021-01, except that materials will be limited “Organic Materials” as defined in this Agreement. Multi-Family Premises Customers shall obtain (unless it obtains a waiver) Organics Materials Collection by contacting Contractor in writing, in person, or via phone, or e-mail. The City or its authorized representative may also request Organic Materials Collection on Customer’s behalf.

**A. Individually Billed Customers**

Multi-Family Dwelling Units with individually billed Cart service for Solid Waste Collection shall receive Organic Materials Collection at no additional cost. Contractor shall provide each such Dwelling Unit Customer with a choice of a 35-, 64- or 96- gallon cart for Organic Materials Collection. Contractor shall Collect Organic Materials from such Multi-Family Customers once a week.

**B. Cart or Bin Service Customers**

Contractor shall provide Multi-Family Premises with Cart(s) and/or Bin(s) for Organic Materials Collection. Contractor shall provide each Customer with 64-gallon Carts or Bins with capacity ranging from one (1) to two (2) cubic yards (or similar sizes), upon approval by the property manager or Owner. Collection shall be provided weekly and arranged with the property manager or Owner.

Contractor shall provide 64-gallon Carts sufficient to provide at least five (5) gallons of capacity per Dwelling Unit. Where Dwelling Units have individual Carts for Solid Waste and Recyclables, Contractor shall offer a 35-gallon Cart to each Dwelling Unit. Contractor may assess a charge equivalent to that charged to a Commercial Customer if additional Carts or Bins requested by an Owner or property manager cause a property’s total Carts or Bins to exceed the five (5) gallons per Dwelling Unit allocation.

Except as provided herein, compensation to the Contractor for provision of this service is included in the Solid Waste Rates, and Contractor shall provide this service at no additional charge. Special Service pickups may be requested by Customers at an additional cost which shall be billed by the Contractor, pursuant to Section 7.2.

Contractor shall not refuse to provide Organics Collection service to any individual Multi-Family Customer. With prior City approval, Contractor may temporarily discontinue Organics Collection service to an individual Customer for repeated Contamination of Organic Materials pursuant to Section 5.6.1.

Contractor shall expedite any requests for decreases in Solid Waste Collection service levels required on behalf of a Multi-Family Premises Customer pursuant to Section 8.3.2.

**5.3.3 Commercial Premises**

Contractor shall Collect Organic Materials from Commercial Premises once per week pursuant to Sections 5(a)(2) and 9 of the Alameda County Waste Management Authority 2021-01, except that materials will be limited “Organic Materials” as defined in this Agreement.

Contractor shall Collect Organic Materials from Commercial Premises at least weekly and up to six times each week, including Saturdays. Saturday Collection shall be provided in those instances where quantities of Organic Materials generated by a Customer would warrant removal to avoid odors and vectors before the next scheduled pick up on Monday. If Customer requests Organic Materials Collection services, Contractor shall charge Customer for such service at Rates approved by City.

Contractor shall allow Commercial Customers to select a Collection service method that best suits the needs of its Premises. Specifically, the Contractor shall offer the following choices to Commercial Customers:

**A. Cart or Bin Service**

Contractor shall allow Commercial Premises to use Cart(s) and/or Bin(s) for Organic Materials Collection. Contractor shall provide each Customer with a choice of one or more 35-, 64- or 96-gallon Carts or one or more Bins with capacity ranging from 1 to 3 cubic yards (or similar sizes).

**B. Centralized Cart or Bin Service**

Contractor shall allow Commercial Premises to use Cart(s) or Bin(s) for Organic Materials Collection, which are shared by the Occupants of two or more Commercial Premises or a mixed-use development that includes Multi-Family and Commercial Premises. In such case, Contractor shall provide one or more Carts or Bins to such Premises as requested by Customer(s). Contractor shall provide each Customer with a choice of one or more 35-, 64- or 96- gallon Carts or one or more Bins with capacity ranging from 1 to 3 cubic yards (or similar sizes).

Compensation to the Contractor for provision of this service is described in Article 11. Special Service pickups may be requested by Customers at an additional cost which shall be billed by the Contractor, pursuant to Section 7.2.

Contractor shall not refuse to provide Organics Collection service to any individual Commercial Customer, provided Customer is no more than forty-five (45) days past due on its bills. With prior City approval, Contractor may temporarily discontinue Organics Collection service to an individual Customer for repeated Contamination of Organic Materials pursuant to Section 5.6.1.

## **5.4 Roll-Off Collection Services**

### **5.4.1 General**

Contractor shall provide temporary Collection of Solid Waste and Construction and Demolition Debris in Roll-off containers to Residential and Commercial Premises upon Customer request. Such temporary Roll-offs shall be serviced or Collected on Customer's request, provided that any Container containing putrescible materials must be Collected no less than one (1) time every seven (7) calendar days; otherwise, a demurrage charge will apply as described in Section 5.4.4.

### **5.4.2 Delivery of Roll-off Loads to the Approved Dry Waste Processing Site**

Contractor shall deliver all Roll-off loads of Construction and Demolition Debris and all Roll-off loads containing Dry Waste to the Approved Dry Waste Processing Site to be Processed for Diversion, in order to ensure Contractor's compliance with Section 4.3.1.

### **5.4.3 Omitted**

### **5.4.4. Demurrage Rates**

Contractor may assess a demurrage charge if a Contractor-owned Roll-off is not serviced at a Commercial Premises within ten (10) business days of the most recent delivery date. Only Commercial Customers who regularly subscribe to Roll-off services shall be subject to this charge. This charge is further described in Section 7.2, Billing.

## **5.5 Commercial Dry Waste Collection**

### **5.5.1 Customer Selection and Processing**

Contractor shall expand the Dry Waste Collection routes to increase Tons Diverted and reduce total Tons Disposed by identifying Commercial Customers whose Solid Waste Cart, Bin or Rolloff contains Dry Waste. Contractor shall Collect these Customers' Dry Waste in vehicles separately from all other Material Types, deliver the Dry Waste to the Approved Dry Waste Processing Site, and Process it for Diversion.

### **5.5.2 Customer Lists**

Contractor shall provide the Contract Administrator with a list of Commercial Dry Waste Customers, and a separate list of Customers receiving Roll-off or Compactor service, whose loads are delivered for Processing to the Approved Dry Waste Processing Site. Contractor shall provide the two lists in electronic format no later than the 20<sup>th</sup> day of the month following each quarter, where quarters begin on the Commencement Date. Other reporting requirements are described in Section 9.4.

### **5.5.3 Additions to List and Delivery to Approved Dry Waste Processing Site**

Contract Administrator shall have the authority to add Commercial Customers to the list of Dry Waste Customers, and to require that their Dry Waste be delivered to the Dry Waste Processing Site and Processed for Diversion.

## **5.6 Contamination; Overage**

### **5.6.1 Contamination in Recyclable Materials or Organic Materials Containers**

- A. Roll-Out Period: During the period beginning on the Commencement Date and ending on 120 days later (the "**Roll-Out Period**"), Contractor shall provide a communication program designed to minimize instances of Contamination. Contractor's communication program will be provided to City prior to the Commencement Date. During the Roll-Out Period, where Contractor documents that a particular Customer has Contamination, Contractor shall collect the offending Container (where it can be done safely and excluding material laying on ground) and provide a notice

electronic/mail to the Customer (if such contact information is provided by Customer) with the following information (a “**Warning Notice**”):

- Date of the offense;
- Description of the offense;
- A photograph or video (or link to photograph or video);
- A description of the materials that are appropriate for collection in said Container and web site with educational materials; and
- A website to obtain additional information and/or receive responses to questions the Customer may have.

During the Roll-Out Period, Contractor shall not impose a Contamination Fee.

**B. Post Roll-Out Period:**

- WMAC will collect Containers that have 10% or more Contamination, unless Contractor notices Unacceptable Waste. If Contractor elects to collect a Container with 10% or more Contamination, it may send (by mail or e-mail) a Warning Notice. If the Customer has received at least two (2) Warning Notices for a particular service (i.e., Recyclable Materials or Organic Materials), Contractor may charge the Customer the Contamination Fee set forth in Exhibit F for the violation and each subsequent violation within 12 months of the previous Warning Notice. If the Customer does not receive a Warning Notice or Violation Notice for 12 months, the process will reset (i.e., two warnings and then Contractor may charge the Contamination Fee for 12 months thereafter). For each Contamination Fee, Contractor must have photographic evidence of the Contamination (which will be provided to the Customer). It will be assumed that Customers receive Warning Notices or Violation notice on the third day after mailing. The Contamination Fee may be included on the Customer’s regular invoice or billed separately. Contractor may dispose of the contents of a contaminated Container it elects to collect.
- Customers may contact Contractor at the telephone number indicated on Contractor invoices and all notices regarding any questions or disputes. Contamination videos or images will be made available to Customers. Contamination Fees will be credited to Customers billed in error, including where there are blurry images, no visible contamination, incorrect Container association (Customer will be exempt from receiving any charges until Container is appropriately linked to the correct address).

**5.6.2 Overage in Solid Waste, Recyclable Materials (Commercial Bins and Carts; MFD Bins) or Organic Materials Containers (Commercial Bins and Carts)**

- A. Roll-Out Period: During the Roll-Out Period, Contractor shall provide a communication program designed to minimize instances of Overage. Contractor’s communication program will be provided to City prior to the Commencement Date. During the Roll-Out Period, where Contractor documents that a particular Customer has Overage, Contractor shall collect the offending Container (where it can be done safely and excluding material laying on ground) and provide a Warning Notice or

Violation Notice to the Commercial or MFD Bin Customer (if such contact information is provided by Customer).

During the Roll-Out Period, Contractor shall not impose an Overage Fee.

B. Post Roll-Out Period:

- Contractor will collect Containers that have Overage, unless contractor deems unsafe. Contractor will send (by mail or e-mail) a Warning Notice. If the Customer has received at least two (2) Warning Notices for a particular service (i.e., Solid Waste, Recyclable Materials (Commercial and MFD (Bins) only) or Organic Materials), Contractor may charge the Customer the Overage Fee set forth in Exhibit F for each subsequent violation within 12 months of the second Warning Notice. If the Customer does not receive a Warning Notice or Violation Notice for 12 months, the process will reset (i.e., two warnings and then Contractor may charge the Overage Fee for 12 months thereafter). It will be assumed that Customers receive Warning Notices or Violation Notices on the third day after mailing. The Overage Fee may be included on the Customer's regular invoice or billed separately.
- Customers may contact Contractor at the telephone number indicated on Contractor invoices and all notices regarding any questions or disputes. Overage videos or images will be made available to Customers. Overage Fees will be credited to Customers billed in error, including where there are blurry images, no visible contamination, incorrect Container association (Customer will be exempt from receiving any charges until Container is appropriately linked to the correct address).
- Customer will not be charged for an Overage Fee if the Contractor did not provide Collection on last regularly schedule day.

### **5.6.3 Route Review Contamination Monitoring**

- A. Methodology and Frequency. Commencing on Commencement Date, the Contractor shall, at its sole expense, conduct route reviews for Contamination in Containers in a manner that is deemed safe by the Contractor and is conducted in a manner that results in all routes being reviewed at least annually.
- B. Contractor shall conduct route reviews that include inspection of the contents of Recyclable Materials, Organic Materials, and Solid Waste Containers for Contamination in a manner that a minimum of ten-percent (10%) percent of containers on each and every route are inspected annually.

### **5.7 Holiday Tree Collection**

Contractor shall Collect undecorated holiday trees from Residential Premises in the following manner:

#### **5.7.1 Organics Materials Carts**

At any time, Contractor shall Collect undecorated holiday trees set out in Organics Materials Carts for Collection. Trees must be free of tinsel, ornaments, lights, metal or plastic tree stands, and other contaminants, and shall be cut to fit into the Cart so that the lid of the Cart is closed.

### **5.7.2 Curbside Collection for Recycling**

During the first two weeks of January, Contractor shall Collect holiday trees Curbside from Single-Family Premises and from Multi-family Premises with up to twenty-five (25) Dwelling Units. Contractor shall only be required to collect those trees that are free of tinsel, ornaments, lights, metal or plastic tree stands, and nails, and that are cut into lengths of no more than five (5) feet. Such Collection will be at no additional cost to the Customer. Contractor shall deliver the Collected trees to the Approved Transfer Station for Recycling.

### **5.7.3 Curbside Collection for Disposal**

Following the first two weeks of January, Contractor shall Collect all undecorated holiday trees from the Curbside, including those that do not meet the criteria for collection under Section 5.7.2. Contractor shall deliver the Collected trees to the Approved Transfer Station for Recycling and/or Disposal.

### **5.7.4 Roll-off Collection**

Upon Customer request, Contractor shall Collect undecorated holiday trees in 30 cubic yard Roll-off containers from Multi-Family Premises with more than twenty-five (25) Dwelling Units. Contractor shall Collect such trees from Roll-offs at a location(s) selected by the Customer. Where mutual agreement is not reached, the Contract Administrator shall designate the location.

Holiday tree Roll-off Collection services shall be provided at no cost to the Customer. Should Roll-offs provided for such trees contain more than incidental Solid Waste, Contractor may bill the Customer at the appropriate Rate for Solid Waste Roll-off Collection per Section 7.2. Contractor shall deliver the Collected trees to the Approved Transfer Station for Disposal and/or Recycling.

### **5.8 Used Motor Oil, Used Oil Filter, and Household Battery Collection**

Contractor shall Collect Used Motor Oil, Used Motor Oil Filters, and Batteries from Single-Family Customers on a weekly basis when placed Curbside. Contractor shall Collect Batteries from Multi-Family Customers at a centralized location. Property managers will be responsible for requesting Collection by Contractor, no more frequently than monthly.

Contractor shall provide two (2) one-gallon translucent plastic containers with screw-on tops for Used Motor Oil Collection and one 4-mil plastic zip-lock bag for a Used Motor Oil Filter. Such containers shall be provided at no additional cost within two (2) Business Days of a written or oral request made to Subcontractor. For each setout removed, Subcontractor's driver shall also place Curbside two (2) empty, one-gallon translucent plastic containers with screw-on tops, along with one empty 4-mil plastic zip-lock bag for a Used Motor Oil Filter.

Contractor shall Collect Batteries deposited in Resident-provided, zip-lock, clear plastic bags by Single-Family Customers and placed Curbside next to the Recyclable Materials Cart. Contractor is required to provide instructions to Customers describing how to prepare lithium coin-type batteries to prevent fires, including but not limited to taping both sides and any other measures.

### **5.9 Collection from City Facilities**



The Contractor shall provide, at no charge to the City, the services in this Section:

### **5.9.1 City Facilities**

Solid Waste, Single Stream Recyclable Materials, and Organic Materials Collection for all City facilities and properties as listed in Exhibit L, and as may be so designated by Contract Administrator during the Term of this Agreement and all extensions. Two additional City facilities may be added per year at no cost to the City; if there are additional City locations beyond two per year, Contractor will be compensated during the five-year rate review.

### **5.9.2 Public Litter Receptacles**

Collection from Public Litter Receptacles, which shall include all cans located on public streets or thoroughfares, as listed in Exhibit L, with a maximum total count of up to 500 cans (including Big Belly units as provided below). The Collection service to the cans shall be provided on Mondays, Wednesdays and Fridays of each week. However, the City shall have the option of directing the Contractor to increase the collection service to some or all cans to a daily (Monday through Friday) frequency. Contractor will provide video documentation of collections where available, upon request of the City.

City shall purchase and own 267 Big Belly™ units for Solid Waste and Recyclable Collection during the 10-year term of the Agreement. The units shall be purchased as follows: 102 units in Rate Period One; 35 units per year in Rate Periods Two through Four; and 10 units per year in Rate Periods Five through Ten. Locations that will be identified by Contract Administrator. City will be responsible for the purchase and receiving delivery according to a schedule determined by Contract Administrator. Since Contractor's Rates have been increased to generate funds to purchase the Big Belly units, Contractor will be responsible for their purchase price. However, if the total purchase price of the Big Belly units exceed Contractor's additional compensation from the Rate increase, City will be responsible for such additional costs.

### **5.9.3 City Requests**

Maintenance and Collection of temporary Roll-off Containers, for neighborhood cleanups, coastal cleanups, City-sponsored special events and other uses requested by the City, up to 1200 cubic yards per calendar year. The total allocated capacity may be used in any combination of Carts ranging from 35-, 64- or 96-gallon carts (or similar sizes) and Roll-off boxes ranging from 14 to 30 cubic-yards (or similar sizes), as determined by Contract Administrator.

### **5.9.4 Dirt and Debris Delivered by City Crews**

Contractor shall accept at the Approved Transfer Station and/or Approved Disposal Location up to three thousand (3,000) Tons of dirt and debris per calendar year. Debris must be delivered in City vehicles or other vehicles to be designated by City and may include Bulky Items, whole tires, and Solid Waste. If total Tons delivered exceeds the annual limit, Contractor and City agree to meet to discuss: (1) the additional compensation due Contractor and the basis for the additional compensation; and (2) other measures to reduce total Tonnage delivered for Disposal through existing or new Diversion programs.

### **5.9.5 Dirt Removal from Designated City Locations**

Contractor shall Collect up to three thousand (3,000) Tons of dirt as Class II Cover Material from City designated locations each calendar year and Transport it to the Approved Transfer Station and/or Approved Disposal Location at no cost to the City. If, in any calendar year, total Tons Collected are less than 3,000 tons, Contractor agrees to carry over the unused tonnage for Collection to the next calendar year only in order to allow City to use the intended allocation. City agrees that the unused tonnage which has been carried over must be used in the next calendar year only. Such dirt is in addition to all other Solid Waste collected by Contractor from City facilities. Contractor shall continue to Divert from Disposal all of the dirt by using it as landfill cover or ADC. Contractor shall submit to Contract Administrator all weigh tags documenting tonnage hauled and deposited at the Approved Transfer Station and/or Approved Disposal Location.

### **5.9.6 Biosolids and Grit Removal**

Contractor shall Collect up to six thousand (6,000) Tons per year of Biosolids and two hundred fifty (250) Tons of grit from the City's Water Pollution Control Facility for Transfer to the Approved Disposal Location at no cost to the City. If, in any calendar year only, total Tons Collected are less than these amounts, Contractor agrees to carry over the unused Tonnage for Collection to the next calendar year only in order to allow City to use the intended allocation. City agrees that the unused Tonnage which has been carried over must be used only in the next calendar year. Contractor shall continue to Divert from Disposal all Biosolids and grit as ADC as allowed by State regulations. Contractor shall submit to Contract Administrator all weigh tags documenting tonnage hauled and deposited at the Approved Disposal Location. If the City wishes to utilize another contractor for the collection of Biosolids and grit from the City's Water Pollution Control Facility, and Contractor's obligations to Collect such material under this section is eliminated, then Contractor's Customer Rates shall be reduced during the Rate Period Five Cost-Based Rate Adjustment Process or, if the change occurs during Rate Periods Four or later, during the next annual rate adjustment to reflect Contractor's costs avoided.

### **5.10 Bulky Item Collection**

#### **5.10.1 Single- and Multi-Family Premises with Individually Billed Cart Service**

Contractor shall provide each Single-Family Premises, and each Multi-Family Premises with individually billed Cart service for Solid Waste, two (2) on-call Bulky Items Collection appointments per calendar year, for each calendar year of the Agreement, on Customers' regularly scheduled service day, at no additional cost to the Customer. Contractor shall Collect Bulky Items from the Curbside and Transport them to the Approved Dry Waste Processing Site for Processing.

Each eligible Customer may also schedule two appointments to remove E-Scrap Items. Such appointments may be separate from the above-described appointments.

Contractor shall accommodate Multi-Family Customers with individually billed Cart service whose manager and/or property Owners wish to schedule one or more Bulky Items Collection events for the entire property, whether a mobile home park, property Owner, manager or authorized agent.

### **5.10.2 Multi-Family Premises**

Contractor shall allow a maximum of three (3) quarterly on-call bulky collections per year, up to the equivalent of two (2) cubic yards per Dwelling Unit, for each Multi-Family Customer subscribing to Solid Waste service using centralized Bin(s) or Roll-off service. Other items accepted in addition to the allocated cubic yards are described in Section 5.10.4.

The property Owner or manager is the only individual authorized to order enclosed Roll-offs. Property Owners or managers may order 14 to 30 cubic-yard Roll-off(s) in which to deposit Bulky Items. Such Roll-offs shall be delivered within six (6) business days of the request by the property Owner or manager. Multiple Roll-offs may be ordered in which to deposit Solid Waste intended for Disposal separate from Recyclable Materials, as described in Section 5.10.4.

To deter illegal dumping, Contractor shall work with property Owner or manager to place Roll-offs in secure locations away from public view, to deliver and retrieve a Roll-off for a brief period (e.g., one day) if desired, utilize Roll-off covers and/or locking devices, or other similar measures. Also, Roll-offs will be removed by Contractor within three (3) days of delivery, unless otherwise agreed by Contractor.

Contractor shall provide written instructions to property Owner or manager regarding acceptable and unacceptable materials as described in Sections 5.10.4, to advise property Owners or managers of their responsibility to pay for excess materials placed next to the Roll-off that require removal. Such instructions shall be available in English, Spanish and Vietnamese as directed by the City and shall be suitable for distribution to residents.

Enclosed Roll-offs shall be delivered to Multi-Family Customers with fifteen (15) or more Dwelling Units. Residents at Multi-Family Premises with fewer than fifteen (15) Dwelling Units shall be allowed to place their items Curbside or a mutually agreeable location for Collection, subject to directions from the property Owner or manager to do so. Property Owners or managers may arrange for Roll-off(s) for Multi-Family Premises with fewer than fifteen (15) Dwelling Units and Contractor shall provide such service upon request.

Contractor shall maintain records for each Multi-Family Premises indicating the total cubic yards allocated, the cubic yards actually used and the remaining cubic yards available. Such records shall be continuously maintained for each calendar year. As directed by the City, Contractor shall provide information about the bulky program printed in a prominent location on each Customer's bill on a quarterly basis or inserted as a separate notice in the bill on the same quarterly schedule, OR Contractor shall mail a postcard addressed to the property owner, manager or authorized agent summarizing the service and mailed twice annually. Additional requirements are included in Exhibit O.

### **5.10.3 Performance Standards**

Contractor is not required to provide Sideyard Service for Bulky Items Collection. Contractor shall provide Collection from Single-Family Customers within two (2) weeks of receiving a request from such Customer, unless such Customer wishes to schedule a Collection date more than two (2) weeks in advance. Contractor shall ensure sufficient Customer services and operational

capacity to provide service on-demand for all services described herein. A detailed listing of performance specifications for the Bulky Items Collection is provided as Exhibit K.

Contractor may assess additional fees as described in this Section only if Contractor has complied with Exhibit K provisions.

#### **5.10.4 Items Accepted for Collection from Single- and Multi-Family Customers**

Acceptable items for Bulky Items Collection include:

- A. Up to two (2) cubic yards per Dwelling Unit of:
  - 1. Solid Waste contained in bags or disposable cartons, and/or;
  - 2. Oversized Yard Trimmings (branches, prunings) tied in bundles not longer than four (4) feet and branches or prunings not larger than four (4) inches in diameter, and/or;
  - 3. Oversized Wood not longer than four (4) feet
- B. Furniture and carpet (up to 3 items per Dwelling Unit)
- C. Passenger car tires (up to 4 tires per Dwelling Unit)
- D. Major Appliances, including those containing chlorofluorocarbons and other refrigerants, and/or scrap metal items such as shelving, box springs, and bed frames (up to 3 items per Dwelling Unit)
- E. Bathroom and kitchen fixtures; painted and unpainted storage cabinets and drywall
- F. Mattresses (up to 2 per Dwelling Unit)
- G. E-Scrap items (up to 2 per Dwelling unit)

The maximum amount of material that a Dwelling Unit may set out without incurring an additional fee for removal is: two (2) cubic yards of Solid Waste/Yard Trimmings/wood; three (3) pieces of furniture/carpet; four (4) passenger tires; three (3) Major Appliances/pieces of scrap metal; two (2) mattresses; and two (2) E-Scrap Items. The tires, appliances, scrap metal, mattresses and E-Scrap Items shall be collected as separate items, not placed in a Roll-off.

Appointments to remove the above-listed items shall be scheduled on the regularly scheduled Collection day for Single-Family Customers. E-scrap Items may be scheduled for removal on a day different from the date for removal of items listed in A through E immediately above. Such appointment for E-Scrap Items shall be at no additional charge.

Any materials set out for Collection that do not meet the above specifications shall be Collected as Solid Waste (except regarding Unacceptable Waste) and Customer charged accordingly by Contractor.

#### **5.10.5 Items Not Accepted for Collection**

The following items shall not be accepted for Bulky Items Collection:

- A. Solid Waste in Carts
- B. Solid Waste not contained in bags or disposable cartons
- C. Yard Trimmings in Carts
- D. Oversized Yard Trimmings not tied in bundles or longer than four (4) feet

- E. Oversized Wood longer than four (4) feet
- F. Commercial truck tires
- G. Rocks, bricks, dirt, asphalt, and concrete from a construction or demolition project, for example
- H. Any single item (excluding items identified in Section 5.10.4) that weighs more than 75 pounds.
- I. Household Hazardous Waste
- J. Infectious Waste

Contractor shall call or email Customer to advise the Customer that any of the above listed items was not Collected and Customer's recourse to remove the items.

Contractor shall Collect improperly prepared but otherwise acceptable items (as described in Section 5.10.4) that are set out for Bulky Items Collection, and may bill the Customer an additional fee per Section 7.2, provided that Contractor has video or photo documentation of the setout and completes Collection of the setout on the scheduled appointment day.

#### **5.10.6 Omitted**

#### **5.10.7 Unscheduled Set Outs**

Contractor shall Collect all unscheduled Bulky Item setouts on either side of the same block of scheduled Bulky Item setouts for Single- and Multi-Family Customers. Contractor shall maintain in its records Collection of unscheduled Bulky Items for each such Customer.

Contractor may bill a Single-Family Customer an additional fee if this is a third setout in one calendar year per Section 7.2, provided that Contractor has video or photo documentation of the setout and completes Collection of the setout on the day the setout was identified by Contractor or Contract Administrator. Prior to assessing additional fees for Multi-Family Customers, Contractor shall first count any unscheduled Bulky Items Collected against each Multi-Family Customer's allotted annual cubic yards with video or photo documentation of the setout.

#### **5.10.8 Collection Schedule**

Contractor shall provide Bulky Items Collection Monday through Friday during Residential Collection hours on Customer's regularly scheduled service day. If Contractor is unable to Collect scheduled appointments Monday through Friday, Contractor shall recover such missed pickups on the next regular business day. Contractor shall also phone or email all such Customers whose setout was not Collected with a statement assuring each that the Contractor will Collect all such materials on the next regular business day. Any additional items requiring Collection shall be removed at Contractor's cost and shall not be billed the Customer. Contractor may, at its discretion, schedule appointments on Saturdays.

#### **5.10.9 Collection Standards and Diversion**

Contractor shall Collect all Bulky Items unless there are significant obstructions preventing Contractor from doing so. Such obstructions may include, for example, at least three vehicles on either side of the set out requiring removal.

Contractor shall Collect Bulky Items in a manner that maximizes Diversion of Bulky Items from Disposal. Contractor shall Collect those items listed in Section 5.10.4 C. through F. utilizing a flat bed or other non-compaction Vehicle, and shall Divert those items. Contractor shall report to the City on a monthly basis the weight of those Diverted items (which may be estimated using a count of items and typical weights for each type of item.)

Contractor shall Deliver items listed in Section 5.10.4 A. and B. to the Approved Dry Waste Processing Site and Process them for Diversion. Contractor shall report on a monthly basis the weight of these items delivered to the Approved Dry Waste Processing Site pursuant to this Agreement. Each calendar year, Contractor shall perform an audit at the Approved Dry Waste Processing Site, utilizing a method approved in advance by the Contract Administrator, to determine the Annual Diversion rate for this service.

**5.10.10 No Service during the First Two Weeks in January**

City agrees that Contractor shall not be required to provide Bulky Items Collection during the first two (2) calendar weeks of January as long as Contractor continues to provide holiday tree Collection during those two (2) weeks. If the holiday tree Collection is revised, then Contractor and City shall meet in order to resume Contractor's Bulky Items Collection during those weeks.

**5.11 Abandoned Waste Collection**

Contractor shall use its best efforts to expedite removal of abandoned waste that has been placed in an unauthorized manner in the public right-of-way, whether the debris is placed next to a Public Litter Receptacle, at a specific address or other location. Such collections shall be limited to twelve (12) per week. Contractor shall direct its staff to identify and remove such abandoned waste on the same day or no later than twenty-four (24) hours from the initial date of recognition. City may request Contractor to remove individual instances of abandoned waste. Such waste may include, but is not limited to, Solid Waste, Bulky Items, or abandoned Carts. Contractor shall maintain a monthly log of all such locations and notify the Contract Administrator at least weekly with the address(es) or location(s), a photo of the abandoned waste and the removal date.

Contractor shall be responsible for Collection, Transportation, Recycling, Diversion, and Disposal of such material.

**ARTICLE 6.  
PROCESSING AND DISPOSAL**

**6.1 Recyclable Materials Processing**

**6.1.1 Approved Site and Disposal of Residue**

Contractor agrees to Transport and deliver all Recyclable Materials (including but not limited to Single Stream Recyclable Materials) it Collects in the City to the Approved Recyclable Materials Processing Site. Residue from the Recyclable Materials shall be Disposed of by Contractor or Subcontractor at the Approved Transfer Station or Approved Disposal Location or other location approved by the City.

### **6.1.2 Sufficient Capacity Secured**

Contractor shall secure sufficient capacity to Process Recyclable Materials Collected under this Agreement. Contractor shall provide the City, upon request, with documentation demonstrating availability of such capacity. All costs associated with Transporting to and Processing Recyclable Materials at the Approved Recyclable Materials Processing Site shall be paid by Contractor.

### **6.1.3 Maintenance of Permits/Approvals**

Contractor shall keep all existing permits and approvals necessary for use of the Recyclable Materials Processing Site(s) in full regulatory compliance. Contractor shall, upon request, provide copies of notices of violation or permits to the City.

### **6.1.4 Elective Request for Alternate Site**

If Contractor elects to use a Recyclable Materials Processing Site(s) that is different than the Approved Recyclable Materials Processing Site, it shall notify the City Manager sixty (60) days prior to use of the site. City may require reasonable documentation from Contractor to confirm such facility is properly permitted and will achieve at least equivalent processing performance. Contractor shall not be compensated for paying any increased Transportation and Processing costs associated with the use of Processing Site(s) different from the Approved Recyclable Materials Processing Site.

### **6.1.5 Alternate Site Required Due to Closure**

Provided the City has not redirected the Contractor to use a different Recyclable Materials Processing Site and the Contractor is unable to use the approved site, due to an emergency or sudden unforeseen closure of the Approved Recyclable Materials Processing Site, Contractor may use an alternate Processing site as long as the Contractor provides verbal and written notice to the City within twenty-four (24) hours of use of an alternate Processing site. The written notice shall include a description of the reasons the Approved Recyclable Materials Processing Site is not feasible and the period of time Contractor proposes to use the alternative Processing Site. Contractor shall receive the City's written approval to use the alternate Processing Site within twenty-four (24) hours of the City's receipt of the Contractor's written notice. Contractor shall not be compensated for paying any increased Transportation and Processing costs associated with the use of Processing Site(s) different from the Approved Recyclable Materials Processing Site.

### **6.1.6 Marketing**

The Contractor shall be responsible for, or shall arrange for its Subcontractor to be responsible for, marketing Recyclable Materials Collected pursuant to this Agreement. Contractor, or its Subcontractor, shall retain all revenue from the sale of Recyclable Materials Collected.

Upon City request, Contractor, or its Subcontractor, shall provide proof to the City that all Recyclable Materials Collected are marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the Applicable Law. Sufficient proof shall be the residual rate at the Approved Processing Facility. Such proof may also include the weight of any Residue from the processing facility that was allocated to the City in Disposal reports submitted to ACWMA and the California Department of Resources Recycling and Recovery.

### 6.1.7 Residue Rates

A. Based on Audits of Hayward's Dry Waste processed at the Davis Street Transfer Station, below are the residue rates:

- Dry Waste CM: Audit conducted on 2/4/22, residue 66.46%
- Dry Waste RO: Audit conducted on 11/3/21, residue 56.92%

B. Based on Contractor's Residue rates for each of the material streams listed below and processed at either the Davis Street Transfer Station or the Altamont, below are the residue rates as of May 2022:

- Organic Materials: less than 5% (Altamont)
- Commercial Recyclables: 26.15%
- Construction and Demolition Debris Processing Site: 28%

C. Subcontractor's facility located in Union City (Tri-CED): 30%

Contractor and Subcontractor are required to provide updated Residue rates in their monthly reports, pursuant to Section 9.4.2. If Residue rates are significantly more than those listed above, upon request by the City, Contractor and its Subcontractor shall meet with the City to develop a plan for improvement. Corrective measures may include, but are not limited to:

- Conducting an audit of inbound materials Collected from within the City in order to determine how much Residue is attributable to the City's materials as opposed to all other materials generated by other jurisdictions that utilize the facility;
- Increased outreach to Customers;
- Training and monitoring of Collection vehicle drivers to ensure that they are not Collecting Contaminated setouts and are leaving non-Collection notices, as required;
- Removing some materials from the list of acceptable Material Types that Customers may place in the Collection Containers; and
- Improvements to the respective processing facility.

Contractor shall diligently monitor all brokers/buyers to ensure that all Material Types are properly handled and sold as secondary materials, not landfilled or used as Alternative Daily Cover. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed of Material Types generated within the City, Contractor shall immediately inform the Contractor Administrator in writing and advise that it has directed its broker or buyer to market the materials for Recycling or Composting. Such markets shall be identified by Contractor, and shall become effective within ten (10) Business Days of the date that Contractor first becomes aware that its buyer or broker Disposed of the Recyclable Materials.

### 6.1.8 Changes in Available Recycling Outlets and Recycling Markets

- Lack of Available Recycling Outlets. If outlets for a particular Recyclable Material commodity become unavailable, Contractor may temporarily dispose of such materials if the following conditions are met: (i) Contractor will notify the City as soon as it becomes



aware of the need to dispose of the material due to previous Recyclable Material outlets being unavailable; and (ii) the City must approve or deny the request within two (2) business days, but such approval will not be unreasonably withheld where Contractor has provided evidence that there are no available outlets for such material within a reasonable distance from previously utilized outlets. Contractor will notify the City of continued disposal lasting longer than 14 days, and every 14 days thereafter. Disposal lasting longer than 60 days will require additional approval of the City Manager, which will not be unreasonably withheld where Contractor has provided evidence that there are no available outlets for such material within a reasonable distance from previously utilized outlets.

## **6.2 Organic Materials Processing**

### **6.2.1 General**

Contractor shall Divert from Disposal Yard Trimmings, holiday trees, and other Organic Materials Collected pursuant to this Agreement. Contractor must provide end uses for Organic Materials that maximizes Diversion and reduces total Tons Disposed. Contractor shall Transfer Collected Organic Materials to the Approved Transfer Station for Transport to the Approved Organic Materials Processing Site.

### **6.2.1 Composting**

- A. Single- and Multi-Family Residential Services.** Contractor shall Transfer all Collected Organic Materials from all such Premises to the Approved Organic Materials Processing Site.
- B. Commercial Services.** Contractor shall Transfer all Collected Commercial Organic Materials to the Approved Organic Materials Processing Site.
- C. Roll-off Services.** Contractor shall Process all Organic Materials from targeted Roll-offs and deliver all such Organic Materials to the Approved Organic Materials Processing Site.

### **6.2.2 Provisions for Separate Collection and Processing; Disposal of Residue.**

Contractor shall pay all costs associated with Transfer, Transporting, Processing, Composting, and marketing Organic Materials. All Organic Materials delivered to the Approved Organic Materials Processing Site shall be Processed for use as Compost, mulch, soil amendment or other process that results in diversion, and none shall be deposited for Disposal or used as ADC. Residue from the Organic Materials Processing and Composting activities shall be Disposed of at a Disposal Site selected by Contractor, or by its Composting Subcontractor.

### **6.2.3 Processing Requirements**

- A. Site Selection and Guaranteed Capacity.** Contractor shall be solely responsible for selecting the Approved Organic Materials Processing Site and guaranteeing sufficient capacity at such Organic Materials Processing Site to Process, Compost, and market all Organic Materials Collected by Contractor under this Agreement throughout the Term of the Agreement. The Owner and Operator of the Approved Organic Materials Processing Site, if different than the Contractor, shall be

considered a Subcontractor to Contractor. Contractor shall cause its Organic Materials Processing Site Subcontractor to Process, Compost (or other process resulting in diversion), and market the Organic Materials. Contractor shall provide the City, upon request, with documentation from the Organic Materials Processing Site Subcontractor guaranteeing and demonstrating the availability of such sufficient capacity at the Approved Organic Materials Processing Site for all Organic Materials Collected by Contractor in the City throughout the Term of this Agreement.

- B. **Maintenance of Permits/Approvals.** Contractor shall require its Organic Materials Processing Site Subcontractor to keep all existing permits and approvals necessary for use of the Approved Organic Materials Processing Site in full regulatory compliance. Upon City request, Contractor shall obtain copies from its Organic Materials Processing Site Subcontractor of facility permits and/or notices of violations and shall provide copies of such documents to the City.
- C. **Compliance with Regulations.** Contractor shall observe and comply with all regulations in effect at the Approved Organic Materials Processing Site and cooperate with the operator thereof with respect to delivery of Organic Materials, including directions to unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with Hazardous Waste exclusion programs.
- D. **Alternate Site Provisions**
1. **Emergency Closure.** If Contractor is unable to use the Approved Organic Materials Processing Site due to an emergency or sudden unforeseen closure, Contractor may use an alternate Organic Materials Processing Site as long as the Contractor provides verbal and written notice to the City and receives written approval from the City at least twenty-four (24) hours prior to the use of an alternate Organic Materials Processing Site. The Contractor's written notice shall include a description of the reasons the Approved Organic Materials Processing Site is not feasible and the period of time Contractor proposes to use the alternate Organic Materials Processing Site.
  2. **Causes Within Contractor's Control.** If the need to use the alternate Organic Materials Processing Site is for reasons within Contractor's, or its Organic Materials Processing Site Subcontractor's, reasonable control, Contractor's Compensation shall not be increased for any increased Transportation and Processing costs associated with use of the alternate Organic Materials Processing Site. However, Contractor's Compensation shall be decreased for any reduced Transportation, Processing, or Composting costs associated with the use of the alternate Organic Materials Processing Site.
  3. **Causes Beyond Contractor's Control.** If the need to use the alternate Organic Materials Processing Site results from reasons beyond Contractor's, or its Subcontractor's, reasonable control, the City may

increase Contractor's Compensation for increased Transportation, Processing, or Composting costs associated with use of the alternate Organic Materials Processing Site. Similarly, the City may reduce Contractor's Compensation for decreased Transportation, Processing, and Composting costs associated with the use of the alternate Organic Materials Processing Site.

4. **Permanent Site Change.** Contractor may permanently change its selection of the Approved Organic Materials Processing Site following City's written approval, but Contractor's Compensation shall not be increased for any increased Transportation, Processing, and Composting costs. However, Contractor's Compensation shall be decreased for reduced Transportation, Processing, and Composting costs associated with the use of an Organic Materials Processing Site different from the Approved Organic Materials Processing Site. If Contractor elects to use an Organic Materials Processing Site that is different than the Approved Organic Materials Processing Site, it shall request written approval from the Contract Administrator sixty (60) calendar days prior to use of the site and obtain the City's written approval no later than ten (10) calendar days prior to use of the site. Such approval will not be unreasonably withheld.
5. **City's Right to Re-Direct.** The City reserves the right to direct Contractor to Transport and deliver all Organic Materials Collected pursuant to this Agreement to an Organic Materials Processing site other than the Approved Organic Materials Processing Site, or other Organic Materials Processing site selected by the Contractor. If the City exercises its right under this provision and specifies use of an Organic Materials Processing Site that is different from the Approved Organic Materials Processing Site, the City shall provide written notice to Contractor six months before the effective date of the change when Contractor shall commence use of the site. Furthermore, the Contractor's Compensation and/or Rates will be adjusted for increases or decreases in Transportation, Processing, and Composting costs, if any, in accordance with Section 4.6 and Article 11.2.1.

**E. Processing Standards.** The following Processing standards shall be met by the Approved Organic Materials Processing Site:

1. Pre-processing activities shall include the inspection for and removal of Hazardous Waste, glass, or any other contaminant.
2. Composting shall be accomplished by the use of recognized Composting methods, which have been demonstrated to be able to consistently produce a stable, mature Compost product that complies with state regulations, as amended from time to time, is suitable for general purpose use and meets the US Composting Council's Class 1 rating.
3. Post-Composting Processing activities shall include screening to remove plastics and other contaminants from the Compost product.
4. The Approved Organic Materials Processing Site owner and/or operator shall cooperate with the City or its agent(s), if the City wants to collect data,

perform field work, and/or evaluate and monitor program results related to Organic Materials Collected in the City by the Contractor.

- F. Excessive Residue.** Upon City request, Contractor shall require its Approved Organic Materials Processing Site to provide proof to the City that all Organic Materials accepted for Composting were, in fact, Composted and marketed and not Disposed or utilized as ADC. Such proof shall include, but not be limited to, the total amount of Organic Materials received at the site, the amount of Organic Materials received from each and every deliverer of such material, the Residue rates at the Approved Organic Materials Processing Site (by material/sector), the types of products produced, and the weight of any Residue from the Approved Organic Materials Processing Site that was Disposed or utilized as ADC and was allocated to the City in Disposal reports submitted to ACWMA and/or the California Department of Resources Recycling and Recovery.
- G. Transport.** The Contractor is responsible for Transporting Collected Organic Materials to the Approved Organic Materials Processing Site. The Contractor plans to consolidate the Collected Organic Materials into large-capacity Transfer vehicles for Transport to the Approved Compost Processing Site. If the Contractor plans to change its Transport method, Contractor shall pay all costs and shall not be reimbursed for any costs outside of the annual program adjustments.
- H. Compliance with Applicable Law.** Contractor shall, throughout the Term of the Agreement, only use Organic Materials Processing Sites that are permitted to accept Organic Materials in accordance with Applicable Law and is in full compliance with Applicable Law. If Contractor becomes aware that the Approved Organic Materials Processing Site is not in full compliance with all applicable laws, it shall immediately notify the City and City and Contractor shall meet and confer in regards to selection of a new fully permitted site, pursuant to Section 6.2.3.D.

### 6.3 Dry Waste Processing

#### 6.3.1 Approved Site; Materials Targeted

Contractor owns and operates the Approved Dry Waste Processing Site. Contractor shall deliver to the Approved Dry Waste Processing Site and Process the following materials for Diversion:

- i) All Solid Waste Collected in the Bulky Items Collection program;
- ii) All Construction and Demolition Debris; and
- iii) All Dry Waste Collected pursuant to Section 5.5.

At a minimum, Contractor shall target for Diversion the following materials through such Processing: cardboard, paper, beverage containers, scrap metal, wood, Yard Trimmings, painted and unpainted drywall, carpet padding, soil, tires, and inerts (concrete, asphalt, brick, rock, gravel, tiles). Fine materials resulting from such Processing may be used as ADC by Contractor.

### **6.3.2 Inbound Tonnage from City Only**

Contractor shall track separately the inbound weight of materials Collected pursuant to this Agreement that Contractor Delivers to the Approved Dry Waste Processing Site, and not to any of the other Contractor's processing sites. Such inbound weights shall only include loads whose jurisdiction of origin is Hayward and be reported separately for: (1) Roll-off vehicles, (2) frontend loader vehicles, and (3) Bulky Items Collection vehicles.

### **6.3.3 Audits: Scope and Frequency**

Contractor shall perform two separate week-long audits of all Dry Waste, one for all front-loader vehicles and the other for all Roll-off loads. Such audits shall be performed each year, where the first year begins on the Commencement Date. Such audits shall require Contractor to separately sort all incoming loads to calculate total Tons Recycled and Disposed. Separate Diversion rates shall be determined for Roll-off and front-end loader materials. The purpose of the audits is to obtain representative data to determine the Diversion rate of City materials Processed at the Approved Dry Waste Processing Site pursuant to this Agreement. Such audits shall be conducted in March and September unless the Contract Administrator approves an alternate date.

Audits of Bulky Items collection vehicles for Single- and Multi-Family Customers are required annually with the dates to conduct the audits to be mutually agreed upon. Such audits shall be conducted to ensure a representative sampling of loads.

If the Diversion Rate for any or all of the services described in this Section is considered an anomaly by Contract Administrator, City reserves the right and Contractor agrees to conduct a second week-long audit within 30 days.

## **6.4 Transfer and Disposal of Solid Waste**

### **6.4.1 General**

Contractor shall Transport all Solid Waste Collected in the City to the Approved Transfer Station, and then Transfer such Solid Waste to the Approved Disposal Location. Contractor shall pay all costs associated with Transfer, Transporting, and Disposal of Solid Waste. Contractor plans to haul the Solid Waste in its Collection vehicles to the Approved Transfer Station where Solid Waste will be consolidated into large-capacity Transfer vehicles and then Transported to the Approved Disposal Location. If the Contractor plans to change its Transport method, Contractor shall pay all costs, and shall not be reimbursed for any costs outside of the annual program adjustments. The City's approval of the Transport method and the duration the Transport method is required.

### **6.4.2 Status of Approved Transfer Station**

Contractor owns the Approved Transfer Station which Contractor represents is designed and constructed in accordance with all applicable state and local laws (e.g., California Public Resources Code, California Code of Regulations, etc.). The Approved Transfer Station shall maintain full regulatory compliance with all permits from Federal, State, regional, county and City agencies necessary for it to operate and is in compliance with all such permits. Upon request, Contractor shall provide copies to City of all notices of violation or amendments to permits that could affect the Contractor's ability to perform under this Agreement.

Contractor shall immediately notify City of any notice of breach or default assessed against the Approved Transfer Station.

#### **6.4.3 Status of Approved Disposal Location**

Contractor owns the Approved Disposal Location which Contractor represents has been designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). The Approved Disposal Location has been issued all permits from Federal, State, regional, county and City agencies necessary for it to operate as a Class II Sanitary Landfill and is in compliance with all such permits.

#### **6.4.4 Permits for Use of Approved Transfer Station and Approved Disposal Location**

Provided the City has not redirected the Contractor to use a different Approved Transfer Station or Approved Disposal Location, the Contractor shall keep in force and comply with the terms of all existing permits and approvals from governmental authorities necessary for the use of the Approved Transfer Station and Approved Disposal Location throughout the Term for receipt of Solid Waste from City.

Contractor shall inform Contract Administrator of the status of renewals of all applicable permits which occur during the Term.

Contractor shall promptly apply for, and diligently pursue, any amendments to permits necessary for it to be legally able to accept Solid Waste from City at such other transfer station or Disposal Site if required to carry out this Section. Contractor shall also give City notice of any proposed material amendment to or alteration of such permits, or of any new permits which may be required at the time such amendments are submitted. Further, and where appropriate, Contractor shall resist amendments or alterations to permits, the terms of which would prevent or materially interfere with, or increase the cost of, the performance of its obligations under this Agreement. In the event such permits occur, despite Contractor's efforts to resist them, Contractor shall not be in breach of this Agreement, and Contractor shall comply with said permit amendments.

Contractor shall immediately notify City of any notice of breach or default assessed against the Approved Disposal Location. Upon request, Contractor shall also provide copies to City of all notices of violation that could affect the Contractor's ability to perform under this Agreement.

Contractor shall immediately notify City if Contractor becomes authorized to accept Hazardous Waste as a Class I landfill. In that event the City may, upon ninety (90) days' notice, terminate all Disposal services as identified in this Agreement.

#### **6.4.5 Reservation of Transfer and Disposal Capacity**

Contractor represents that the capacity of its Approved Transfer Station and Approved Disposal Location is sufficient for the Term of this Agreement and any extensions.

#### **6.4.6. Alternate Transfer Station and Disposal Location**

- A. Causes Within Contractor's Control.** If Contractor becomes unable to accept and Dispose of City's Solid Waste at the Approved Transfer Station or Approved

Disposal Location as the result of causes within its control and which could have been avoided by the exercise of due care, then Contractor shall accept and Dispose of such Solid Waste at another transfer station or Disposal Site. Any additional Transportation costs incurred in delivering the Solid Waste to the other transfer station or Disposal Site shall be borne by Contractor and shall be disallowed as part of the Rates charged by Contractor.

Contractor agrees that City reserves the right to negotiate with other potential service provider(s) to determine its lowest fee and may pay the lesser of the two fees.

- B. Causes beyond Contractor's Control.** If Contractor becomes unable to accept and Dispose of City's Solid Waste at the Approved Transfer Station or Approved Disposal Location as a result of causes which are beyond its control and which could not have been prevented by the exercise of due care, then Contractor shall, to the extent it is legally able to do so, accept and dispose of Solid Waste at another transfer station or Disposal Site owned by it or an Affiliate at the lowest fee then in effect at such transfer station or Disposal Site under contracts entered into after the Effective Date of this Agreement and subject to approval by the City, which will not be unreasonably withheld. Changes in Transportation and Disposal costs incurred in delivering the Solid Waste to the other transfer station or Disposal Site will be allowed as a part of the Rates in accordance with this Agreement, subject to approval by the City, which will not be unreasonably withheld.

Contractor agrees that it will provide all data requested by the City regarding the potential transfer station or Disposal Site, including, but not limited to, a list of each of the actual and potential fees or surcharges that would be assessed, a copy of the permit on file with State of California, and a description of the notices of violation issued by the local enforcement agency.

Failure to provide the documents specified by this section shall constitute an event of default and shall be subject to the remedies specified in Article 13 of this Agreement, including, but not limited to, termination of the Agreement and imposition of Liquidated Damages.

Contractor agrees that City reserves the right to negotiate with other potential service provider(s) to determine its lowest fee and may pay the lesser of the two fees.

#### **6.4.7 City's Right to Terminate**

If the cost of delivery (i.e., the Transfer and Disposal fee plus additional Solid Waste Transportation costs) at such other transfer station or disposal site is higher than the amount then in effect under this Agreement and Contractor requests that its compensation be increased to reflect those higher costs, City may terminate this Agreement for convenience.

#### **6.4.8 Identification and Rejection of Unauthorized Waste**

Contractor shall implement procedures to identify and reject materials delivered to the Approved Transfer Station or Approved Disposal Location which are Hazardous Wastes, or which otherwise may not be legally accepted at the Approved Transfer Station or Approved Disposal Location under its permits and other applicable governmental regulations then in effect. Contractor shall implement such procedures in a uniform and non-discriminatory manner as applied to Solid Waste materials delivered to the Approved Transfer Station or Approved Disposal Location from City and from all other sources.

Contractor may, in the course of implementing such procedures, refuse to accept materials delivered from the City if such materials constitute Hazardous Waste, or if such materials may otherwise not be legally accepted at the Approved Transfer Station or Approved Disposal Location. Contractor shall be solely responsible for material which is accepted at the Approved Transfer Station and Approved Disposal Location. If Contractor discovers such Hazardous Wastes among materials which it has accepted, it shall dispose of such materials at its own expense. Contractor may pursue all legal rights and remedies it may have against the Generator(s) of such materials, if the Generator(s) can be identified.

#### **6.4.9 Days and Hours of Operation**

Contractor shall operate the Approved Transfer Station or Approved Disposal Location for the receipt and Disposal of Solid Waste for at least the minimum number of hours necessary to provide for Transfer and Disposal of all Solid Waste generated within the City.

At a minimum, Contractor shall maintain days and hours of operation at the Approved Transfer Station sufficient to receive all materials collected pursuant to this Agreement during the days and hours of Collection specified in Section 8.1, such that Collected materials may be received at the Approved Transfer Station up to one hour after the latest approved collection time. Given adequate notice, Contractor shall make reasonable accommodations to receive occasional loads of material Collected pursuant to this Agreement outside of the days and hours specified in Section 8.1.1. The conditions of this Section 6.4 would continue to apply in the event of Assignment of the Collection or Transfer services provided for in this Agreement.

#### **6.4.10 Weighing**

- A. **Maintenance of Scale Systems.** Contractor shall operate and maintain an adequate scale system at the Approved Recyclable Materials Processing Site, the Approved Dry Waste Processing Site, the Approved Organic Materials Processing Site, the Approved Transfer Station and Approved Disposal Location. All scales and weighing equipment shall be kept in good and accurate condition, operating at the standards of accuracy and reliability specified in Title 4, California Code of Regulations, Articles 8 and 9. Contractor shall request that the appropriate governmental agency inspect all scales and weighing equipment at least once per year. If a scale or weighing equipment is found to be measuring inaccurately and the errors are outside the tolerances allowed in Title 4, California Code of Regulations, Articles 8 and 9, Contractor shall promptly repair or calibrate such equipment so that it does operate accurately.



- B. **Establishment of Vehicles' Tare Weights.** After the Effective Date and prior to the Commencement Date, Contractor shall weigh each Solid Waste collection vehicle operated by City or Contractor which will, or may be, used to deliver Solid Waste to the Approved Transfer Station or Approved Disposal Location, to determine its unloaded ("tare") weight. The tare weight of each vehicle shall be recorded by Contractor. Contractor shall be responsible for coordinating with the City the weighing of City vehicles, if any. When additional or replacement vehicles are placed into service or after all major maintenance, Contractor shall promptly weigh such additional and replacement vehicles. Tare weights of all Contractor and City vehicles shall be available for City review during normal business hours.

All weighing shall be conducted in accordance with Contractor's standard procedures, a copy of which shall be supplied to City and updated from time to time. City may require Contractor to weigh vehicles at least annually to confirm or adjust tare weights. Tare weights of vehicles delivering publicly-hauled Solid Waste which are required to be weighed will be established by weighing such vehicles on each entry to and exit from the Approved Disposal Location.

- C. **Weighing of Solid Waste.** All Contractor's vehicles that deliver Solid Waste to an Approved Transfer Station or Approved Disposal Location shall be weighed, and their weights recorded, so as to accurately measure Tons of Solid Waste delivered.

If the scales and weighing equipment at the Approved Transfer Station or Approved Disposal Location are out of service, Contractor shall determine the amount of Solid Waste delivered to that facility in the vehicles operated by Contractor, by utilizing the arithmetic average of that vehicle's recorded Tons of Solid Waste delivered on its immediately preceding three (3) deliveries to the Approved Transfer Station or Approved Disposal Location.

All information required by this Agreement shall continue to be recorded for each delivery during any period the scales are out of service. Such recorded information shall be made available to City upon request.

Contractor shall repair or replace inoperable scales as promptly as possible. In addition, if the scales are out of service ninety-six (96) hours, Contractor shall immediately supply temporary substitute scales, rather than continuing to use the volume-to-weight conversion factors.

#### **6.4.11. Disposal Requirements**

The following Disposal requirements shall be met by the Approved Disposal Location:

- A. Operation, management, and maintenance of the refuse fill areas including, but not limited, to the receipt, placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and compaction (if necessary) of daily cover, Alternative Daily Cover, intermediate cover, and final cover; management

- of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;
- B. Provision, operation, and maintenance of all equipment, rolling stock, and supplies necessary for operations, closure, post-closure, and environmental monitoring;
  - C. Provision and operation of tippers for the purposes of unloading Collection or Transfer vehicle trailers;
  - D. Proper management of dust, odors, litter, vectors, and other potential nuisances;
  - E. Operation, maintenance, and management of leachate and landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements.

#### **6.4.12 Compliance with Applicable Law**

Contractor warrants throughout the Term that the Approved Disposal Location selected by Contractor is authorized and permitted to accept and Dispose of Solid Waste in accordance with Applicable Law and is in full compliance with Applicable Law. Contractor shall not, during the Term of this Agreement, use any Approved Disposal Location that is not in full compliance with all applicable laws and regulations.

#### **6.4.13. Closure and Post-Closure Obligations**

Provided facility is owned and/or operated by Contractor or its Affiliate, Contractor shall safely manage the Approved Disposal Location in full regulatory compliance with Applicable Law, not only during the normal Approved Disposal Location operating period, but also during the landfill closure and post-closure periods. Contractor acknowledges that it (or its Subcontractor) is solely responsible for: (i) the appropriate closure and post-closure activities of the landfill; and, (ii) the establishment and funding of sufficient reserve funds to meet its obligations required by Applicable Law for the purposes of providing funds for the payment of costs of closure of the landfill (or any cell within the landfill) or post-closure activities relating to the landfill. Without limitation, in no event shall the City be responsible for paying any deficiencies in such required reserves. In addition, the City shall have no responsibility to make any payments in the event that actual closure and post-closure costs relating to the landfill exceed the amounts upon which the Contractor's Disposal rate was based or the amount reserved by the Contractor for such purposes. The City shall have no responsibility or liability (financial or otherwise) for the closure or post-closure maintenance of any Disposal Site utilized by Contractor during the Term of this Agreement except for a Change in Law, as defined in Article 1.

#### **6.5. Free Self-Haul Disposal Coupons for City Residents**

Contractor shall offer 5,000 free disposal coupons each calendar year to Single-Family Residential Customers, Multi-Family Occupant, and Multi-Family Customers who subscribe to Solid Waste Collection services. Each coupon shall be redeemable for disposal of up to two (2) cubic yards of Solid Waste at the Approved Transfer Station at no additional charge. Customers shall be required to Transport their Solid Waste to the Approved Transfer Station in order to utilize this coupon. A valid City of Hayward account or address will be the only required identification when delivering loads to the Davis Street Transfer Station. Documents showing proof of residency shall not be required.

Contractor may require Yard Trimmings contain only de minimus amounts of contaminants and that Customers deliver their Yard Trimmings to a designated location at Contractor's Approved Transfer Station in order to comply with ACWMA's landfill ban on plant debris. Contractor may also assess additional charges for appliances, tires, E-Waste Items and Solid Waste in excess of the coupon(s) submitted. Contractor may not accept any Hazardous Waste.

Contractor shall ensure that a sufficient quantity of coupons is available to accommodate all requests from Customers and Contract Administrator on an on-going basis. Such coupons may be obtained ordered by phone, received by City staff, who would then distribute to Customers, or at Contractor's Hayward office if such office is retained by Contractor. Contractor shall also provide a staffed phone line and coupons for mailing to Customers on request. Coupons shall be valid for one (1) calendar year and stamped with an expiration date. Unused coupons at the end of a calendar year do not carry over.

Contractor shall advertise the availability of coupons via bill inserts that advise Customers of the procedure to obtain a coupon. Section 9.4.10 lists data required in each monthly report indicating Customer's usage levels, Contractor's experience in redeeming coupons received, and any other data City may identify in order to evaluate this service.

## **ARTICLE 7. OTHER SERVICES**

### **7.1 Public Education**

#### **7.1.1 General**

Contractor shall be responsible for the following public outreach and educational materials. Detailed information describing the public education activities is included in Exhibit M.

#### **7.1.2 Annual Communication and Public Education Plan**

Contractor shall submit by January 1 of each year an annual plan for the following contract year that includes the components described in Exhibit M. The City shall review and respond in writing within forty-five (45) calendar days indicating whether the plan is acceptable or requires revisions. The final plan shall be mutually agreed upon by the City and the Contractor. Implementation of the plan shall begin on the Commencement Date.

#### **7.1.3 Contractor's Web-Based Customer Access**

Contractor agrees that it will maintain a website that will allow Single-Family, Multi-Family and Commercial (Business) Customers to obtain City-specific information about available services

The website shall include but is not limited to the following services:

- A. provide, by type of Customer (i.e., Single-Family, Multi-Family, Commercial Cart and Bin and Roll-off), separate sections describing all of the services available, including frequently asked questions, and rates charged;
- B. allow Customers to download and print all public outreach materials;

- C. Contact information on the site to allow property owners or managers of Multi-Family and Commercial Customers to request a site visit to evaluate and to receive recommended improvements to their Collection service for Recyclable Materials or Organic Materials;
- D. provide telephone number to schedule Bulky Items appointments;
- E. initiate queries about the services provided
- F. list hours when Collection services are performed; indicate holidays when no Collection service is provided and the revised schedule that will be used for the balance of the week when a holiday is observed;
- G. indicate a phone number(s) that Customers may call to discuss a question(s) or service issue.
- H. The option for customers to create a digital login for their account to pay bills and monitor their account

Contractor agrees that this list will require revisions from time to time to reflect service changes or to better convey Collection service information. Contractor agrees to make such changes with reasonable notice from the Contract Administrator.

#### **7.1.4 Residential and Commercial Services**

As directed by the City, Contractor shall print informational materials for insertion in all Customer Billings that:

- A. focus on improving the Customers' understanding of the benefits of waste reduction, reuse, Recycling, and Composting;
- B. provide instructions regarding proper preparation of Recyclable Materials and Organic Materials with specific focus on minimizing Contamination and appropriate placement of Carts or Bins to ensure regular Collection;
- C. provide instructions regarding proper preparation of Bulky Items Collection, including acceptable and unacceptable materials, as described in Section 5.10.
- D. as much as possible, use graphics and other visual images to convey information and include brief text in English, Chinese, Spanish and Vietnamese;
- E. describe Unacceptable Materials and inform Customers about proper handling and the hazards of such materials;
- F. describe the services provided by the Alameda County Household Hazardous Waste Program, alternatives to Disposal of Household Hazardous Waste;
- G. list and describe Rates charged, Holidays, and regular Collection days, proper disposal of specific Material Types based on new legislation and related topics;

Contractor agrees that this list will require periodic revisions and shall make all changes requested by the Contract Administrator with reasonable notice from the Contract Administrator.

#### **7.1.5 Compliance with ACWMA's Ordinance 2012-1, AB 341 and SB 1383**

Contractor shall demonstrate diligent efforts to ensure that all Multi-Family, Commercial and Roll-off Customers are aware of the services for separate Collection of Recyclable Materials and Organic Materials, the provisions of ACWMA's Ordinance 2012-1, AB 341 and SB 1383. Contractor shall provide technical assistance to Multi-Family and Commercial Customers to

facilitate their subscription to Collection of Single Stream Recyclable Materials and Organic Materials by conducting waste assessments and staff training, where appropriate, arranging for delivery of an outdoor Cart(s) or Bin(s) and confirming the Collection schedule. Contractor shall provide appropriate support to all Multi-Family and Commercial Customers to implement Commercial Recycling services to comply with the ACWMA's Definition of an Adequate Commercial Recycling Program by June 30, 2015. Other provisions are included in Exhibit M.

Effective on the Commencement Date, Contractor will be required to provide education to Multi-Family property Owners, managers and Occupants to facilitate implementation of separate Organics Collection services by offering to conduct meetings with property Owners, managers and Occupants, arranging for delivery of an outdoor Cart(s) or Bin(s), and confirming the Collection schedule. Additional information regarding these services is described in Exhibit M.

#### **7.1.6 Other Informational Materials and Preparation**

The City shall be allowed to insert materials in Residential and Commercial Billings for each Billing cycle, in a format mutually agreeable to City and Contractor. Contractor shall also cooperate with ACWMA regarding requests to insert informational materials in bills. Materials may describe City-sponsored events or other integrated waste management activities to the extent that the agreed upon mailer format does not increase Contractor's normal postage cost for billing. If a postage increase is incurred for any mailing, the City shall be responsible for the actual reasonable amount of the increase.

Contractor shall not create, produce, or distribute public education materials without the prior written approval from the City. All materials, including art work, shall be submitted in writing for review and approval. Written authorization by the City is required prior to final production of any public education materials. Minimum public education requirements are described in Exhibit M.

When available and for a commercially reasonable price, for public education materials, WM shall utilize 100% recycled and 100% post-consumer recycled content paper. All public education materials must include the Contractor's toll-free number and the City's phone number as directed by Contract Administrator.

#### **7.1.7 Services Outreach, Promotion and Budget**

A total of \$100,000 is allocated to promote the services described in this Agreement. Contractor shall expend said amount annually during the Term and any extensions. Such amount shall be a passthrough expense. Exhibit M describes the types of outreach and promotion planned and the Contractor's obligations. Any unspent amount will carry forward to the next year.

## **7.2 Billing**

### **7.2.1 General**

The City shall establish the Rates and fees that Contractor may charge Customers for Solid Waste, Recyclable Materials, Organic Materials and C&D Collection services pursuant to Article 11. Contractor shall bill all Customers and collect Billings at City-approved Rates. Contractor shall not charge Customers in excess of City-approved Rates and shall charge all Customers in a

consistent and uniform manner so that Contractor's Rates are the same for the same service level (e.g., the same for the type of material collected, Container size, collection frequency, and/or extra services).

The Contractor shall prepare, mail, and collect bills for services provided by Contractor. The City shall have the right to review the Billing format.

Contractor shall make arrangements to allow its Customers to pay bills through the following means: cash (for which a written receipt shall be issued), check, credit card, debit card, Internet payment service, or automatic withdrawal from banking account.

Contractor may require a pre-payment from all delinquent Commercial Bin Customers in an amount equal to the Rate for two (2) months' service to those Customers. In the event Contractor is unable to collect payment from Commercial Customers, services may be terminated.

Contractor may assess a demurrage charge if a Contractor-owned Roll-off is not serviced at a Commercial Premises within ten (10) business days of the most recent delivery date. Such charge shall be at \$30 per five-day week or portion thereof with no proration.

Contractor shall maintain copies of all Billings and receipts, each in chronological order, for five (5) years for inspection and verification by City at any reasonable time upon request. The Contractor may, at its option, maintain those records in electronic format, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

### **7.2.2 Service Changes**

If a Customer (or the City or City's authorized representative) initiates a service change, Contractor shall pro-rate that Customer's bill based on the effective date of the service change. For example, if a Commercial Customer with a 64-gallon Solid Waste Cart requests a 35-gallon Solid Waste Cart on the 20<sup>th</sup> day of a 30-day billing period, and Contractor delivers the 35-gallon Cart on the 25<sup>th</sup> day of the 30-day billing period, then Contractor shall bill that Customer for 25 days at the 64-gallon rate and 5 days at the 35-gallon rate. Monthly rates will be converted to daily rates by dividing the number of days in the current month.

### **7.2.3 Collection of Bad Debts**

Contractor shall be responsible for collection of payment from Customers or property Owners with past due accounts ("**bad debt**"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, late fees at one and one half percent (1.5%) on past due balances thirty (30) days after billing and providing written notice that the account is overdue, telephone requests for payments, and assistance from collection agencies.

### **7.2.4 Special Assessment Procedure**

Contractor shall perform several tasks to initiate collection of delinquent charges for Single-Family Solid Waste Collection by special assessment on the Alameda County tax rolls.

Contractor shall record each new Single-Family Customer and individually billed Multi-Family Customer as a tenant or Owner of the real property at which services are provided by Contractor. Monthly, Contractor shall mail notices to all property Single-Family Owners regarding new starts from their tenants and reminding the property Owners of their ultimate responsibility for all delinquent bills, as established in the City's Municipal Code.

During each quarterly billing period, the Contractor shall determine which Single-Family Cart Customers are ninety (90) days or more delinquent in payment of their bill. Contractor shall prepare and mail a bill to each such Cart Customer indicating that the Customer has incurred a bill that is ninety (90) days delinquent. Contractor shall also mail a notice to each affected property Owner, if not the Customer, advising the Owner that the Customer's tenant has incurred a bill that is ninety (90) days delinquent, including tenants who have cancelled their service. All such bills and notices in any quarterly billing period shall be mailed at the same time. The purpose of the notices to property Owners is to provide sufficient information and notification to correct the delinquent bill prior to Contractor requesting use of special assessment. The City shall have the right to review and revise the content and layout of the notice to property Owners, and such revisions shall be incorporated by the Contractor prior to mailing. Contractor agrees that it will use the most current data of property Owners compiled by the Alameda County Tax Assessor's Office when mailing such notices.

Contractor will mail three (3) notices to delinquent Single-Family Cart Customers and each affected property Owner. Such notices shall be mailed the second week of February, the third week of March and the last full week of April with a payment due date of June 1st. Contractor shall provide the City a list of the delinquent accounts that have not paid by the second business day in June in time for an annual administrative hearing on all delinquent accounts each year and later placement as a special assessment on the tax rolls. A bill must be past due at least one hundred twenty (120) days and the Contractor shall exercise reasonable efforts as described in this Section to achieve collection of the bill prior to passing it on to the City for placement on the tax rolls. City shall reimburse Contractor for delinquent payments that are placed on the tax roll, less the fees retained by the City (as described in Article 10), upon collection of those payments from the property Owner and within thirty (30) days of receipt by the City. City may retain all reasonable expenses it incurs to facilitate collection of delinquent payments, including, but not limited to, staff and materials.

#### **7.2.5 Customer-Specific Billing Instructions.**

- A. **Single-Family Billing.** Contractor shall mail bills for Single-Family Customers quarterly, no more than 30 days in advance of the provision of service. Payment is due by the end of the first month of each quarter.
- B. **Multi-Family Billing.** Contractor shall mail bills to older Multi-Family Customers on a monthly basis following the provision of service for the previous month. Contractor shall mail bills to newer Customers no more than 30 days in advance of services rendered. Payment is due within thirty (30) days of issuance.
- C. **Commercial Billing.** Contractor shall mail bills to older Commercial Customers on a monthly basis following the provision of service for the previous month. Contractor shall mail newer Customers their bill in advance of services rendered. If Commercial Customers have centralized service (in which Containers are shared

by more than one Commercial Premises), Contractor shall bill one Customer, Owner or manager for centralized services. Payment is due within thirty (30) days of issuance.

- D. **Roll-off Billings.** Roll-off Customers are billed two times each month; the first through the 15<sup>th</sup> are billed on the first working day after the 15<sup>th</sup>, and the second billing is from the 16<sup>th</sup> through the end of the month. The second billing is issued on the first working day after the end of the prior month. Payment is due within thirty (30) days of issuance.

Contractor shall ensure that sufficient customer service staff is available to respond to phone calls from affected Customers as cited in Section 6 of Exhibit J, Schedule for Liquidated Damages.

### **7.2.6 Review of Billings**

Contractor shall conduct a desk audit to review its Billings to Customers to determine: (i) if the amount the Contractor is Billing each Customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container, and location of Container) Contractor is providing such Customer, and (ii) that all parties receiving service are invoiced for service. Such review shall be conducted annual and submitted with the annual report. annually. Review shall include all Single-Family, Multi-Family, Commercial and Roll-off Customer accounts. The City may, at its sole discretion require an alternate schedule and will advise Contractor with sixty (60) days' notice. The scope of the review, the Contractor's work plan, and the format of the report (including supporting exhibits) shall be submitted to the City for review no later than sixty (60) days prior to commencement of the Billing review process. Additionally, the City may conduct its own independent review itself or through use of an agent.

## **7.3 Customer Service Program**

### **7.3.1 Program Requirements**

- A. **Telephone.** Contractor shall maintain a toll-free telephone system in operation at its call center from 8:00 a.m. to 5:00 p.m. and shall have staff available to answer calls. Contractor shall install telecommunications equipment sufficient to handle the volume of calls and emails typically experienced on the busiest days and such equipment shall be capable of recording the number of seconds of on-hold wait time required until each such caller is able talk with a customer service representative or receive a response to an email.

Contractor shall provide bilingual customer service representatives for English and Spanish, or provide a way for the Customer to adequately communicate with Contractor.

If Persons are unable, with reasonable effort, to reach Contractor's office by phone, or are subject to an "on hold" waiting time of more than three (3) minutes prior to talking with a Customer service representative, Contractor shall take all necessary actions to eliminate the problem. In such instances where Contractor is unable to respond to all Customers within the required three minutes and is unable to do so



for more than 5% of all Customer calls received during a month-long period, Contractor shall so advise Contract Administrator within five Business Days with the following data for each week of the month long period:

1. The number of incoming calls answered;
2. The percent of incoming calls answered within 30 seconds, within three minutes, more than three minutes and the average speed of answer; and
3. Contractor's actions to eliminate the unacceptable on-hold wait times, including a timeframe within which wait times will be reduced to allowable levels described above.

Call queue data is for Northern California and an allocation is used for the City of Hayward.

Contractor shall record all Customer calls and email messages between 5:00 p.m. and 8:00 a.m. on week days and on Saturdays, Sundays and Holidays. Contractor shall return all such Customer calls and respond to all email messages no later than the next business day after such calls were recorded or emails received. If Contractor fails to meet the requirements described in this Section, the Contractor shall pay the City Liquidated Damages in accordance with Section 13.5 and Exhibit J.

- B. Holidays for Contractor's Regional Call Center.** Holidays observed include New Year's Day (January 1); Memorial Day; July 4; Labor Day (first Monday in September); Thanksgiving Day (fourth Thursday in November); the day after Thanksgiving (fourth Friday in November); 1:00 to 5:00 p.m. on December 24; Christmas Day (December 25); and 1:00 to 5:00 p.m. on December 31.
- C. Customer Satisfaction Survey.** The City may conduct a Customer satisfaction survey every year to facilitate input from Customers. Contractor shall cooperate with any such survey as requested by City.
- D. Training.** Contractor shall provide training to customer service representatives on City-specific service requirements at least quarterly based on the calendar year. If requested, Contractor shall provide Contract Administrator with summary information regarding such training.

### 7.3.2 Service Complaints

- A. Log Required.** Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Complaints. Contractor shall record in a separate log all Complaints, noting the name and address of complainant, date and time of Complaint, nature of Complaint, and nature and date of resolution. Contractor shall maintain this Complaint log for the Term, and provide copies of such log to the City upon request.

- B. Required Timeframe for Response.** Contractor shall respond to all Complaints received within twenty-four (24) hours, weekends and Holidays excluded. In particular, if a Complaint involves a failure to Collect Solid Waste, Recyclable Materials or Organic Materials from a Premises in the City, Contractor shall Collect the material in question within twenty-four (24) hours of receipt of the Complaint provided that Generator has properly placed materials for Collection in accordance with this Agreement. Contractor shall have e-mail capabilities (accessible through the Contractor's website) to enable Persons to communicate Complaints to Contractor via e-mail.

## **7.4 Sideyard Service**

### **7.4.1 Service Exemption**

Sideyard Service is available for Solid Waste, Recyclable Materials and Organic Materials Collection Customers on request and at no additional cost to any Occupant(s) of a Single-Family Dwelling Unit who is disabled, or 65 years of age or older, and who has no able-bodied adult under the age of 65 living in their home who could place the Carts Curbside. Occupants are required to complete an application form provided by Contractor or Subcontractor and attach documents verifying Occupant's eligibility. Such verification shall include a statement by a licensed physician describing the disability, or a copy of the Occupant's driver's license or birth certificate indicating date of birth, and a statement from the Occupant indicating that there is no able-bodied adult under the age of 65 living in their home who could place the Carts Curbside.

Sideyard Service shall be provided to such Premises where the Occupant has already submitted an application for this service.

Contractor and its Subcontractor shall review all applications submitted by Customers to determine conformance with this exemption provision and shall grant exemptions if applicable. The Contractor and its Subcontractor shall make reasonable accommodations with regard to Container and Collection requirements (e.g., Container size and type, placement of Containers for Collection, etc.). Contract Administrator may amend these provisions from time to time.

### **7.4.2 Fee for Service**

Sideyard Service is also available on request by Occupants of Single-Family Dwelling Units who are not disabled due to age or infirmity at an additional cost which is billed by the Contractor per Section 7.2.

## **7.5 Reduced Rate for Low-Income Residents**

The City has established eligibility criteria and a reduced rate for low-income Single-Family residents subscribing to Solid Waste Service. The City shall receive, review and approve or deny all applications for this reduced rate and will periodically advise Contractor in writing of additional Customers City has determined are eligible to receive the subsidy. Contractor shall subtract the amount of this reduced rate from bills issued to Customers who have been confirmed eligible. Contractor shall also submit a list of the eligible Customers, including their name, address and Cart service level, within five business days of City's request. The amount of the subsidy effective with the Commencement Date is listed in the current Rate Schedule. Contractor shall increase the

amount of the subsidy annually based on the adjustment approved by City pursuant to Article 11. The City may establish different criteria and subsidy levels in the future.

#### **7.6 Provision for Emergency Services**

Contractor shall provide emergency services at the City's request in the event of major accidents, disruptions, or natural calamities. Emergency services may include, but are not limited to, assistance handling salvaged materials, Processing, Composting, or Recycling materials, or Disposing Solid Waste following a major accident, disruption, or natural calamity. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services which exceed the Contractor's obligations shall be compensated in accordance with Section 11.2.1.A.

#### **7.7 Distribution of Chipped Mulch and/or Finished Compost**

On an annual basis, Contractor shall provide at no charge to the City 1,500 cubic yards of chipped mulch and/or finished Compost for City's use to apply in areas maintained by the City. Contractor shall be responsible for obtaining and Transporting the mulch and/or Compost in bulk quantities when requested by the City, or the City may elect to collect the chipped mulch and/or Compost from the Approved Transfer Station. Contractor shall deliver no more than two-hundred fifty (250) cubic yards of chipped mulch and/or finished Compost each three-month period. Arrangements for obtaining and Transporting the chipped mulch and/or finished compost shall be under the direction of the Contract Administrator. Chipped mulch shall mean two-inch minus recycled wood.

#### **7.8 Annual Giveaway of Finished Organic Compost**

On an annual basis, Contractor shall provide 10,000 bags of finished organic Compost certified as acceptable for Residential uses, including gardening and landscaping applications (not more than 5,000 bags per event). If less than 10,000 bags are provided in any given Agreement year, such deficiency shall carry over to the following Agreement year (up to 5,000 bags). Such bags shall contain no less than one cubic foot of finished organic Compost. Certification that the finished organic compost may be used for this purpose shall be confirmed by an independent third-party, such as the Organic Materials Review Institute. Contractor shall deliver the bags of finished organic Compost to a specified location and on a date identified by Contract Administrator. City will arrange for distribution of the finished organic Compost to residents.

#### **7.9 Organics Procurement Required by SB 1383**

On an annual basis, Contractor shall deliver up to 5,000 cubic yards of bulk mulch and 7,250 cubic yards of bulk compost to locations and dates identified by Contract Administrator.

## **ARTICLE 8. STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL**

#### **8.1 Operating Hours and Schedules**

### 8.1.1 Hours of Collection

- A. Residential Premises.** Collection from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. Contractor may Collect from Residential Premises on a Saturday only when required to a) implement a City-approved Holiday Collection schedule, or b) Collect a missed pick-up.
- B. Commercial Premises.** Collection from Commercial Premises that are two hundred (200) feet or less from Residential Premises shall occur only between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. Collection from Commercial Premises more than two hundred (200) feet from Residential Premises shall occur only between the hours of 5:00 a.m. and 7:00 p.m. Roll-offs may be collected from Commercial Premises between the hours of 5:00 a.m. and 10:00 p.m. The Contract Administrator may require modifications to hours for Collection from Commercial Premises to resolve noise Complaints, and, in such case, the City Manager may change the allowable operating hours.
- C. Exceptions.** In the event of an unforeseen 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 Contract Administrator.

### 8.1.2 Route Schedules

Contractor shall provide City with route maps and daily schedules for each type of Collection and service. The City shall review and approve such maps and schedules.

Contractor shall not change its regularly scheduled Residential Collection days or schedules without prior written approval from the City. Contractor shall obtain such written approval from the Contract Administrator thirty (30) calendar days before the effective date of the schedule change. Collection of Solid Waste, Single Stream Recyclable Materials and Organic Materials shall continue to be provided by Contractor on the same day of the week, in accordance with Section 5.1.2. Once approved, Contractor shall notify any Residential Customer fourteen (14) days before any Collection schedule changes via letter, email or automated voice messages by phone. Contractor shall not permit any Customer to go more than seven (7) calendar days without service during a Collection schedule change.

Except for load balancing or route efficiency, Contractor may not change any Commercial Customer's regularly scheduled Collection days without prior notification to the City. Contractor shall obtain such written approval from the Contract Administrator five (5) Business Days before the effective date of the schedule change. Contractor shall provide a list of the businesses that will have their schedule changed. Once approved, Contractor shall notify any Commercial Customer five (5) business days before any Collection schedule changes via letter, email or phone. Contractor shall not permit any Customer to go more than five (5) Business Days without service during a Collection schedule change.

### 8.1.3 Holiday Collection Schedule

No Collection service is provided on Holidays. When Holidays fall on a regular work day (i.e., Monday through Friday), Collection services shall resume on the day after the Holiday and shall continue for the balance of that week. For example, if Thursday is a Holiday, regular Thursday Collections are made on Friday, and Friday Collections are made on Saturday. The regular Collection schedule resumes the following week. The Holiday Collection Schedule will continue to be described in all literature disseminated to Single-Family Premises.

## **8.2 Contingency Plan**

Contractor shall submit to City, on or before the Commencement Date, a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, and in case of natural disaster or other emergencies.

## **8.3 Collection Standards**

### **8.3.1 Servicing Containers**

- A. Cart Placement.** Contractor shall pick up and return each Cart to the location where the Occupant properly placed the Cart for Collection. Contractor shall place all Carts upright. If a Residential Customer improperly placed the Cart in the street or alley instead of up on the curb, Contractor shall pick up and return that Cart to the top of the curb, or, where no curb is present, to the edge of the pavement of the street or alleyway. The City may levy liquidated damages for repeat occurrences of Container misplacement in accordance with Section 13.5 and Exhibit J of this Agreement.
- B. Due Care; Container Access.** Contractor shall use due care when servicing Containers. Contractor shall not throw, roughly handle, damage, or break Containers.

If a Container cannot be serviced because it is not accessible due to a temporary obstruction, such as a parked vehicle, Contractor shall first phone the Customer to attempt to service the Container while the driver is in the vicinity. Such call will be made after 7:00 a.m. If Contractor is unable to talk with the Customer via phone or email on the regular service day, Contractor shall contact the Customer on the following day and explain the reason for non-Collection and confirm service on that alternate day. Such return service shall be subject to an additional charge pursuant to Exhibit F. If Contractor experiences repeated incidents of obstructions to access Containers, Contractor is encouraged to resolve access issues with the Customer. If access is not resolved within a reasonable period, Contractor is encouraged to discuss the issue with Contract Administrator to expedite resolution.

- C. Other Services.** Contractor, at the request of Customers, shall offer all of the services listed in the Rate schedule approved by City. If these services change from time to time, Rates shall be established and approved by City.

### 8.3.2 Required Timeframe for Service Level Changes

Contractor shall implement any request for decreases in Recyclable Materials, Organic Materials or Solid Waste Collection service levels on behalf of a Multi-Family or Commercial Customer upon mutual agreement by Contractor and Customer provided that such a reduction in services will ensure that all materials will fit inside the Container and comply with Applicable Law. Such service level changes may be arranged by phone or email or a form signed by the Customer and delivered to Contractor in person or via facsimile, email, or U.S. mail. Contractor shall deliver Carts or Bins and shall commence Collection service, exchange or remove Solid Waste Containers and reduce Solid Waste Collection services on or before the next scheduled Collection day, or within six (6) Business Days (whichever is later) after receiving a request from Customer, City or City's authorized representative. If Contractor fails to deliver Container(s) and initiate service within such times, Contractor may be subject to Liquidated Damages as set forth in Exhibit J.

### 8.3.3 Allocation of City Materials

The Tonnage Collected for any Material Type which has been Collected from within the City and commingled in Residential or Commercial Collection vehicles with the same Material Type Collected from any other jurisdiction shall be allocated by Contractor to the City's Collection program. The Tonnage shall be allocated by multiplying the Tonnage Collected in each load by the percentage of the total volume serviced by the vehicle that is attributable to the City where the volume serviced shall be calculated based on the service levels of all Customers on the Collection route or shall be calculated by another method approved by the City.

The Tonnage allocation percentages assigned to individual Collection routes shall be audited and calculated at least twice annually by Contractor in March and September for evaluation by the Contract Administrator. The purpose of the audits is to accurately allocate the Tonnage attributed to the City for each Material Type by Service Type based on each Customer's service level (e.g., one 2-cubic-yard bin serviced twice weekly would yield 4 cubic yards) and an average weight per cubic yard. Such audits shall be required of all routes that "cross jurisdictional boundaries" resulting in commingling of materials Collected in the City and other service areas such as, but not limited to the Oro Loma Sanitary District service area. The table below documents the number of routes that, as of the Effective Date, indicate routes entirely located within the service area contemplated by this Agreement and the routes that cross jurisdictional boundaries along with the average Tonnage allocation percentages assigned to each such route for each service. The content of the requisite reports is described in Section 9.7.5.

<b>Description</b>	<b>Number of Routes</b>
Solid Waste Residential	10 routes
Multi-Family and Commercial	4 routes
Roll-offs	12 routes
Commercial Single Stream Recyclable Materials	4 routes
Commercial Organic Material	1.7 routes
Residential Organic	6 routes

Dry Waste	3 routes
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Contractor and City agree to meet and confer in good faith in order to evaluate the appropriate frequency of such audits throughout the Term. Nothing in this section obligates the City to agree to reduce the frequency of any of the audits since accurate Tonnage data is required in order to comply with local and State regulations. The decision regarding the frequency of the audits shall remain with the City.

### **8.3.4 Proper Preparation of Materials**

Contractor shall instruct Customers regarding proper preparation of Solid Waste, Recyclable Materials, Organic Materials, or C&D and the proper placement of Containers. Contractor shall notify such Customers by phone or in writing (may be digital) who are not adhering to Contractor's instructions. Communication shall indicate the materials that are not acceptable and identify the steps that the Customer must take to have its materials Collected by Contractor, as further described below.

### **8.3.6 Care of Private Property**

Contractor shall not damage private property. Contractor shall ensure that its employees: (i) close all gates opened in making Collections, unless otherwise directed by the Generator, (ii) do not cross landscaped areas, and (iii) do not climb or jump over hedges and fences.

City shall refer Complaints about damage to private property to Contractor. Contractor shall repair all damage to private property caused by its employees. Contractor shall repair any damages to public property caused by its employees to its previous condition.

### **8.3.7 Litter Abatement**

- A. Minimization of Spills.** Contractor shall use due care to prevent vehicle oil and vehicle fuel from being spilled or scattered during Collection or Transportation. If any materials are spilled or scattered during Collection, Transportation, the Contractor shall promptly clean up all spilled and scattered materials. All instances of vehicle oil on streets shall be promptly cleaned ensuring that all liquids are removed using a vacuum system and that no liquids flow to storm drains. Contractor may be subject to liquidated damages pursuant to Exhibit J for all such instances.

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, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the City.

- B. Clean-Up.**

**Public Litter Receptacles.** Contractor shall remove all abandoned debris placed inside such Receptacles whether or not there is a liner in the Receptacle. Removal may require using a shovel, broom or other appropriate tools to ensure that the

location is reasonably clean. If there is no liner, Contractor shall advise Contract Administrator within 24 hours that a liner is required, along with the Receptacle's location.

**Near Containers or Container Storage Areas.** During Collection, the Contractor shall clean-up litter in the immediate vicinity of any Container or any Container storage area (including the areas where Containers are delivered for Collection) whether or not Contractor has caused the litter. Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for cleaning up litter. Cat-litter or similar absorbent material shall be used by Contractor to clean up liquid spills.

The Contractor shall discuss instances of repeated spillage not caused by its employees with the Customer of the Premises where spillage occurs, and Contractor shall report such instances to City. If the Contractor has attempted to have a Customer stop creating spillage but is unsuccessful, the City will attempt to rectify such situation with the Customer.

- C. Covering of Loads.** Contractor shall cover all open Roll-offs with a cover at the pickup location before Transporting materials to the Approved Processing Sites or Disposal Location.

### **8.3.8 Noise**

All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, county and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet and at a height of five (5) feet from the Collection vehicle. In the event of repeat occurrences of noise levels in excess of these provisions, Contractor shall pay Liquidated Damages in accordance with Section 13.5. Contractor shall promptly resolve any Complaints of noise during the morning or evening hours of the day to the satisfaction of the City. The City may conduct random checks of noise emission levels to ensure such compliance.

### **8.3.9 Commingling of Materials Prohibited**

Contractor shall not commingle on any route or in any Container or vehicle, any Material Type Collected from Customers with any other Material Type. If Contractor acquires technology that allows for advanced separation of comingled recyclables at the Approved Processing Site, City will meet with Contractor to discuss a potential change to this prohibition.

## **8.4 Vehicle Requirements**

### **8.4.1 General**

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 (e.g., side-loader, front-end loader, and Roll-off vehicles) to respond to Complaints and emergencies. Contractor shall own or lease vehicles.



Vehicles for Residential Cart Collection may be designed for either semi-automated or fully-automated collection. Contractor shall use single-compartment Collection vehicles for all Residential Cart services.

#### **8.4.2 Alternative Fuel Vehicles**

- A. **Residential Cart Collection.** Contractor and its Subcontractor shall utilize Alternative Fuel Vehicles to collect Solid Waste, Single Stream Recyclables and Organic Materials from all Residential Premises with shared or individual Cart Collection service. Upon request, Contractor shall provide documentation to the Contract Administrator verifying the use of alternative fuels to provide Residential Cart service. In the event of an emergency or equipment failure, Contractor or Subcontractor may, on a temporary basis, utilize standard diesel-powered vehicles to Collect from Residential Cart Customers, and shall notify the Contract Administrator in writing if such utilization exceeds five (5) consecutive Business Days and of each such occurrence thereafter. In no event shall use of standard diesel-powered vehicles exceed a total of two hundred (200) route days in a 12-month period. The maximum two hundred (200) route days is based on a total of twenty (20) routes. Liquidated damages of \$200 per route day shall apply for each day Contractor uses diesel-powered vehicles that are in excess of this amount, as described in Exhibit J. Notwithstanding the foregoing, liquidated damages shall not apply in the event the alternative fuel vehicles are not in service due to unavailability of parts or manufacturer defects beyond Contractor's reasonable control.
- B. **Dedicated Vehicles:** As of the Commencement Date, Contractor or Subcontractor shall not utilize these vehicles in other jurisdictions, except on a temporary basis and only in case of emergency or equipment failure, and shall notify the Contract Administrator in writing if such utilization exceeds five (5) consecutive Business Days. Liquidated damages of \$200 per route day shall apply for each day Contractor requires use of these vehicles in other jurisdictions in excess of this amount, as described in Exhibit J.
- C. **Additional Vehicles.** If, during the Term of this Agreement, the current number of vehicles (23) proves insufficient to provide service to all Residential Cart Customers, Contractor and/or Subcontractor shall provide additional Alternative Fuel Vehicles at Contractor's sole cost and expense not subject to offset, compensation or Rate increase. Such additional Alternative Fuel Vehicles are not required to be new, and may be shared with other jurisdictions.
- D. **Zero Emissions Vehicles.** If WMAC or any of its California affiliates implement a fleet of zero emission collection vehicles on a permanent basis, WMAC will use commercially reasonable efforts to utilize such vehicles in the City of Hayward. If such vehicles result in greater operating or capital costs, then the City and WMAC will first agree on any compensation adjustments to offset such additional costs.

CONTRACTOR will add an EV pick-up truck and flatbed truck as soon as they are available.

If CONTRACTOR moves forward with EV pilot programs for collection vehicles, City will be considered for the pilot.

### **8.4.3 Vehicle Specifications**

Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality regulations and other applicable noise control regulations.

Collection vehicles shall comply with the State of California Air Resources Control Board regulations, including those regulations requiring the implementation of “Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicle Diesel Engines.”

### **8.4.4 Vehicle Identification**

Contractor's name, local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of four (4) inches high. Identification numbers shall be located on the front and back of each vehicle. Contractor shall not place the City's logo on its vehicles.

### **8.4.5 Inventory**

Contractor shall furnish sufficient equipment to provide all services required by this Agreement. Contractor shall furnish the City with a written inventory of all vehicles used in providing service, and shall update the inventory report annually. The inventory shall list all vehicles by Make & Model, ID number, date of acquisition, type, capacity, Fuel Type, and license number.

### **8.4.6 Cleaning and Maintenance**

- A. General.** Contractor shall maintain all of its properties, facilities, and equipment in a safe, neat, clean and operable condition at all times.
- B. Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam cleaned at a minimum of one time per week, or more frequently if necessary, to present a clean appearance of the exterior and interior compartment of the vehicle. City may inspect vehicles at any time to determine compliance with sanitation requirements. Contractor shall make vehicles available to the Alameda County Health Department for inspection, at any frequency requested by the department.
- C. Maintenance.** 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 perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. All vehicles shall be painted in a uniform manner that does not create a resemblance between Contractor's vehicles and City utility vehicles. Contractor shall keep accurate records of all vehicle maintenance,

recorded according to date and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Sections 8.9.3 and 9.1.3.

- D. Repairs.** Contractor shall immediately repair, or arrange for the repair of, all of its vehicles and equipment necessitated by accident, breakdown or any other cause, so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.
- E. Storage.** If Contractor proposes to store any vehicles or other equipment within the corporate limits of the City, then Contractor shall arrange to store such equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.

### **8.4.7 Operation**

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions for vehicles and roads. Contractor shall have each Collection vehicle weighed at the Approved Disposal Location or Processing Sites to determine the unloaded weight ("tare weight") of the vehicle, and the total loaded weight of each load delivered to the Approved Disposal location or Processing Sites, as further described in Section 6.4.10.

If Contractor becomes aware that more than 10% of its vehicles are overloaded within any six-month period, then Contractor shall notify Contract Administrator in writing. Such notice shall include the number of overloaded vehicles and statistical data with a plan of action to effectively reduce the number of overloaded vehicles as soon as possible. If necessary, Contractor and City may meet and confer in order to agree on Contractor's requirements to resolve the number of overloaded vehicles.

Contractor's drivers shall consistently operate all vehicles in a courteous manner including, but not limited to, temporarily parking vehicles to avoid blocking a regular driving lane, using signals to properly advise driver's intent, avoiding honking horns unless absolutely necessary, and ensuring that back-up beepers are not unreasonably loud.

## **8.5 Container Requirements**

### **8.5.1 General**

Contractor shall provide all Carts, Bins, and Roll-offs to all Customers as part of its services. Contractor-provided Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers shall have functioning wheels or casters. All Bins with a capacity of one cubic yard or more shall meet applicable Federal, State, and local regulations for Bin safety and be covered with attached lockable lids. All Carts shall be manufactured by injection or rotational molding methods and shall meet the Cart design and performance requirements provided in Exhibit P. Contractor shall obtain City's written approval of Cart colors before

acquisition. The useful life of Carts, Bins, and Roll-offs provided to Customers shall be equal to or longer than the Term of the Agreement. All Containers, except Carts, shall be painted the Contractor's standard color. All Containers shall prominently display the Contractor's name; Carts shall have Contractor's name molded or hot stamped.

Contractor also shall also provide kitchen pails to Residential Customers for the purpose of consolidating Food Scraps prior to placement in the Organics Container. Such kitchen pails shall be provided Residential Customers on request and at no additional charge. Such pails shall also be offered at Contractor's local office to all such Customers upon request, at no additional charge.

All Containers placed into service after the Commencement Date shall comply with color and labeling requirements specified in 14 CCR Section 18984.7 and 14 CCR 18984.8 respectively, provided that all Containers in service will comply with the applicable color requirements by January 1, 2036. Specifically, (a) all new Carts for Solid Waste Collection shall be gray with gray lids; all Carts for Organic Materials Collection shall be green with green lids; and all Carts for Recyclable Materials shall be blue with blue lids; and (b) all new Bins for Solid Waste Collection shall be green with black lids, Bins for Recyclable Materials Collection shall be blue with blue lids, and all Bins for Organic Materials Collection shall be green with green lids. Containers in service on the date of this Agreement may continue to be used. If Contractor proposes any changes in the colors of the listed Containers, Contractor shall obtain written approval from Contract Administrator prior to any change and shall allow Contract Administrator thirty (30) days to respond.

Contractor shall also apply labels on all Containers describing how to participate in the Single Stream Recyclable Materials and Organic Materials Collection services prior to delivery to all Customers. All labels on Containers require prior approval by the Contract Administrator, pursuant to Section 7.1.6, Other Informational Materials and Preparation, and further described in Exhibit M.

### **8.5.2 Cleaning, Painting, and Maintenance**

All Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Containers, except Carts as necessary, to present a clean appearance. Customers using Carts shall be responsible for cleaning such Carts. If any Container is impacted by graffiti, Contractor shall remedy the situation within forty-eight (48) hours of a request from a Customer or the City, or when identified by Contractor. Contractor shall not charge Customer to remove graffiti on the first or second request from Customer during the same calendar year. In response to the second request, Contractor shall meet with the Customer within ten (10) Business Days after the Contractor has returned the re-painted Container to the Customer to discuss what Customer could do to prevent or minimize further graffiti including, but not limited to, identifying a more secure location for the Container and that Contractor will assess a fee for a third request during the same calendar year. On the third and all subsequent requests during the same calendar year, Contractor may charge Customer a fee to remove the graffiti pursuant to Section 7.2. If the same Customer requests graffiti removal in any consecutive calendar years, Contractor may charge the Customer a fee to remove graffiti on the second and all subsequent requests during the same calendar year.

### **8.5.3 Repair and Replacement**

Contractor shall repair or replace all Containers damaged by Collection operations without limit and within five (5) Business Days of request by Customer or City. If the repair or replacement cannot be completed within five (5) Business Days, the Contractor shall notify Customer and a Container of the same size or larger shall be made available until the proper Container can be replaced. If a larger Container is provided by Contractor, Customer shall only be charged for the Container size requested, not the temporary larger Container that was delivered by Contractor.

### **8.5.4 Ownership and Age**

Containers are the property of Contractor and/or its approved Subcontractor(s) and not of the City. At the end of the initial or extended Term, or in the event that this Agreement is terminated for any reason, City shall have the option to purchase Containers from Contractor and Subcontractor at fair market value, subject to City's review of such fair market value. For the Term of this Agreement, Contractor and Subcontractor may continue to utilize all of the Containers currently in use.

## **8.6 Personnel**

### **8.6.1 General**

Contractor shall furnish such qualified drivers, mechanical, supervisory, customer service, clerical, and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

### **8.6.2 Provision of Field Supervision**

Contractor shall designate at least one qualified employee as supervisor of field operations. The field supervisor(s) will devote at least 50% of his or her time in the field checking on Collection operations, including responding to Complaints. The field supervisor(s) shall be accessible at reasonable times of call. The Contractor shall give the names and day and night telephone numbers of these person(s) to the City. The field supervisor(s) shall be able to contact any on-duty Collection vehicle driver in the City via radio or cellular phone during allowed operating hours.

### **8.6.3 Driver Qualifications**

All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

### **8.6.4 Safety Training**

Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to Collect, Hazardous Waste or Infectious Waste. Contractor shall maintain records of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings and provide copies of such records to City, upon request.

### **8.6.5 Employee Conduct and Courtesy**

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures.

#### **8.6.6 Uniforms**

While performing services under this Agreement, all of the Contractor's employees performing field service shall be dressed in clean uniforms and shall wear patches that include the employee's name and/or employee number, and Contractor's name.

### **8.7 Hazardous Waste Inspection and Handling**

#### **8.7.1 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.

#### **8.7.2 Response to Hazardous Waste Identified During Collection**

If Contractor determines that material placed in any Container for Collection is Hazardous Waste, Designated Waste, or other material that may not legally be Disposed of at the Approved Disposal Location or handled at the Processing Sites, 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 tag at least two inches by six inches (2" x 6") in size, or within two business days send an email, which indicates the reason for refusing to collect the material and lists the phone number for the Alameda County Household Hazardous Toxic Waste Facility. Under no circumstances shall Contractor's employees be required to Collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste from a Collection Container.

If Hazardous Waste is found in a Collection Container or Collection area that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the City's Fire Department using the 911 emergency number. The Contractor shall notify the City of any Hazardous Waste identified in Containers or left at any Premises within twenty-four (24) hours of identification of such material.

#### **8.7.3 Response to Hazardous Waste Identified At Disposal Site or Processing Site**

If materials collected by Contractor are delivered to a facility owned by Contractor for purposes of Transfer, Processing, or Disposal, load checkers and equipment operators at such facility shall

conduct inspections in areas where Collection vehicles unload Solid Waste, Single Stream Recyclable Materials, or Organic Materials to identify Hazardous Wastes. Facility personnel shall remove these materials for storage in approved, on-site, hazardous materials storage Container(s). Contractor shall make reasonable efforts to identify and notify the Generator. Contractor shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance with Applicable Laws and regulatory requirements.

If the unacceptable material is delivered to the Approved Disposal Location, Approved Recyclable Materials Processing Site or Approved Organic Materials Processing Site by Contractor before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor shall make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

#### **8.7.4 Regulations and Record Keeping**

Contractor shall comply with emergency notification procedures required by Applicable Law and regulatory requirements. All records required by regulations shall be maintained at the Contractor's facility. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

#### **8.8 Non-Discrimination**

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, natural origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability or any other protected class in violation of any Applicable Law.

#### **8.9 Communication and Cooperation with City**

##### **8.9.1 Communications**

If requested, the Contractor shall meet with the City or its agent at least once each month to discuss service issues. Upon City request, Contractor shall also require Subcontractor(s) to send a representative to these meetings. Contractor shall designate one contract compliance manager to be the City's primary point of contact. Contractor shall provide City's Contractor Administrator with the e-mail, office telephone, and cellular phone number of Contractor's contract compliance manager, route supervisors, district manager and other managers, as warranted.

##### **8.9.2 Contractor's Designee**

Contractor shall designate at least one qualified employee as supervisor of field operations. The field supervisor(s) shall be accessible to the City at reasonable times of call. The Contractor shall provide the City's Contract Administrator with the names and day, night, and cellular telephone numbers of these person(s). Contractor's field supervisor(s) shall have the ability to immediately contact any on-duty Collection vehicle driver in the City during allowed operating hours via radio or cellular phone.

##### **8.9.3 Inspection by City**

The City or its designated representatives shall have the right to observe and review Contractor operations and Processing facilities and enter same for the purposes of such observation and review during reasonable hours with advance notice and with the use of safety equipment and subject to all safety requirements.

#### **8.9.4 Annual Route Audits to Record Actual Setout Rates**

Contractor shall conduct an annual route audit of all Single-Family Customers on Organics Materials routes to confirm the number of Customers on each route, and to determine the actual setout rate for each route and the average setout rate for the City. Such route audits shall be conducted in June of each year and the data submitted to the Contract Administrator in the next quarterly report.

Subcontractor shall also conduct an annual route audit of all Single-Family Customers on Single Stream Recyclable Materials routes to confirm the number of Customers on each route, and to determine the actual setout rate for each route and the average setout rate for the City. Such route audits shall be conducted in June of each year and the data submitted to the Contract Administrator in the next quarterly report.

#### **8.9.5 Cooperate with City-Initiated Studies**

Contractor shall fully cooperate with and assist the City or its agent with performance of City-initiated studies of Solid Waste, Single Stream Recyclable Materials, and Organic Materials such as, but not limited to, waste characterization and composition studies.

## **ARTICLE 9 RECORD KEEPING AND REPORTING**

### **9.1 General**

#### **9.1.1 Maintenance of Records**

Contractor shall maintain accounting, statistical, and other records directly related to its performance to develop the financial and other reports required by this Agreement. Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and solid waste program management needs of City, AB 341, AB 939, ACWMA's Ordinance 2021-01, and other Applicable Law, as well as the requirements of this Agreement. This Article is intended to 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 mutual agreement of the Contractor, written direction by or approval of 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. Records and reporting may be revised to reflect current record keeping and reporting requirements. This Agreement will not require Contractor to provide confidential financial information unless specifically required herein pursuant to Exhibit I.

#### **9.1.2 Retention of Records**

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its



expiration or earlier termination. Records and data shall be in chronological order, be organized, and in a form that is readily and easily interpreted. At the City's request, records and data required to be maintained that are specifically directed to be retained shall be retrieved in a timely manner by Contractor and made available to the City.

### **9.1.3 Inspection of Records**

The City, its auditors and other agents, shall have the right, during regular business hours, upon 24-hour notice, to conduct on-site inspections of records necessary for the implementation of this Agreement. Subject to Contractor and Applicable Law confidentiality requirements, the City may at its expense make copies of any documents it deems relevant to this Agreement.

### **9.1.4 Record Security**

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.

## **9.2 Records**

### **9.2.1 Financial and Operational Records**

Financial records, including fuel costs and usage records, shall be maintained for City as required by this Agreement and shall be segregated from other areas served by Contractor. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

### **9.2.2 Collection Service Records**

Records shall be maintained by Contractor for City relating to:

- A. Customer services and Billing, including service exemption information;
- B. Weight of material collected by Material Type (e.g., Solid Waste, Single Stream Recyclable Materials, Organic Materials, and Dry Waste). Information is to be separated by Service Type, except that Abandoned Waste Collection Service records will be combined with Bulky Items Collection service records, and Public Litter Receptacle service records may be included in Commercial front-loader records;
- C. Tonnage of Solid Waste, Recyclable Materials, Organic Materials, Bulky Items Collection, Abandoned Waste Collection, Dry Waste, and Construction and Demolition Debris, listed by Processing Site or Disposal Site where such materials were delivered;
- D. Setout rates for Recyclable Materials, Organic Materials Collection, and Bulky Items Collection;
- E. Tonnage of Single Stream Recyclable Materials, Organic Materials, Bulky Items, and Abandoned Waste collected from Premises located only within the City and Diverted from Disposal by Contractor;
- F. Tonnage of Solid Waste, Single Stream Recyclable Materials, and Organic Materials from routes of Commercial Cart and Bin Customers which has been Collected from within the City by Contractor and co-mingled in Commercial front-

loader vehicles with the same materials from other Commercial Cart and Bin Customers from jurisdictions located immediately adjacent to the City. The scope and purpose of the audits associated with providing this data is described in Section 8.3.3.

- G. Number and type of routes;
- H. Facilities, equipment, operations, maintenance, repair and personnel used;
- I. Single Stream Residential Recyclable Materials sales revenue, Tons sold, and inventories, to be provided by Subcontractor;
- J. End use and markets for recovered materials pursuant to Section 6.1.6;
- K. Reports of Customer calls or requests: missed pick-ups, Container replacements, and scheduled clean-ups;
- L. Non-collection notices.

### **9.2.3 Transfer, Processing, Diversion, and Disposal Records**

Contractor shall maintain records of Transfer, Processing, Diversion, and Disposal of all Solid Waste, Recyclable Materials, Organic Materials, C&D and Bulky Items collected by Contractor.

### **9.2.4 Other Programs Records**

Records for other programs shall be tailored to specific needs. In general, the records shall include plans, tasks, and milestones; and accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

### **9.2.5 Customer Service Records**

Records shall be maintained by Contractor for City related to:

- A. Number of calls by Category (missed pickups, Container replacements required for those damaged, missing, or for any other reason). Contractor shall establish call categories for reporting purposes. Such categories must be approved by the Contract Administrator.
- B. Average on-hold wait time for calls; number and percent of all calls answered within three (3) minutes and greater than three (3) minutes;
- C. Training materials and records;
- D. Number of notices issued for non-compliant setouts by route and number of missed setouts by route for Residential Single Stream Recyclable Materials Collection to be provided by Subcontractor;
- E. Number of notices issued for non-compliant setouts by route and number of missed setouts by route for Residential Organics Collection;
- F. Number of notices issued for non-compliant setouts by route and number of missed setouts by route for Commercial Single Stream Recyclable Materials and Commercial Organics Collection;

### **9.2.6 CERCLA Defense Records**

City views its ability to defend itself against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where Solid Waste materials are taken for Transfer or Disposal, as well as where they are not taken, to be matters of concern. Contractor

shall maintain, retain and preserve records which establish where Solid Waste materials were Disposed and therefore establish where they were not. 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.

### **9.3 General Reporting Requirements**

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

- A. Set Rates approved by the City;
- B. Verify the accuracy of Customer Billings, remittance of Franchise fees, street sweeping fees and any other fees assessed;
- C. Evaluate past and expected progress to document compliance with Section 4.3, Diversion Requirements;
- D. Determine needs for adjustment to programs;
- E. Evaluate Customer service and Complaints; and
- F. Provide the City with adequate Customer account and service level data.

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 Contract Administrator. Contractor agrees to provide and submit all reports in an electronic format via e-mail, a thumb drive, CD-ROM or other generally accepted electronic storage device in a format that is compatible with the City's software and computers at no additional charge.

Contractor shall submit monthly reports within twenty (20) calendar days after the end of the reporting month. Contractor shall submit quarterly reports within twenty (20) calendar days after the end of the report quarter. Contractor shall submit annual reports no later than thirty (30) calendar days after the end of each calendar year.

Contractor shall submit (via e-mail) all reports to Contract Administrator:

Solid Waste Program Manager  
City of Hayward  
Public Works and Utilities Department  
777 B Street, 2<sup>nd</sup> Floor  
Hayward, CA 94541

### **9.4 Monthly Reports**

Contractor shall submit reports that present the following information. The City may review and request changes to Contractor's report formats and content and Contractor shall not unreasonably deny such requests.

#### **9.4.1 Public Litter Receptacles**

Contractor to provide monthly summaries of locations and dates of servicing for each container.

#### **9.4.2 Solid Waste Services**

Data shall include total Tonnage collected and Diverted, by Line of Business, except that data for the Single-Family Bulky Items Collection service and Abandoned Waste Collection service may be combined, and Public Litter Receptacle service data may be included in Commercial front-loader reports.

#### **9.4.3 Recyclable Materials Services**

- A. Data shall include Tonnage Collected and Recycled by Line of Business, Tonnage of Residue Disposed and the Residue Rate.
- B. The Total Diversion Rate of the Approved Recyclable Materials Processing Site as a whole, the Tons of Residue from the Approved Recyclable Materials Processing site that were Disposed of, and an estimate of how many of those residual Disposed Tons are attributable to the City. The City's estimated allocation of the Residue Tonnage shall be calculated in a manner approved in advance by the City.
- C. Upon Request, Contractor shall provide a list of each Multi-Family Customer with Cart(s) or a Bin that are serviced by Contractor. Such list shall include the Customer name, service address, capacity and number of Carts or Bin provided and service frequency. The purpose of the list is to monitor the number of Customers receiving this service.
- D. If available from the processing subcontractor, commodity sales data shall be provided, including all Single-Stream Residential Recyclable Materials recovered and sold, and the corresponding revenue for each commodity, in aggregate and separately by Service Type (Single-Family Cart, Multi-Family Cart, Multi-Family Roll-Off).

#### **9.4.4 Used Motor Oil and Used Motor Oil Filters Collection Services for Single-Family Customers**

- A. Data shall include gallons of Used Motor oil collected, and the number or pounds of Used Oil Filters collected.

#### **9.4.5 Organic Materials Services**

- A. Tonnage collected and Diverted by Service Type (Single-and Multi-Family Cart service; Multi-Family cart & Bin) Commercial Cart and Bin service; and permanent Commercial Roll-Off and Compactor service, this would include MFD if applicable).
- B. Provide number of Residential Organic Materials Cart set outs per week, by route, and the number of homes on each route.

#### **9.4.6 Commercial Dry Waste Services**

Tonnage and volume collected and Delivered to the Approved Dry Waste Processing Site, by Service Type, as follows: Commercial, City Facilities, and Roll off. Provided on the report in the Recycling Services section.

#### **9.4.7 Bulky Items Collection Services for Single-Family Customers**

- A. Data shall include Tonnage collected by Material Type (Solid Waste, Major Appliances, passenger tires, mattresses, E-Scrap Items (e.g., televisions and computer monitors). Item counts may be used to estimate Tonnage for all items other than Solid Waste.
- B. Maintain records to provide upon request for each Customer that Contractor billed for collecting a Bulky Items overage for a scheduled or unscheduled set-out, Contractor shall maintain for Contractor's records a photo of the set-out, the date of Collection, and the name, address, and account number of the Customer.

#### **9.4.8 Bulky Items Collection Services for Multi-Family Customers**

- A. **Tonnage:** Data shall include Tonnage Collected by Material Type (Solid Waste, Major Appliances, passenger tires, mattresses, E-Scrap Items). Item counts may be used to estimate Tonnage for all items other than Solid Waste.
- B. **Scheduled Collections:**
  - Provide the total number of completed Bulky Items Collections, total Roll-off capacity ordered
  - Contractor shall maintain records to provide upon request for each Customer that Contractor billed for Collecting a Bulky Items overage for a scheduled set-out, for Contractor's records a photo(s) of the set-out, the date of Collection, and the name, address, and account number of the Customer.
- C. **Assessment of Service:** During meetings or upon request by the City, Contractor shall provide its assessment of the new service, including but not limited to outreach to property Owners and managers informing them of the service, measures to deter illegal dumping or other recommended actions to assist in evaluating usage levels in various neighborhoods.

#### **9.4.9 Holiday Tree Services**

Data shall be separately reported to reflect Tonnage collected Curbside from Single-Family Premises and in Roll-offs from Multi-Family Premises.

#### **9.4.10 Free Self-Haul Disposal Coupons**

Data shall include the number of coupons accepted from City Residents at the Approved Transfer Station, and any other data describing Contractor's experience in order to allow the City to evaluate the service.

#### **9.4.11 City Properties Services**

- A. Data shall include the estimated weight of Single Stream Recyclable Materials Collected from each City property during the month as pounds or Tons per property.
- B. Provide Tonnage, by Material Type (Solid Waste, Recyclable Materials, Organic Materials, Yard Trimmings, C&D,) Collected in Roll-offs by the Contractor from

City properties. Contractor shall provide this information separately for the City properties listed in Exhibit L, and any others that may be added from time to time.

#### **9.4.12 Disposal from City Properties**

Data shall include separate reports of Tonnage of dirt, debris, Biosolids, and grit accepted at the Approved Transfer Station or the Approved Disposal Location, from City properties, and the final disposition of each (i.e., ADC, other Diversion, Disposal) of those materials.

#### **9.4.13 Self-Haul and Non-Franchised Activities**

- A. Data shall include the total Tons of Solid Waste generated in the City that were self-hauled to the Approved Transfer Station or the Approved Disposal Location by: a) City crews; b) other vehicles to be designated by City; and c) the general public.
- B. Provide the total Tons of Class 2 waste generated in the City that were Disposed of at the Approved Disposal Site.
- C. Separately report the Tonnage of all Recyclable Materials and Organic Materials generated in the City that are Collected by the Contractor and/or accepted at the Approved Transfer Station for Diversion, through private initiatives that are not Franchised under this Agreement.

#### **9.4.14 Customer Service**

- A. Report: missed pick-ups, container replacement, and container repair.
- B. Provide the number of customer complaints categorized by type.
- C. Provide the number and percentage of calls: dropped before the call is answered; answered within three (3) minutes; answered in greater than three (3) minutes in increments of one minute each; and the average on-hold wait time for calls;
- D. Provide the number of non-compliant and missed setouts by route for Residential Single Stream Recyclable Materials Collection provided by Subcontractor;
- E. Provide the number of non-compliant and missed setouts by route for Residential Organic Materials Collection.

#### **9.4.15 Account Data by Service Type**

Data shall include, in table format, the number of Customers and service levels for the Service Types listed below. Public Litter Receptacle service data may be included in City Facilities.

- A. **Single- and Multi-Family Premises Cart Service.** Provide number of customers and quantity of containers by Cart size (20 – 96-gallon) and the number and percent of total households served for each Cart size.
- B. **Commercial Cart Service.** Provide number of customers and quantity of containers by Cart size (20 – 96-gallon) by service frequency, and the number and percent of total Commercial Cart Customers served for each Cart size.
- C. **Commercial Bin Service, including Multi-Family Premises.** Provide separate tables for Bins without Compactor units and Bins with a Compactor unit, listed by Bin capacity (1 cy-7 cy) and service frequency (1-6 times weekly).

- D. **City Properties Bin and Cart service.** Provide the Bin and/or cart size and service frequency for each of the City Properties listed in Exhibit L.
- E. **City Properties Roll-off service.** Provide the Roll-off size and service frequency for each of the City Properties listed in Exhibit L.

#### **9.4.16 Customer Calls In Excess of 3-Minute On-Hold Wait Time**

On request from the Contract Administrator, Contractor shall provide the following data:

- A. Number of incoming calls answered by a customer service representative for each week;
- B. Percent of incoming calls answered and completed by a customer service representative within the first 30 seconds of the call;
- C. Percent of calls answered and completed by a customer service representative within the first 180 seconds (three minutes);
- D. Percent of calls answered and completed by a customer service representative more than three minutes;
- E. The average speed to answer and complete a call from a Customer based on the data listed immediately above in B through D; and E. Percent of calls abandoned by Customer.

Call queue data is for Northern California and an allocation is used for the City of Hayward.

#### **9.4.17 Customer Notices for High Contamination**

On request from the Contract Administrator, Contractor shall provide a list of the Customers that received warning notices from Contractor for Contamination levels in excess of standards specified in Section 5.6 for Residential Collection of Organics or Single Stream Recyclable Materials Collection provided by Subcontractor. Contract Administrator may review such notices in order to evaluate the type and extent of Contamination, as described in Section 6.1.7.

#### **9.4.18 Cart Replacement Statistics**

Data required shall include the number of Carts delivered during the month by size, Material Type, and if replaced or repaired.

### **9.5 Quarterly Reports**

Reports shall present the following information by each month's data in the reported quarter and include a quarterly average. In addition, each quarterly report shall show the past four quarters average for data comparison. A quarterly summary of all monthly report data required in Section 9.4 shall also be provided.

#### **9.5.1 Battery tons for Single-Family Customers**

Subcontractor shall provide battery ton data for the quarterly report.

#### **9.5.2 Holiday Tree Services**

In the first quarterly report of the calendar year, provide Tonnage of holiday trees collected at the Curbside and in Roll-offs.

### **9.5.3 Commercial Service Data**

For each Commercial Collection Container in use during the Quarter, Contractor shall provide:

- A. Business Name
- B. Service Address
- C. Account Number
- D. Contact Phone Number
- E. Material Type (Solid Waste, Single Stream Recyclable Materials, Organic Materials, Dry Waste)
- F. Container Type (Cart, Bin, Roll-off, Compactor)
- G. Container Size (e.g. 96-gallon, 3-cubic-yard, 20-cubic-yard, etc.)
- H. Frequency of Container Collection (e.g. once per week, five times per week, etc.)

Contractor shall provide this data in an electronic format compatible with Microsoft Excel and Access. Contractor shall provide the City, upon request, with individual Roll-off Customer data.

### **9.5.4 Dry Waste Processing Diversion Rates**

Per Section 6.3, provide separate Diversion Rates (excluding ADC) for Roll-off and Bin Dry Waste processed at the Approved Dry Waste Processing Site pursuant to this Agreement.

### **9.5.5 Bulky Items Diversion Rate**

Provide the Diversion Rate of Solid Waste from Bulky Items Collections Processed at the Processing Site, as determined by an audit per Section 5.10.8.

### **9.5.6 Public Education and Outreach**

#### **Public Education Budget (7.1.7)**

- A. List the public education materials produced.
- B. List the total actual amount of expenses incurred to design and print informational literature, including a brief description of each flyer, brochure, etc.

#### **Outreach and Education Activities**

Provide number of outreach visits/contacts for MFD and CM customers, non-compliant accounts, and organics and recycling services added.

### **9.5.7 City Requests for Roll-off Containers**

Contractor shall maintain records of each Temp Roll-off requested by City pursuant to Section 5.9.3. Contractor agrees to submit a report indicating the number of hauls and tons collected for each event, and the total number of cubic yards remaining for the City's use.

### **9.5.8 Pilot and New Programs**

Upon request, for each pilot and/or new program, a description is required of tasks performed and a narrative report of goals and accomplishments; description of problems encountered, actions



taken, and any recommendations to facilitate progress; and description of vehicles, personnel, and equipment utilized for each program.

### **9.5.9 Recyclable Material Markets**

A report of end markets (either domestic or foreign country) of Recyclable Materials collected in the previous quarter.

## **9.6 Annual Reports**

The annual report shall be in the form of the quarterly reports and shall provide the same type of information as required pursuant to Section 9.5 of this Agreement, summarized for the preceding four quarters, and shall include the Annual Diversion Rate calculations and documentation required by Section 4.3.

### **9.6.1 Equipment**

An inventory of equipment in accordance with Section 8.4.5.

### **9.6.2 Billing**

Billing review report issued biennially in accordance with Section 7.2.6

## **9.7 Other Reports**

### **9.7.1 Disposal of Dirt, Debris, Biosolids, and Grit from City Properties**

Contractor shall provide the Tonnage of dirt, debris, Biosolids, and grit accepted at the Approved Transfer Station or the Approved Disposal Location, from City properties via email up to three times a year upon request.

### **9.7.2 Report of Unauthorized Dumping**

As required by Section 5.11, Contractor shall report: (i) the addresses of any Premises at which the driver observes that Solid Waste, Recyclable Materials, and/or Organic Materials is accumulating; and (ii) the address, or other location description, at which Solid Waste, Recyclable Materials, and/or Organic Materials has been dumped in an apparently unauthorized manner. The report shall be delivered to the City within one Business Day of such observation.

### **9.7.3 Roll-off Report by Account Name and Delivery Site**

Contractor shall provide Contract Administrator with a report listing all permanent and temporary Roll-offs by Customer name and its disposition, i.e., whether it is designated for sorting as Construction and Demolition Debris or other Dry Waste sorting, or designated as an Organics account, for example. Sites shall include the Approved Dry Waste Processing Site, the Approved Recyclable Materials Processing Site, Transfer of Organic Materials to the Approved Organic Materials Processing Site, and the Approved Transfer Station for Disposal. Such report shall be prepared for an entire month and shall be provided Contract Administrator on request.

### **9.7.4 Hazardous Waste**

Upon City request, the Contractor shall notify the City of any Hazardous Waste identified in Containers or left at any Premises within twenty-four (24) hours of such request.

### **9.7.5 Allocation of Commercial Solid Waste, Organic Materials and Recyclable Materials**

Contractor shall submit reports based on the results of audits of Commercial front-loader vehicles, as described in Section 8.3.3. Each such report shall include, for each route, the data described in Section 8.3.3, the total number of cubic yards collected based on Container sizes and service frequency for all Customers located within the City and all other jurisdictions in aggregate, and the City's percent share of the total cubic yards collected. Each report shall include data for the current and each previous year during the Term. Such reports shall be submitted by Contractor in the next monthly report which is due the 20<sup>th</sup> day of the month following each audit.

### **9.7.6 Route and Productivity Data**

In the event City elects to issue a request for proposals for its next agreement, Contractor shall provide the data listed below on a calendar year basis beginning with the first calendar year after the Commencement Date and shall continue for the Term. The data shall be submitted in conjunction with the Annual Report described in Section 9.6.

#### **A. Routes by Service Type and Material Type**

1. Number of routes per day for all Residential and Commercial Premises in the City. In the case of routes that cross jurisdictional boundaries, indicate the number of cubic yards and the percent of each route is comprised of within the City based on Customer Container sizes and Collection frequency.
2. Complete lists of all Residential, Commercial and Roll-off Customers, including Customer name; service and billing address; contact phone number; and Container type, size, and service frequency.

#### **B. Productivity Statistics**

1. Number of accounts by Service Type
2. Number of setouts or subscription service level by Service Type
3. Solid Waste, Recyclable Materials, Organic Materials, and C&D Tonnage collected
4. Customer Rate Revenues by Residential, Commercial (Cart or Bin), and Roll-off service.

## **ARTICLE 10. FRANCHISE FEES AND OTHER FEES**

### **10.1 Franchise Fee**

In consideration of the exclusive rights provided Contractor herein, Contractor shall pay Franchise Fees to the City each month equal to thirteen and one half percent (13.5%) of Rate Revenues remitted by Customers for services provided in City.

### **10.2 Street Sweeping Fee**

Contractor shall collect and remit to the City a fee that will be used to offset a portion of the City's street sweeping and cleaning costs. This fee shall be 1% of Rate Revenues remitted by Customers for services provided in the City. The fee is required to fund the City's street sweeping costs to

remove waste that has dropped from Contractor's Containers and is not deposited into Contractor's Collection vehicles for proper Processing or Disposal. Such sweeping and cleaning efforts are required to protect the quality of storm water and the Bay.

### **10.3 Street Impact Fee**

Contractor shall collect and remit a Street Impact Fee to City each month. The amount of the Street Impact Fee shall be 2.5% of annual revenue, shall begin in Rate Period One and shall be paid in equal monthly installments. This fee is to reimburse the City for street maintenance costs incurred because of Collection vehicles traveling on City streets.

### **10.4 Measure D Augmentation Fees**

Contractor shall collect and remit to the City a Measure D Augmentation Fee. The amount of the Measure D Augmentation Fee shall be one percent (1%) of annual revenue, shall begin in Rate Period Four and shall be paid in equal monthly installments. The fee is required to pay recycling and sustainability staff program costs.

### **10.5 Other Fees**

The City may set other fees, 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 fees described in this Article.

### **10.6 Adjustment to Fees**

City may adjust the fees established in this Article annually at any time during the Term of this Agreement. If no adjustment amount is provided by the City, the fee shall be increased by the same percentage as the change in Rates.

### **10.7 Payment Schedule and Late Fees**

On or before the 20th day of each month during the Term of this Agreement, Contractor shall remit to City each of the above-listed fees. Each monthly remittance to City shall be accompanied by a statement itemizing each amount paid. Such remittance shall include a detailed calculation of all fees; and list Rate Revenues, by service sector (i.e., Residential, Commercial, and Roll-off), for the monthly period collected from all operations conducted or permitted by this Agreement. All such fees shall be paid based on the rate revenues, collected by Contractor from within City during the preceding calendar month.

If such remittance is not paid to the City on or before the 20th day of any month, Contractor shall pay to City an amount equal to two percent (2%) of the amount owing for that month. Contractor shall pay an additional two percent (2%) owing on any unpaid balance for each following thirty (30) day period the Franchise Fees or the street sweeping fee remain unpaid. Late fees shall not apply as long as Contractor has paid such originally calculated remittance on time.

## **ARTICLE 11. CONTRACTOR'S COMPENSATION**

### **11.1 General**

The Contractor's compensation for performance of its obligations under this Agreement shall be Contractor's Rate Revenue. Contractor's Rate Revenue shall be the full, entire and complete compensation due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's actual costs, including Annual City Fees due to City, are more than Contractor's Rate Revenue, Contractor shall not be compensated for the difference in actual costs and actual Rate Revenue. If Contractor's actual costs are less than the actual Rate Revenue, Contractor shall retain the difference provided that Contractor has paid Annual City Fees pursuant to Article 10.

Exhibit I describes and illustrates the Rate adjustment methods by which the Contractor and City shall determine the annual adjustment to Rates during the Term of this Agreement.

### **11.2 Rate Setting Process**

The City has adopted Rates to take effect on the Commencement Date. Rates are included as Exhibit F.

The City shall be responsible for establishing future Rates as described in this Article. Contractor shall provide the services required by this Agreement, charging only those Rates then in effect until Rates are adjusted by the City pursuant to Exhibits I-1 and I-2.

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, Contractor shall immediately notify the City and request establishment of such Rate. For example, if a Customer requires Collection of a three-cubic-yard Compactor Bin 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. Contractor must also request City approval of any Rates, fees or surcharges not listed in the Rate schedule. Contractor shall not charge Customers any Rate unless and until they are itemized on the City-approved Rate schedule.

The City shall have the sole and exclusive right to change the relationship of individual Rates in comparison with other Rates as it deems appropriate. Any such changes would occur in conjunction with the annual Rate adjustment process described in Exhibits I-1 and I-2.

#### **11.2.1 Special Rate Adjustments**

- A. **Eligible Items.** Contractor may receive an adjustment to the Rates then in effect for changes approved by the City and described in this Section 11.2.1.A. In such case, the Contractor shall submit an application documenting its request for a Rate adjustment and all supporting documentation for review by the City. The City shall review the Contractor's application and determine the amount of the Rate adjustment. The percentage change to Rates shall be equal to the approved change in Contractor's costs, including the Annual City Fees, divided by the Rate Revenue for the most-recently completed twelve (12) month period. The City may implement the Rate change at any time between regularly scheduled

annual Rate adjustments, or may delay the Rate change until the next regularly scheduled Rate adjustment, as described in Exhibit I.

In the event that the City delays implementation of the Rate change, the Rate change shall be calculated to allow the Contractor to recover the Rate Revenue that would have been generated by the change between the date that the Rate change was approved by the City and the date that the Rate change was implemented. The Contractor acknowledges and agrees that, although the Rate change will be calculated to generate a certain dollar amount of revenue, the actual amount of revenue generated may be more or less than the calculated amount, and the City has no obligation to change future Rates to make up for Rate Revenues being greater than or less than anticipated.

1. Change in Scope. Documented significant changes in the cost to provide services or losses in revenue as a result of an agreed-upon, City-directed change in scope, as provided for under Section 4.6, City-Directed Changes in Scope.
  2. Emergency Services. Provision of emergency services, pursuant to Section 7.6, Provision for Emergency Services.
  3. Catastrophic Events. Force Majeure Events, such as flood, earthquake, other acts of nature, war, civil insurrection, riots, acts of any government agency (including judicial action), or other similar catastrophic events that are beyond the control of and not the fault of the Contractor. Such events are further described in Section 4.7, City's Right to Perform Services.
  4. Change in Law. Change in Law, including, but not limited to, Changes in Law that result in regulatory, governmental, or other surcharge fees, after the Effective Date that: (1) were not reasonably known to the Contractor before the Effective Date, and (2) the Contractor substantiates.
  5. Disposal of Recyclable and Organic Materials. Disposal of Recyclables and Organic Materials is approved by the City subject to Section 6.1.8.
  6. Alternate Transfer Station, Processing and Disposal Location: Use of facility(ies) other than Approved Facility(ies) for reasons beyond Contractor's control and subject to City approval pursuant to Section 6.4.6.B.
- B. **Ineligible Items**. A special Rate adjustment would not apply for the following items and Contractor shall not be compensated for such items over the Term of the Agreement unless the City and Contractor agree to an adjustment during the Rate review process when determining Rates for Rate Period Four.
1. Collection, Processing, Transfer, and Disposal Cost Increases. Increases in the cost of Collection, Processing, Transfer and Disposal costs in excess of the increases provided through the annual Rate adjustment mechanism described in Exhibit I unless cost increases are related to eligible items listed in Section 11.2.1.A above.

2. Change in Facility Conditions. Increases in the cost of Collection, Processing, Transfer and Disposal costs that may be impacted by a change(s) in operating conditions of an Approved Facility unless such change is initiated by or at the direction of the City.
  3. Decreases in Revenues from Sale of Materials. Decreases in revenues from the sale of Recyclable Materials, Organic Materials, or other Material Types.
  4. Change in Number of Customers and/or Customer Service Levels. Growth or decline in the number of Customers and/or changes to Customer Service Levels related to number and size of Containers, Material Type, and frequency of Collection; however, the Contractor shall be entitled to bill all Customers at Rates approved by the City and retain all Rate Revenues (net payments and fees due to City) collected from its Customers for Collection services provided under this Agreement.
  5. Change in Material Quantities and Composition. Change in the Tonnage or composition of Material Types with the exception that changes in Tonnage shall be reflected in calculated Processing, Transfer, and Disposal costs when determining Rate Year Five Rates, pursuant to Exhibit I-2.
- C. Review of Costs. If the Contractor or the City requests a special review of Rates, the City shall have the right to review any or all relevant financial and operating records of Contractor and Affiliates pertaining to Contractor's performance under this Agreement.
- D. Submittal of Request. If the Contractor is requesting a special review of Rates, the Contractor must submit its request for a special review of Rates, and cost and operational data, in a form and manner specified by the City, at least eight (8) months before the proposed effective date of any Rate adjustment. The City may waive the eight- (8) month submittal requirement if the reason for the special review is a Change in Law that will become effective in less than an eight (8) month period.
- If City is requesting a special review of Rates, the City shall notify the Contractor at least nine (9) months before the proposed effective date of any Rate adjustment. Upon such notification, Contractor shall, within thirty (30) Days, submit reasonable cost and operational data as requested by the City, in a form and manner specified by the City.
- A request for Special Rate Adjustment review shall include a proposal on whether the Rate adjustment resulting from the special review shall be an adjustment in addition to or in lieu of the annual adjustment to Rates to be performed pursuant to Exhibit I.
- E. Burden of Justification. Contractor shall bear the burden of justifying to the City by substantial evidence any entitlement to increased Rates under this Section 11.2.1. Records required to be maintained pursuant to Exhibit I shall be subject to review, in accordance with appropriate professional standards, and inspection, for the primary purpose of reviewing changes in costs to the Contractor attributable to the circumstances that triggered the special review of Rates, at any reasonable time by an independent third party. The

selection of the independent third party as well as the scope of work for such review shall be approved in advance by the City. The independent reviewer shall provide any and all drafts of its review to the City and the Contractor. The Party requesting the special rate adjustment review shall bear the cost of the review.

If the City determines that the Contractor has not met its burden, the Contractor may request a meeting with City to produce additional evidence. Upon such request, the City shall permit said additional hearing.

- F. Grant of Request. Based on evidence the Contractor submits, the City may grant some, all, or none of the requested increase and approve adjusted Rates.
- G. Compensation. If Contractor requests a special rate adjustment, Contractor shall bear all reasonable costs of both Parties for participating in such review up to a maximum of \$50,000 per Party and such costs shall not be reimbursed through Rates charged Customers. If a special review occurs in response to a City-directed change in scope (pursuant to Section 11.2.2.A), the City shall be considered the Party requesting the Special Rate Adjustment review and the City's costs of the review may be reimbursed through the Rates.

### **11.2.2 Adjustment of Rates for Changes in Scope**

- A. **General.** In the event either the City or Contractor requests a change in scope in accordance with Section 4.6 of this Agreement, the Contractor shall furnish the City with projected operational and cost data for the change in scope to support any adjustment to Rates. For the purposes of analyzing cost impacts of changes in scope, the Contractor's profit shall be calculated using an ROI of 5.5% based on actual reasonable and necessary costs and such calculation of profit shall be performed in the manner described in Exhibit I-2. The City reserves the right to require that the Contractor supply any additional cost data or other information it may reasonably need to ascertain the appropriate adjustment of Rates, if any, for the change in scope. The City shall review this operational and cost data, and the City Council shall approve Rates for the change in scope, if warranted.

The granting of any change in scope shall be contingent upon City's written approval and establishment of new Rates, if appropriate.

- B. **Court Actions with Potential Rate Impact**

Contractor agrees that it will secure prior consent from the City regarding any fees assessed as a result of a court action filed by or against Contractor in order to allow the City sufficient time to evaluate the issues surrounding the lawsuit and to determine its course of action, where such fees may or will result in an increase in Rates.

### **11.2.3 Notice of Rate Adjustments**

The Contractor shall provide all Customers with written notice of Rate changes in the form of inserts approved by the Contract Administrator that describe the City-approved Rates and which Contractor shall include in all Customers' bills.

## **ARTICLE 12. INDEMNITY, INSURANCE, AND PERFORMANCE BOND**

### **12.1 Indemnification**

Contractor shall indemnify, defend with counsel acceptable to the City, and hold harmless (to the full extent permitted by law) the City and its City Council, 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) (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 such loss or damage which was caused by the negligence or willful misconduct of the City.

Contractor's duty to defend and indemnify herein shall include damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Waste collected in the City. If City contracts with a third party that owns or operates the Approved Disposal Location for Disposal services or an Approved Recyclable Materials or Organic Materials Processing Site, notwithstanding the foregoing, Contractor shall not be required to indemnify the City for the costs for any claims arising from such sites, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless such claim is a direct result of Contractor's actions or negligence. If City does not secure Disposal services and Contractor is responsible for securing Disposal capacity, Contractor shall be required to indemnify the City for the costs for any claims arising from the Disposal of Solid Waste at the Approved Disposal Location, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The foregoing is intended to operate to defend and indemnify and hold harmless indemnitees to the full extent permitted for liability pursuant to 107(e) of CERCLA, 42 U.S.C. 9607(e) and California Health and Safety Code 25364.

In addition, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in Public Resources Code section 40059.1, if the requirements of AB 939 or AB 341 are not met by the Contractor 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 required by the AB 939 or AB 341 in a timely manner.

In addition, Contractor's duty to defend and indemnify herein includes damages or liability that the City may incur arising from Contractor's assessment of any fee or charge in excess of the schedule of proposed rate increases for Solid Waste and Recycling services as approved by the



Hayward City Council on July 5, 2022. The foregoing is not intended to conflict with the limitations contained in Public Resources Code Section 40059.2.

This provision 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.

## **12.2 Insurance**

**12.2.1 Minimum Scope of Insurance Coverage** shall be at least as broad as:

- A. Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
- B. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", and endorsement CA 0025.
- C. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
- D. Commercial Crime Insurance including Employee Dishonesty Coverage.

### **12.2.2 Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

- A. Comprehensive General Liability: ten million dollars (\$10,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.
- B. Automobile Liability: ten million dollars (\$10,000,000) combined single limit per accident for bodily injury and property damage.
- C. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of one million dollars (\$1,000,000) per accident.
- D. Commercial Crime Insurance in the amount of one million dollars (\$1,000,000) per employee, covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).
- E. Contractors Pollution: Contractor, at its own expense, shall carry and maintain environmental impairment liability insurance for the Term, including any extensions thereto, in the amount of Ten Million Dollars (\$10,000,000) per loss and in annual aggregate, covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by the City will be called upon to contribute to a loss suffered by Contractor hereunder and waive subrogation against the City and other additional insureds.

### **12.2.3 Deductibles and Self-Insured Retentions**

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

#### **12.2.4 Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Liability Coverages**
  1. The City, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers. The automobile liability is endorsed to contain MCS-90 coverage.
  2. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and volunteers but only as respects the services provided by Contractor under this agreement. Any insurance or self-insurance maintained by the City and its City Council, its officers, officials, employees, volunteers and agents shall be excess of the Contractor's insurance and shall not contribute with it.
  3. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- B. Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officers, employees, and volunteers for losses arising from work performed by the Contractor for the City.
- C. All Coverages.** Except for Workers' Compensation and Employer's Liability, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after 30 calendar days' prior written notice, or ten (10) days of nonpayment of premium, has been given to the City.
- D.** Contractor shall comply with the reporting provisions of the policies so that coverage provided to the City, its officials, employees or volunteers as additional insureds is not affected.

#### **12.2.5 Acceptability of Insurers**

The insurance policies required by this Section shall be issued by an insurance company or companies admitted by the California Department of Insurance or listed as an approved non-admitted insurer by the California Department of Insurance with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A- or better.

#### **12.2.6 Verification of Coverage**

Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct the agent to provide the City with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to evidence coverage on its behalf.

The certificates and endorsements are to be received and approved by the City before the Commencement Date. Upon request, the City may review Contractor's insurance policies at

Contractor's office, or via a screen-share during an online meeting provided such information may not be copied and shall remain confidential.

### **12.2.7 Required Endorsements**

**A.** The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty calendar days' prior written notice, ten (10) days for non-payment of premium, shall be given to the City of Hayward in the event of cancellation, reduction in coverage, or non-renewal of this policy." Such notice shall be sent to:

Office of the City Clerk  
City of Hayward  
777 B Street, 4<sup>th</sup> Floor  
Hayward, CA 94541

**B.** The Commercial General Liability Business and Automobile Liability policies shall contain endorsements in substantially the following form:

1. "Thirty calendar days' prior written notice, ten (10) days for non-payment of premium, shall be given to the City of Hayward in the event of cancellation, reduction in coverage, or non-renewal of this policy." Such notice shall be sent to:

Office of the City Clerk  
City of Hayward  
777 B Street, 4<sup>th</sup> Floor  
Hayward, CA 94541

2. "The City of Hayward, its officers, employees, and agents are additional insureds on this policy." The City requires form CG2010 1001 and form CG2037 1001.

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

### **12.2.8 Delivery of Proof of Coverage**

Simultaneously with the execution of this Agreement, Contractor shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverages throughout the Term. Upon request, the City may review Contractor's insurance policies at Contractor's office, or via a screen-share during an online meeting, provided such information may not be copied and shall remain confidential.

### **12.2.9 Other Insurance Requirements**

- A.** If any services are delegated to a Subcontractor, the Contractor shall require such Subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work in accordance with Section 12.2.2.C and Section 12.2.4.B. The liability insurance required by Section 12.2.2.C shall cover all Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 12.2.
- B.** The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third person against the Contractor or any Subcontractor on account of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the City, unless Contractor determines that such facts are confidential and relate to a pending legal dispute.

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

The Comprehensive General and Automobile Liability insurance required by Sections 12.2.2 and 12.2.4.A shall be written on an "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Contractor must arrange for a 36-month "tail coverage" to protect the City from claims filed after the expiration or termination of this Agreement relating to incidents which occurred prior to such expiration or termination.

### **12.3 Performance Bond**

On or before the Effective Date of this Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's faithful performance of its obligations under this Agreement and such bond shall be renewed annually so that the performance bond is maintained at all times during the Term. The initial principal sum of the performance bond shall be equal to \$15,000,000 (fifteen million dollars) and adjusted yearly on the anniversary date of this Agreement to reflect 100% of the change in the Consumer Price Index (CPI) for the most recent 12 month period for all urban consumer items in San Francisco, Oakland and San Jose as published by the U.S. Department of Labor, Bureau of Labor Statistics. The premium for the bond described above shall be paid by the Contractor. The bond shall be executed by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the City. The performance bond is included in Exhibit E.

## **ARTICLE 13. DEFAULT AND REMEDIES**

### **13.1 Events of Default**

Each of the following shall constitute an event of default ("**Event of Default**") hereunder:

- A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, and: (i) if the failure or refusal has created an imminent threat to public health and is not cured within two Business Days after receiving notice from the City specifying the breach; or (ii) in the case of any other breach of the Agreement, the breach continues for more than thirty (30) calendar days after written notice from the City for the correction thereof. Where such breach cannot be cured within such thirty (30) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed. Determination of sufficiency of Contractor's action to cure breach and continued diligent performance shall be at the City's discretion.
- B. Contractor fails to meet the Annual Diversion Rate requirements specified in Section 4.3.3 two consecutive Rate Period(s) and City exercises its right to define such failure as an "Event of Default."
- C. Any representation, warranty, or disclosure made to 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, warranty, or disclosure appears as part of this Agreement; In addition, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting typographical and grammatical errors.
- D. Contractor practices, or attempts to practice, any fraud or deceit upon City.
- E. Contractor attempts to assign its rights, delegate or otherwise transfer its obligations under this Agreement, which include but are not limited to the following services: Collection, Transfer, Processing, Composting and Disposal of Solid Waste, Organic Materials, C&D and Recyclable Materials, to any other Person without the prior written consent of the City, pursuant to Section 14.6.
- F. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;
- G. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;
- H. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor

relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

- I. Contractor fails to provide reasonable assurances of performance as required under Section 13.7.
- J. Cost of delivery (i.e., the Transfer and Disposal fee plus additional Solid Waste Transportation costs) at a transfer station or disposal site other than the approved locations is higher than the amount then in effect under this Agreement and Contractor requires that its compensation be increased to reflect those higher costs.
- K. Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- L. Contractor violates Applicable Law relative to this Agreement, including 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 in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred upon final resolution of the contest or appeal in favor of Contractor. In the event that Contractor contests or appeals the violation, penalty or sanction, City may initiate emergency measures to preserve public health and safety including, but not limited to, supplementing Contractor's service with another service provider.
- M. Contractor fails to make any payments to City required under this Agreement, and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in this Agreement; Contractor shall be given no more than 30 days to cure such breach after receipt of notice from the City of the breach.
- N. Except as provided under Section 13.6, Contractor fails to provide Collection, Transfer, Transport, Processing, Diversion, or Disposal services as required under this Agreement for a minimum of either two (2) consecutive Business Days or three (3) non-consecutive Business Days within one (1) week. City may give notice of Contractor's failure to perform verbally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such verbal notification shall be sent to Contractor within twenty-four (24) hours of the verbal notification.

### **13.2 Right to Terminate upon Default**

Upon a default by Contractor, the City may terminate this Agreement upon ten (10) days' notice if public health or safety is threatened, or otherwise upon thirty (30) days' notice, but without the need for any hearing suit, or legal action. This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligation under this Agreement.

### **13.3 Possession of Property upon Termination**

In the event of termination for default, the City shall have the right to take possession of any and all of Contractor's, equipment, and other personal property used or useful in the Collection, Transportation, Processing, and Disposal of Solid Waste, Recyclable Materials, or Organic Materials, and the Billing and collection of fees for these services and to use such property. The City shall have the right to retain the possession of such personal property until other suitable arrangements can be made for the provision of Solid Waste, Recyclable Materials, or Organic

Materials Collection services, which may include the award of an Agreement to another waste hauling company. If the City retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, the Contractor shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the City for the Contractor's default).

Contractor shall furnish the City with immediate access to all of its business records related to its Customers and Billing of accounts for Collection services.

#### **13.4 City's Remedies Cumulative; Specific Performance**

The City's rights to terminate the Agreement under Section 13.2 and to take possession of the Contractor's personal properties under Section 13.3 are not exclusive, and the 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 the 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.

#### **13.5 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 and compliance with the Annual Diversion Rate 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 J of this Agreement and the following Liquidated Damage amounts 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 Schedule of Liquidated Damages, Exhibit J.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of Complaints by Customers, Occupants, and Generators.

Other than Liquidated Damages payable under Section 13.4 of this Agreement, Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. Before assessing Liquidated Damages other than pursuant to Section 13.5 of this Agreement, 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. The 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. Either party may, within ten (10) calendar days after issuing the notice, request a meeting with Contractor. The parties may present evidence of nonperformance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Contractor with a written explanation of his or her determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 13.5. The decision of City shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

- C. Amount.** City may assess Liquidated Damages for each calendar day or event (as provided in Exhibit J), as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit J.
- D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within ten (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-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.
- E. Issues Beyond Contractor's Control and Minor Infractions.** Notwithstanding anything to the contrary herein, and further recognizing that this Agreement requires that implementation of new or modified services, no Liquidated Damages shall be levied or assessed against Contractor during the first forty-five (45) days from the Commencement Date of the Agreement for any minor infractions in the implementation or provision of new services under this Agreement, or in the event a delay in the implementation or provision of such new services is due to any circumstances beyond Contractor's reasonable control.



### **13.6 Excuse from Performance**

The Parties shall be excused from performing their respective obligations hereunder and no Liquidated Damages shall be applicable thereto, if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, pandemics, war, civil insurrection, riots, labor unrest or job actions, acts of any governmental agency (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 (collectively, "**Force Majeure Events**").

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 Collection, 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 case of labor unrest or job actions by Contractor's employees or directed at Contractor, Contractor agrees to meet and confer with the City within twenty-four (24) hours of said labor action regarding the scope and extent of the impact of such action, and to discuss available resources, if any, to effectuate the most critical collections and minimize public inconvenience. Such meet and confer with the City shall include a written alternate plan prepared by the Contractor and approved by the City. The alternate plan shall include provisions for maintaining the highest level of services during the entire labor unrest or job actions, with reasonable allowances to mobilize replacement workers subject to City approval, which shall not be unreasonably withheld, prior to and during the job action. Contractor shall, to the City's satisfaction, provide ample fully-trained substitutes for all employees, regardless of the basis for the labor unrest, e.g., a lockout established by Contractor. Contractor agrees to fully defend, indemnify and hold harmless the City against any actions or incidents occurring as a result of the labor unrest or job action.

The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice of such cause (or within such time as is reasonable based on the circumstances), 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 or more of the events described in this Article shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, (i) the existence of an excuse from performance will not affect the City's rights under Section 4.6; and (ii) 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, other than as the result of third party labor disputes where service cannot be provided for reasons described earlier in this Section, the City shall nevertheless

have the right, in its sole discretion, to terminate this Agreement for convenience by giving ten (10) calendar days' notice to Contractor, in which case the provisions of Section 13.3 shall apply.

### **13.7 Right to Demand Assurances of Performance**

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

The Parties agree that any material interruption of solid waste management service would cause imminent harm to the City and the members of the public who will be denied service under the Agreement and who will be exposed to health and safety risks. In addition, if Contractor: (i) is the subject of any labor unrest including work stoppage or slow down, 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; (iii) is financially insolvent; or (iv) is the subject of a criminal judgment, and the City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City, at its option and in addition to all other remedies it may have, give written demand to Contractor that it provide reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City believes in good faith is reasonably necessary under the circumstances to evidence continued ability to perform under the Agreement. Contractor shall have two (2) days from the date of receipt of such written demand to respond to the City. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance under the Agreement, such failure or refusal shall be an event of default for purposes of Section 13.1.

## **ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES**

### **14.1 Relationship of Parties**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer or employee of the City, nor as a partner of, or joint venture with, the City. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of the City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste, Recyclable Materials, Organic Materials and C&D Collection, Transportation, Processing and Disposal services performed under this Agreement, and all Persons performing such services. 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 the City.

### **14.2 Compliance with Law**

Contractor shall at all times, and at its sole cost, comply with all Applicable Laws, permits and licenses of the United States, the State and the City and with all applicable regulations promulgated

by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

### **14.3 Governing Law**

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

### **14.4 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.

### **14.5 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.

### **14.6 Assignment**

Contractor shall not assign its rights, nor delegate or otherwise transfer its obligations, under this Agreement to any other Person without the prior written consent of the City. Such obligations of the Contractor include the entire scope of services of this Agreement, whether performed by Contractor or its Subcontractor(s), and include but are not limited to the following services: Collection, Transfer, Processing, Composting and Disposal of Solid Waste, Organic Materials, C&D and Recyclable Materials. Any such assignment made without the consent of the City shall be void and the attempted assignment shall constitute an "Event of Default" pursuant to Article 13 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 assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of the outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, 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 Contractor. This shall include a merger or consolidation of a parent entity and a subsidiary entity; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related, contemporaneous or sequential transactions) which has the effect of any such transfer or change of 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. Assignment may exclude a change in ownership of Contractor's assets or stocks which occurs for interfamilial planning purposes only

and does not involve a change in the management of the Agreement or services performed hereunder.

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 Solid Waste, Recyclable Materials, Organic Materials and C&D management operations in a safe, effective, and responsible fashion, at all times in keeping with Applicable Law, regulations and best waste management practices, and (ii) Contractor's financial resources 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 written consent to an assignment, City may deny or approve such request in its discretion. Under no circumstances shall any proposed assignment be considered by City if Contractor is in default at any time during the period of consideration. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements. However, City may, in its sole discretion, waive one or more of these requirements:

- A. On the date the Contractor submits a written request for the City's written consent of an assignment, Contractor shall pay the City a transfer fee in the amount of City's actual costs to review Contractor's assignment request, with an initial deposit of two hundred fifty thousand dollars (\$250,000). The purpose of this fee is to pay for administrative costs related to the City's evaluation of the impact of the potential assignment. WMAC shall immediately notify City if the proposed assignment does not proceed.
- B. In addition to the transfer fee, Contractor shall undertake to pay City its reasonable expenses for attorney's fees 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;
- C. Contractor shall provide City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- D. Contractor shall provide City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, Organic Materials, and C&D management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last 5 years, the proposed assignee has not suffered any citations or other censure from any Federal, State or local agency 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; and (iv) that the proposed assignee conducts its Solid Waste, Recyclable Materials, Organic Materials, and C&D management practices in accordance with sound waste management practices in full compliance with Applicable Law regulating the Collection, Transportation, Processing and Disposal of Solid Waste, Recyclable Materials, Organic

- Materials, and C&D, including Hazardous Waste as identified in Title 22 of the California Code of Regulations as may be amended from time to time;
- E. Contractor provides Contract Manager with any and all additional records or documentation that, in the Contract Manager's sole determination would facilitate the review of the proposed assignment;
  - F. Contractor also assigns any Subcontractor agreement(s) with no change in its compensation or terms. City reserves the right to assume Contractor's agreement(s) with Subcontractor(s) at the City's sole option.
  - G. In the event of assignment by the Contractor, of the Collection portion of the Contract, Contractor agrees that the queuing time for vehicles shall not exceed twenty (20) minutes from arrival at the Approved Transfer Station. Such receiving time shall be calculated in this manner: The difference between the time that the vehicle arrived at the entrance to the Approved Transfer Station and the time that the inbound scale house transaction for that vehicle was completed. Should Contractor exceed the maximum vehicle receiving time, that contractor shall pay liquidated damages equal to One Hundred Dollars (\$100) for each vehicle which was not received within twenty (20) minutes of arrival, in accordance with Section 13.4.

In addition, Contractor shall ensure that no vehicles received at the Approved Transfer Station or other approved facilities have preference or priority at the Approved Transfer Station or other approved facilities entrance, scale house, tipping floors, or exits over vehicles delivering materials Collected pursuant to this Agreement.

On the date City approves Contractor's written request for an assignment, Contractor shall pay City a transfer fee in the amount of one percent (1%) of the total Rate Revenues for the most recently completed Rate Period. City's approval of such an assignment shall be conditioned on the receipt of the transfer fee.

#### **14.7 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns.

#### **14.8 Waiver**

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

#### **14.9 Notice Procedures**

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes or contemplates all, except as provided in Section 4.6.1, 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:

- A. To City:
- City Manager  
City of Hayward  
777 B Street, 4<sup>th</sup> Floor  
Hayward, CA 94541
- B. To Contractor: Waste Management of Alameda County, Inc.  
Attn. President  
100 Vassar Street  
Reno, NV 89502

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.

#### **14.10 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council, and all actions to be taken by the City shall be taken by the City Council, except as provided below. The City Council may delegate, in writing, authority to the City Manager, the Director of Utilities and Environmental Services, 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 employees. 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 the City in writing of such designation and of any limitations upon his or her authority to bind the Contractor. The 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.

#### **14.11 Criminal Activity of Contractor**

##### **14.11.1 Events or Circumstances and Notification**

Contractor shall notify City in writing within five (5) calendar days of occurrence of any Criminal Activity, of Contractor, its officers, director, agents, employees, subcontractors, and Affiliates providing direct services under this Agreement, as enumerated below.

For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:

- A. Convictions. The entry against any Contractor Party of a criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality or regulatory agency of competent jurisdiction based on acts taken in his or her official capacity on behalf of Contractor with respect to:

1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to municipal Solid Waste, Recyclable Materials, Organic Materials or C&D services of any kind (including Collection, Transportation, Transfer, Processing, Composting or Disposal), including this Agreement or any amendment thereto;
  2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;
  3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
  4. Unlawful disposal of Hazardous Waste or Designated Waste the occurrence of which any of Contractor Party knew or should have known;
  5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practices laws, including with respect to inflation of fees for Solid Waste, Recyclable Materials, C&D or Organic Materials Collection, Transportation, Processing, or Disposal;
  6. Violation of securities laws;
  7. Felonies.
- B. Pleas. Entry of a plea of “guilty”, “nolo contendere,” or “no contest” by a Contracting Party based on acts taken in his, her, or its official capacity on behalf of Contractor with respect to conduct described in preceding subdivision (1) of this Section.

#### **14.11.2 Contractor’s Cure**

Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the following:

- A. Terminate from employment or remove from office any offending individual Contractor Party, unless otherwise ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Contractor, and
- B. Eliminate participation by any individual offending Contractor Party in any management, supervision, or decision activity that affects or could affect, directly the performance of the Contractor under this Agreement.

#### **14.11.3 Transfer and Hiring**

Contractor shall not allow or cause to be allowed the hire or transfer of any individual from any parent company or subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor representative, field supervisor, officer, or director who is directly responsible for performance of this Agreement without obtaining prior written consent of City, following full disclosure to City of the facts and circumstances surrounding such Criminal Activity.

#### **14.11.4 City’s Remedy**

In the event of any occurrence of Criminal Activity, the City, in its sole discretion, may terminate the Agreement within thirty (30) calendar days written notice to Contractor, or after meeting and conferring with Contractor, may impose other sanctions deemed proper, only in the following events:

- A. Contractor fails to comply with the foregoing obligation of this Section, or
- B. The Criminal Activity concerns or relates directly to this Agreement.

Contractor shall be given the opportunity to present evidence in mitigation during the 30calendar day notice period.

#### **14.12 Public Hearing on Contractor's Performance**

At any time, but no more than once annually, the City may hold a public hearing at which Contractor may be required by City to attend and participate, for purposes of reviewing the Contractor's performance and soliciting feedback from the public regarding Contractor's performance of services under this Agreement. The purpose of the public hearing shall be to provide for discussion and review of technological, economic, and regulatory changes in order to achieve continuing, state-of-the-art Collection, Transportation, Processing, and Disposal and to ensure services are being provided with adequate quality, effectiveness, and economy.

### **ARTICLE 15. MISCELLANEOUS AGREEMENTS**

#### **15.1 Entire Agreement**

This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

#### **15.2 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.

#### **15.3 References to Laws**

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

#### **15.4 Interpretation**

This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

#### **15.5 Amendment**

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

#### **15.6 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.

**15.7 Counterparts**

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

**15.8 Exhibits**

Each of the Exhibits identified as Exhibit "A" through "O" is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

CITY OF HAYWARD

Recommended by:

DocuSigned by:  
*Alex Ameri*  
85810E68250446B...  
Alex Ameri  
Public Works Director

DocuSigned by:  
*Kelly McAdoo*  
38D6F24F5EFE4F8...  
By: Kelly McAdoo  
City Manager

Date: 12/6/2022

Approved as to form:

DocuSigned by:  
*Michael Lawson*  
FB86E64E63F24B7...  
Michael Lawson  
City Attorney

Date: 11/30/2022

Attest:

DocuSigned by:  
*Miriam Lens*  
0022A42DA1F540D...  
Miriam Lens  
City Clerk

Date: 12/6/2022

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

DocuSigned by:  
*Barry Skolnick*  
2A640847CE8F475...  
By: Barry Skolnick, President

Date: 11/30/2022

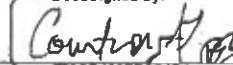
**EXHIBIT A  
SECRETARY'S CERTIFICATION**

The undersigned, being the Secretary of Waste Management of Alameda County Inc., a California corporation (the "**Company**"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Barry Skolnick is authorized to execute by and on behalf of the Company the Franchise Agreement between the City of Hayward and the Company for Solid Waste, Recyclable Materials and Organic Materials Services and any and all other agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to such Agreement, and that any such action taken to date is hereby ratified and approved.

Dated: \_\_\_\_\_

DocuSigned by:



Signature

Courtney A Tippy

**EXHIBIT B  
CORPORATE GUARANTY**

THIS GUARANTY (the "**Guaranty**") is given as of the \_\_\_\_ day of \_\_\_\_\_, 2022.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. hereinafter ("**Owner**") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by USA Waste of California, Inc. ("**Guarantor**").
- B. Owner and the CITY have negotiated a Franchise Agreement for Solid Waste, Recyclable Materials and Organic Materials Services dated as of \_\_\_\_\_, (hereinafter "**Agreement**"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a

trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Owner's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of nonpayment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its

obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agents for service of process in California:

USA Waste of California, Inc.  
Attention: General Counsel  
800 Capitol, Suite 4000  
Houston, TX 77002

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

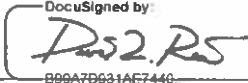
To the City: City Manager  
City of Hayward  
777 B Street, 4th Floor  
Hayward, CA 94541

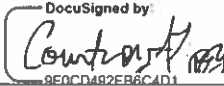
with a copy to the City Attorney at the same address.

To the Guarantor: USA Waste of California, Inc.  
Attention: General Counsel  
800 Capitol, Suite 3000  
Houston, TX 77002

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.

USA WASTE OF CALIFORNIA, INC.

DocuSigned by:  
By:   
899A7D631AE7440  
Vice President Treasurer

DocuSigned by:  
By:   
9E0CD492EB6C4D1  
Secretary

**EXHIBIT C**

**NUCLEAR WEAPON STATEMENT & GENERAL PROVISIONS**

**CITY OF HAYWARD REQUIREMENTS**

- a) Non-Involvement in Development of Production of Nuclear Weapons
- b) General Provisions for Purchases of Work and Services

Any conflict between the Franchise Agreement and the above two documents shall be resolved in favor of the Franchise Agreement.

**AFFIRMATION ON NON-INVOLVEMENT IN DEVELOPMENT OF PRODUCTION OF NUCLEAR WEAPONS**

The undersigned hereby certifies:

That it understands that City of Hayward Ordinance No.87024 C.S. prohibits award of contract to, or purchase of goods or services from, "any person which is knowingly or intentionally engaged in the development or production of nuclear weapons."

That it understands the ordinance defines "Nuclear Weapon" as "any device the intended explosion of which results from the energy released by fission or fusion reactions involving atomic nuclei."

That it understands the ordinance defines "Person" as "any person, private corporation, institution or other entity..."

As the owner or company official of the firm identified below, I affirm that this company is not knowingly or intentionally engaged in such development or production.

Waste Management of Alameda County, Inc.

Barry Skolnick, President

Print/Type Company Name  
Title

Print/Type Official Name &

172 98th Ave

Company Address

Signature of Company Official

Oakland, CA 94603

City/State/Zip Code

Date

11-21-22



**CITY OF HAYWARD  
GENERAL PROVISIONS FOR PURCHASES  
OF WORK AND SERVICES**

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If these general provisions are incorporated by reference into a Purchase Order for work and/or services, all references to "Bidder" or "Successful Bidder" shall be construed to mean the Seller from whom work and services are purchased by the City. The work and services described in the accompanying Request for Quotation or Purchase Order hereinafter shall be designated as "The Work".

1.00 Legal Relations and Responsibilities

1.01 Laws to be Observed: The Bidder shall keep itself fully informed of all existing and future State and Federal laws, including O.S.H.A. standards, and all municipal ordinances and regulations of the City of Hayward which in any manner affect those engaged or employed in The Work or the materials used in The Work, or which in any way affect the conduct of The Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

1.02 Labor Discriminations: No discrimination shall be made in employment of persons upon The Work because of the race, color or religion of such persons, and any Successful Bidder which violates this Section is subject to all the penalties imposed for a violations of Chapter 1, Part 7, Division 2, of the Labor Code of the State of California in accordance with the provisions of Section 1735 thereof.

1.03 Prevailing Wage: The Successful Bidder hereby stipulates that Sections 1771 and 1777.5 of the Labor Code of the State of California shall be complied with and shall forfeit as a penalty to the City of Hayward not more than fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the general prevailing rates of per diem wages as determined by the Department of Industrial Relations for such work or craft in which such worker is employed on The Work in violation of the Labor Code of the State of California, in particular the provisions of Sections 1770 to 1780, Inclusive, thereof.

Copies of the general prevailing wage rates are on file in the office of the City Engineer and are available to any interested parties on request.

1.03.1 Certified Payroll Records: Bidder shall maintain certified payroll records as required by Section 1776 of the Labor Code. Copies of certified payroll records shall be provided to the City of Hayward within ten (10) days of written request by the City. Failure to provide copies of certified payroll within the time prescribed by statute shall result in imposition of monetary penalties or withholding of progress payments due under the contract.

1.04 Permits and Licenses: Any person doing business in the City of Hayward is required by Chapter 8, Section 1 of the Municipal code to pay a business license tax. The successful bidder

shall have or procure a business license and, prior to initiation of work, show evidence thereof to the Revenue Department. The successful bidder shall, in addition, procure all permits, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of The Work.

1.05 Encroachment Permit: The Successful Bidder shall obtain and/or comply with any encroachment permits as set forth in the order.

1.06 Patents: The Successful Bidder shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in The Work.

1.07 Public Convenience and Safety: Attention is directed to all applicable Sections of Chapter 7, Article 2, STREETS, "Disturbance of Streets," of the City of Hayward Municipal Code.

Traffic control procedures stated herein and traffic control standard plans shall be the MINIMUM accepted in the City of Hayward. Any variations shall be approved by the Engineer prior to use. In no way shall compliance with these specifications and standards relieve the Successful Bidder of any liability for claims or damages arising from his work.

All streets within the project limits shall remain open to traffic at all times during the construction period. Between the hours of 5:00 PM and 8:00 AM, all lanes remain open to traffic.

Adequate traffic warning and control devices shall be provided and maintained by the Successful Bidder during the construction period in accordance with the "State of California Manual of Warning Signs, Lights and Devices for Use In Performance of Work upon Highways" dated 1973. When inadequate traffic warning and control devices have been installed, the City shall provide whatever facilities are deemed necessary and will charge the Successful Bidder for the costs thereof as provided in Section 7, Article 2 of the Hayward Municipal Code.

Traffic control signs, (regulatory, warning or construction type) conforming to the State of California Standards, and any special-legend signs required, except "NO PARKING" signs, shall be furnished by the Successful Bidder as directed by the Engineer.

The Successful Bidder shall install and maintain all signs.

Any obstructions which will remain in the roadway after darkness MUST BE adequately outlined with barricades with flashers or delineators along with other warning devices. All barricades and delineators shall conform to State of California Manual of Warning Signs, Lights, and Devices for Use in Performance of Work upon Highways.

Safe and convenient pedestrian access shall be provided at all times.

Flagmen are mandatory at locations where equipment is intermittently blocking a traffic lane or where only one lane is available for two-direction traffic. One flagman is required for each

direction of traffic affected where only one lane is available for over 100 feet or when required by the Engineer. When less than 20 feet of street width is available for traffic, a flagman will be required. Flagman shall wear distinctive clothing, such as a RED jacket.

All work specified herein shall be considered to be at the Successful Bidder's expense.

1.08 Responsibility for Damage: OMITTED

1.09 Responsibility for Work: Except as provided above, until the formal acceptance of The Work by the City, the Successful Bidder shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of The Work. The Successful Bidder shall rebuild, repair, and restore, and make good all injuries or damages to any portion of The Work occasioned by any of the above causes before final acceptance and shall bear the expense thereof, except such injuries or damages occasioned by acts of the Federal Government or of the public enemy.

1.10 No Personal Liability: Neither the City Council, officers, employees or agents of the City of Hayward, nor any other officer or authorized assistant or agent shall be personally responsible for any liability arising from or in connection with The Work.

1.11 Responsibility of City: The City of Hayward shall not be held responsible for the care or protection of any material or parts of The Work prior to final acceptance, except as expressly provided for in these specifications.

1.12 Successful Bidder Not an Agent of the City of Hayward: The right of general supervision of the City of Hayward shall not make the Successful Bidder an agent of the City; and the liability of the Successful Bidder for all damages to persons or to public or private property arising from the Successful Bidder's execution of The Work shall not be lessened because of such general supervision.

1.13 Inspection and Payments Constitute No Waiver of Order Provisions: Neither the Inspection by the City Engineer nor by an inspector or other City representative, nor any payment of money, nor acceptance of any part or whole of The Work by the City of Hayward or its agents shall operate as a waiver of any provision of the order.

1.14 Insurance Requirements: OMITTED

1.15 Disposal of Material Outside the Public Right of Way: The Successful Bidder shall make his own arrangements for disposing of materials outside the public right of way, and he shall pay all costs involved.

1.16 Preservation of Property: Attention is directed to Section 1.08, "Responsibility for Damage." Due care shall be exercised to avoid injury to existing improvements or facilities, adjacent property and real or personal property that is not to be removed.

1.17 Cooperation: Should work be performed by other firms, within or adjacent to The Work specified, or should work of any other nature be underway by other forces within or adjacent to said limits, the Successful Bidder shall cooperate with all such other firms or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When two or more firms are employed on related or adjacent work, each shall conduct his operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each firm shall be responsible to the other for all damage to work, to persons or property caused to the other by his operations and for loss caused the other due to his unnecessary delays or failure to finish The Work within the time specified for completion.

1.18 Assignment: The performance of The Work may not be assigned except upon the written consent of the Purchasing Agent. Consent will not be given to any proposed assignment which would relieve the Successful Bidder or its surety of their responsibilities under the order. The Successful Bidder may assign monies due or to become due it under the order and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law. That any assignment of money shall be subject to all proper set-offs in favor of the City, and to all deductions provided for in the order, and particularly all money withheld, whether or not assigned, shall be subject to being used by the City for the completion of The Work, in event that the Successful Bidder should be in default therein.

1.19 Time of Completion: The Successful Bidder shall complete all or any designated portion of The Work in all parts and requirements within the time set forth in the order.

1.20 Care and Protection: The Successful Bidder shall be entirely responsible for any damage to the City's or adjacent property due to hauling materials or other causes attributable to the conduct of his work, and all such damage will be repaired by the Successful Bidder when and as directed by the City's representative, and as required to place the property in as good condition as before the commencement of The Work. The Seller will not be responsible for normal wear and tear to City or other streets in performing services under the franchise agreement.

1.21 Nondiscriminatory Employment Practices: In the performance of this contract the contractor or subcontractor agrees as follows:

(1) AFFIRMATIVE ACTION - GENERAL

The contractor or subcontractor shall not discriminate against any applicant for employment or employee on the grounds of race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. The contractor or subcontractor will take affirmative action to ensure that its recruitment, selection, and evaluation practices do not discriminate against any applicant for employment or employee. The contractor or subcontractor shall also ensure that its personnel policies, practices and procedures, including, but not limited to, the transfer, promotion, demotion, suspension, layoff, or termination, rates of pay and other form of compensation, and the selection for training programs, apprenticeship, and on-the-job training do not discriminate against any employee. The contractor or subcontractor shall post in conspicuous places that are accessible to applicants for employment and employees notices setting forth this Nondiscriminatory Employment Practices Provision.

## (2) RECRUITMENT

(a) Non-union employees. Advertising placed with any media shall include the notation, "An Equal Opportunity Employer." Advertisements shall be placed with media having large circulation among minority groups or at school placement centers having large minority student enrollments. The contractor or subcontractor will send to each source of employee referrals, other than labor unions or workers' representatives, a notice in such form and content as shall be furnished or approved by the City, advertising said source of employee referrals of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Recruitment of non-union employees shall, to the maximum extent possible, utilize the services of minority organizations likely to be referral sources for minority group employees.

(b) Union employees. Union employees shall be recruited in accordance with applicable labor agreements. The contractor or subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the City, advising said labor union or workers' representatives of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or sub contractor agrees to seek the inclusion in all union agreements to which it is a party, clauses prohibiting discrimination based upon race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. To the maximum extent consistent with applicable labor agreements, the contractor or subcontractor will attempt to recruit applicants without regard to race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability.

## (3) EQUAL EMPLOYMENT OPPORTUNITY OFFICER

The contractor or subcontractor shall designate one of its management employees as its Equal Employment Opportunity Officer and assign such officer the responsibility and authority to

administer and promote an active program to put the contractor's or subcontractor's nondiscriminatory employment practices commitment into practice.

(4) ACCESS TO RECORDS

The contractor or subcontractor shall permit access during normal business hours to its records of employment, employment advertisements, completed application forms, and other pertinent data and records when requested to do so by the City Manager or any representative of the Fair Employment Practices Commission of the State of California.

(5) COMPLIANCE REVIEW PROCEDURES

(a) The contractor or subcontractor shall, upon request of the City Manager, submit its official payroll records together with a monthly cumulative summary of all employee hours worked in performance of its contract with or on behalf of the City identified as to minority status.

(b) The contractor or subcontractor shall submit to a formal, thorough review of its records, books, reports, and accounts concerning its employment practices for the purpose of determining whether they are nondiscriminatory. This review will be performed at intervals during the performance of the contract as may be specified by the City Manager.

Each review shall be followed within 30 days by either a written notice to the contractor or subcontractor that it is in apparent compliance with the Nondiscriminatory Employment Practices Provision of its contract or by a citation of apparent deficiency, summary of findings, and a statement of remedial commitment for signature by the contractor. If the contractor or subcontractor fails to meet the commitments it has made in executing such statement, the City Manager shall issue a notice of intent to initiate an action against the contractor or subcontractor with the Fair Employment Practices Commission for willful violation of the Nondiscriminatory Employment Practices Provision and the California Fair Employment Practices Act in not less than 30 days or such notice of intent.

(6) VIOLATIONS

The City Manager shall deem a finding of willful violation of the Nondiscrimination Employment Practices Provision and the California Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the contractor or subcontractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426, which has become final, or obtained relief under Labor Code Sections 1429 and 1429.1, or an appropriate federal commission or agency, or a court of the State of California, or if the United States Government finds, in any action or proceeding to which the contractor or subcontractor is a party, that it discriminated against employees or applicants for employment in the performance of this contract. Upon receipt or such notice or final judgment, the City Manager shall notify the contractor or subcontractor that unless it demonstrates to the satisfaction of the City Council within a stated reasonable period that the violation has been corrected, said contractor or subcontractor shall be subject to the remedies hereinafter provided.

(7) REMEDIES FOR WILLFUL VIOLATION

The contractor or subcontractor agrees that a finding of willful violation of the California State Fair Employment Practices Act or of this Nondiscriminatory Employment Practices Provision shall be regarded by the City Council as a basis for determining whether or not it is a responsible bidder as to future contracts for which such contractor or subcontractor may submit bids. The contractor or subcontractor further agrees that such disqualification by said City Council shall remain in effect for one year or until it demonstrates to the satisfaction of the City Manager that its employment practices are in conformity with the nondiscrimination provisions of the article.

The contractor or subcontractor further agrees that the contractor or subcontractor shall, as a penalty to the City of Hayward, forfeit for each calendar day or portion thereof an amount not to exceed \$250 or 1 percent of the total contract amount, whichever is greater. Such penalty may be deducted from any sums due to the contractor or subcontractor or recovered by the City through maintenance of an action in any court of competent jurisdiction.

Prior to making any determination with respect to reinstatement of a contractor or subcontractor as a responsible bidder, the City Council may refer the matter to the Human Relations Commission of the City of Hayward for a report and recommendation. The contractor or subcontractor agrees to cooperate to the fullest extent with said Human Relations commission in its exercise of the authority here conferred, including, but not limited to, promptly furnishing reports requested by the commission's review of matters relating to such reinstatement.

1.22 Acceptance and/or Rejection of Bids: The City reserves the right to reject any or all bids, or to accept separate items in a bid. In addition the City reserves the right to cancel a Request for Bids or an award at any time.

1.23 Waiving Minor Irregularities: The City may waive any minor irregularities in a bid or in the bidding process and make award accordingly.

1.24 Nuclear Affirmation Requirements: A purchase order has no force or effect until the person to which it is issued has on file with the City or executes and returns to the City of Hayward's Purchasing Manager an Affirmation Of Non-Involvement In Development Or Production Of Nuclear Weapons. City of Hayward Ordinance 87-024 C.S. defines "nuclear weapons" as "any device the intended explosion of which results from the energy released by fission or fusion reactions involving atomic nuclei." The ordinance defines "person" as "any person, private corporation, institution or other entity."

1.25 Hazardous Material Requirements: The contractor shall comply with all government laws, rules and regulations concerning the use of hazardous materials and the disposal of hazardous wastes at the job site, including but not limited to the following:

- (1) The contractor shall not bring hazardous materials onto the job site or deliver hazardous materials without providing the City, in advance, the Material Safety Data Sheets for each hazardous material introduced. Where applicable, materials must be labeled in accordance with Section 5194, Title 8, of the California Administrative Code. The contractor is required to include a Material Safety Data Sheet prepared in accordance with Section 5194 (g) with each shipment of all such materials to the City. No hazardous material will be introduced onto the job site until the City gives written approval for each hazardous material.
- (2) All hazardous material shall be stored and used in a safe manner and shall not be stored or used in any vehicular or pedestrian traffic lanes.
- (3) Any hazardous products, waste or empty containers used or generated shall not be poured down any drain or sewer nor disposed of in any trash container or dumpster.
- (4) The contractor will be considered to be the hazardous waste generator and will be responsible for the legal transport and disposal of all hazardous waste. No containers or trash will be left in any building or on any job site.
- (5) The contractor shall not disturb or damage any existing pipe lagging or equipment insulation or other asbestos material on the job site. If any asbestos material is disturbed or damaged, the contractor shall immediately notify the City and the situation will be considered an "asbestos release" under State and Federal Regulations. The job will be shut down immediately until all appropriate State and Federal notifications have been complete and all testing completed to determine if any asbestos fibers have been released.
- (6) Violation of any of the above procedures shall be sufficient cause for the City to stop all work. Any expense incurred by the City caused by the work stoppage will be borne by the contractor. These expenses will include all costs to return the job site and all other areas contaminated by the contractor to a hazard-free condition.
- (7) The contractor will be solely responsible for all the costs, including fines and penalties, for the investigation and cleanups of any suspected hazardous materials the contractor used, left on the job site, or dumped down a City drain or sewer, and any damage to property and/or injury to any person.

For purposes of clarity, this Section only pertains to material the Seller generates and brings onto City property, and not material collected by Seller from customers under the franchise agreement.

1.26 Recycled Materials: It is the policy of the City of Hayward to encourage the use of recycled materials, reusable products, and products designed to be recycled. Contractors and suppliers shall use or provide such materials or products to the maximum extent practicable and allowable within



the specifications prepared by the City, provided however, that the performance or operational effectiveness of the product or material is not detrimentally effected nor the health and safety of the citizens or employees of the City of Hayward negatively impacted by the use of such products or materials.

**EXHIBIT D  
NOTARY'S CERTIFICATION**

STATE OF NEVADA

COUNTY OF WASHOE

On Nov 21, 2022, before me, the undersigned, a Notary Public in and for the State of Nevada, personally appeared Barry Skolnick, known to me to be the President of Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Washoe this 21<sup>st</sup> day of November, 2022.

Notary Public



My Commission Expires:

8-5-26



**BOND NO. 873115**

**Effective 3/1/2023**

**EXHIBIT E**  
**CITY OF HAYWARD**  
**CONTRACTOR'S FAITHFUL PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That, Waste Management of Alameda County, Inc., 172 98th Avenue, Oakland, CA 94603 California Corporations, as PRINCIPAL, and Evergreen National Indemnity Company, 6150 Oak Tree Boulevard, Suite 440, Independence, OH 44131, a Corporation organized and doing business by virtue of the laws of the State of California, and authorized for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the CITY OF HAYWARD, a Municipal Corporation of the State of California, hereinafter called OBLIGEE, in the penal sum of fifteen million dollars (\$15,000,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract on March 1, 2023, entitled "FRANCHISE AGREEMENT BETWEEN THE CITY OF HAYWARD AND WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. FOR SOLID WASTE, RECYCLABLE MATERIALS, ORGANIC MATERIALS AND C&D SERVICES" with the OBLIGEE, to do and perform the following work, to wit: Collect, Transport, Process, and Dispose of Solid Waste, Recyclable Materials, Organic Materials and C&D generated within the City of Hayward, and provide services, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise, it shall remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

As a part of the obligation secured hereby, and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including attorney's fees, incurred by the City in successfully enforcing such obligations, all to be taxed as costs included in any judgment rendered.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this 28<sup>th</sup> day of November, 2022.

By: Waste Management of Alameda County, Inc.  
(PRINCIPAL)

By: Evergreen National Indemnity Company  
(SURETY)

(SEAL)

(SEAL)

By: Hilarie Frankenberg  
Hilarie Frankenberg, Witness

By: Patricia A. Temple  
Patricia A. Temple, Witness

By: Julie K. Bowers  
Julie K. Bowers, ATTORNEY-IN-FACT  
(SEAL)

By: Denise M. Borowy  
Denise M. Borowy, ATTORNEY-IN-FACT  
(SEAL)

**(Signatures of Principal and Surety must be acknowledged by a Notary Public)**

Note: The performance bond submitted shall include a certified copy of the bonding agent's power of attorney. In addition, it shall be verified that the surety is an "admitted surety," i.e., qualified to do business in the State, and proof of verification (e.g., website print out from the California Department of Insurance [www.insurance.ca.gov/docs/index.html](http://www.insurance.ca.gov/docs/index.html)) or certification from the County Clerk.

**EXHIBIT F  
SCHEDULE OF RATES FOR RATE  
PERIOD ONE**

**The Contractor Rates in this Exhibit F are an estimate, and are based Contractor's rates in effect as of March 1, 2022 (under the previous agreement) + 7.88% + Contractor's estimate of the Rate Adjustment calculation pursuant to Exhibit I, Sections 3.A.2.C and 6 for the 12 month period ending November 30, 2022. By December 31, 2022, Contractor will submit its calculations pursuant to Exhibit I, Sections 3.A.2.C and 6 regarding the 12 month period ending November 30, 2022. Effective March 1, 2023, the Rate Period One Rates in this Exhibit F shall equal the Contractor's rates in effect as of March 1, 2022 + 7.88% + Rate Adjustment as determined by Exhibit I-1, Section 6.**

## CITY OF HAYWARD

Schedule of Rates Effective March 1, 2023 through February 28, 2024 Annual Rate Adjustment
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### Single-Family Dwelling Rates

(The following rates apply to households that have their own carts and pay their own bill)

**Weekly Curbside Solid Waste Service** **Monthly Rates for March 1, 2023 - February 28, 2024**

#### Residential - SFD Solid Waste Rates

20 gallon	\$29.35
32 gallon	\$42.90
64 gallon	\$76.50
96 gallon	\$110.08

<b>Low Income Discount</b>	<b>-\$11.16</b>
Subject to approval	

#### Premium Sideyard Service

20 gallon	\$57.95
32 gallon	\$71.50
64 gallon	\$105.10
96 gallon	\$138.68

#### Extra services

Same day as regular service, per 32-gallon equivalent	\$8.85
Other than regular scheduled day, per 32-gallon equivalent	\$33.59

#### Tag-it tags (prepaid extra service)

Rate per tag	\$7.49
Rate per package (5 tags)	\$37.43

#### Bulky

Current allotment: 2 cubic yards, 2 times per year	
Bulky overage, per cubic yard	\$27.89

3 or more bulky pick-ups will be charged a trip plus the per cubic yard charge	
Additional Bulky Pick-up (Trip Charge)	\$80.27
Additional Bulky Pick-up per cubic yard charge	\$27.89
Removal of Large Appliances, per Unit Rate	\$89.41
(up to 3 are allowed for the Annual Bulky Item Appointment; examples include washers, dryers,	

#### Contamination

Cart - Recycling Materials and Organics Materials

Incidents 1 and 2	Warning
Incident 3+	\$25.00

#### Overages

Cart - Solid Waste Only

Incidents 1 and 2	Warning
Incident 3+	\$10.00

## CITY OF HAYWARD

### Multi-Family Properties and Mobile Home Parks with Centralized Billing:

Monthly Solid Waste Rates for Multi-Family Properties and Mobile Home Parks that have Centralized Billing

#### Solid Waste Rates

##### 32-Gallon Solid Waste Carts:

Number of Carts	Service Frequency	
	1 x week	2 x week
1	\$29.39	\$58.81
2	\$58.78	\$117.62
3	\$88.17	\$176.43
4	\$117.56	\$235.24
5	\$146.95	\$294.05
6	\$176.34	\$352.86
7	\$205.73	\$411.67
8	\$235.12	\$470.48
9	\$264.51	\$529.29
10	\$293.90	\$588.10

##### 64-Gallon Solid Waste Carts:

Number of Carts	Service Frequency	
	1 x week	2 x week
1	\$58.81	\$117.60
2	\$117.62	\$235.20
3	\$176.43	\$352.80
4	\$235.24	\$470.40
5	\$294.05	\$588.00
6	\$352.86	\$705.60
7	\$411.67	\$823.20
8	\$470.48	\$940.80
9	\$529.29	\$1,058.40
10	\$588.10	\$1,176.00

##### 96-Gallon Solid Waste Carts:

Number of Carts	Service Frequency	
	1 x week	2 x week
1	\$88.22	\$176.42
2	\$176.44	\$352.84
3	\$264.66	\$529.26
4	\$352.88	\$705.68
5	\$441.10	\$882.10
6	\$529.32	\$1,058.52
7	\$617.54	\$1,234.94
8	\$705.76	\$1,411.36
9	\$793.98	\$1,587.78
10	\$882.20	\$1,764.20

#### Per Unit - 20-Gallon Solid Waste Cart

Rate is restricted to Mobile Home Parks only 1x per week

\$19.62

#### Extra Services:

Same day as regular service, per 32-gallon equivalent

\$8.60

Other than regular scheduled day, per 32-gallon equivalent

\$32.64

## CITY OF HAYWARD

### Commercial

**Monthly Commercial Solid Waste Rates**

**Base Rate for 20-Gallon Service = \$20.83**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
20-Gallon Per Cart	1	\$20.83	\$41.63	\$62.46	\$83.31	\$104.12	\$124.94

**Extra Services:**

Extra pick up same day as scheduled, per 20-gallon equivalent: \$5.47  
 Extra pick up on day other than scheduled, per 20-gallon equivalent: \$20.74

**Base Rate for 32 Gallon Service = \$34.71**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
32-Gallon Per Cart	1	\$34.71	\$69.44	\$104.14	\$138.85	\$173.58	\$208.30

**Extra Services:**

Extra pick up same day as scheduled, per 32-gallon equivalent: \$8.73  
 Extra pick up on day other than scheduled, per 32-gallon equivalent: \$33.20

**Base Rate for 64 Gallon Service = \$69.47**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
64-Gallon Per Cart	1	\$69.47	\$138.90	\$208.38	\$277.84	\$347.29	\$416.76

**Extra Services:**

Extra pick up same day as scheduled, per 64-gallon equivalent: \$17.50  
 Extra pick up on day other than scheduled, per 64-gallon equivalent: \$66.35

**Base Rate for 96 Gallon Service = \$103.86**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
96-Gallon Per Cart	1	\$103.86	\$207.71	\$311.58	\$415.45	\$519.30	\$623.16

**Extra Services:**

Extra pick up same day as scheduled, per 96-gallon equivalent: \$26.25  
 Extra pick up on day other than scheduled, per 96-gallon equivalent: \$99.54

### Commercial and Multi-family

**Monthly Commercial and Multi-Family Bin Rates for Solid Waste**

Bin Size	Service Frequency					
	1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
1 cubic yard	\$182.48	\$357.00	\$494.69	\$632.84	\$770.69	\$908.68
2 cubic yard	\$329.59	\$605.55	\$881.21	\$1,157.01	\$1,432.69	\$1,708.69
3 cubic yard	\$470.12	\$883.91	\$1,297.48	\$1,711.31	\$2,124.92	\$2,559.15
4 cubic yard	\$618.49	\$1,169.99	\$1,721.66	\$2,273.20	\$2,824.82	\$3,376.29
6 cubic yard	\$904.47	\$1,731.91	\$2,559.15	\$3,386.48	\$4,213.96	\$5,041.27
7 cubic yard	\$1,056.67	\$2,022.00	\$2,987.23	\$3,952.50	\$4,917.77	\$5,883.06

**Rates are per additional pick up provided on the schedule pick up day:**

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$31.82	\$63.73	\$95.58	\$127.39	\$191.11	\$222.94

**Rates are per additional pick up provided on other than the scheduled pick up day:**

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$53.57	\$83.43	\$112.91	\$141.93	\$201.28	\$230.61



### CITY OF HAYWARD

**Monthly Commercial and Multi-Family Compactor Bin Rates for Solid Waste**

Bin Size	Service Frequency					
	1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
1 cubic yard	\$356.95	\$705.92	\$981.59	\$1,257.57	\$1,533.36	\$1,809.04
2 cubic yard	\$651.09	\$1,202.97	\$1,759.71	\$2,305.93	\$2,857.36	\$3,409.25
3 cubic yard	\$932.10	\$1,759.71	\$2,586.94	\$3,414.44	\$4,241.71	\$5,068.94
4 cubic yard	\$1,229.02	\$2,331.91	\$3,435.25	\$4,538.24	\$5,641.54	\$6,744.55
6 cubic yard	\$1,800.88	\$3,455.79	\$5,110.24	\$6,765.01	\$8,419.76	\$10,074.59
7 cubic yard	\$2,105.33	\$4,035.88	\$5,966.33	\$7,896.97	\$9,827.54	\$11,758.05

Rates are per additional pick up provided on the schedule pick up day:

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$63.68	\$127.39	\$191.06	\$254.75	\$382.12	\$445.82

Rates are per additional pick up provided on other than the scheduled pick up day:

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$107.12	\$166.87	\$225.85	\$283.87	\$402.53	\$461.28

- Steam clean bin: \$117.98
- Graffiti Removal: \$117.98
- Lock for Solid Waste Bin: \$32.44
- Key for Solid Waste Bin: \$3.81

**Multi-family & Commercial Container Solid Waste Overage**

**Carts - Solid Waste**

Incidents 1 and 2	Warning
Incident 3+	\$10.00

**Bins - Solid Waste**

Incidents 1 and 2	Warning
Incident 3 +	\$75.00

**Monthly Commercial and Multi-family Bin Rates for Organics Materials Collection**

Bin Size	Service Frequency					
	1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
1 cubic yard	\$91.24	\$178.50	\$247.35	\$316.42	\$385.35	\$454.34
2 cubic yard	\$164.80	\$302.78	\$440.61	\$578.51	\$716.35	\$854.35
3 cubic yard	\$235.06	\$441.96	\$648.74	\$855.66	\$1,062.46	\$1,279.58
4 cubic yard	\$309.25	\$585.00	\$860.83	\$1,136.60	\$1,412.41	\$1,688.15
6 cubic yard	\$452.24	\$865.96	\$1,279.58	\$1,693.24	\$2,106.98	\$2,520.64
7 cubic yard	\$528.34	\$1,011.00	\$1,493.62	\$1,976.25	\$2,458.89	\$2,941.53

Rates are per additional pick up provided on the schedule pick up day:

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$15.91	\$31.87	\$47.79	\$63.70	\$95.56	\$111.47

Rates are per additional pick up provided on other than the scheduled pick up day:

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$26.79	\$41.72	\$56.46	\$70.97	\$100.64	\$115.31

**Commercial**

**Monthly Commercial Cart Rates for Organics Materials Collection**

Cart Size	Service Frequency					
	1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
32-Gallon	\$17.36	\$34.71	\$52.07	\$69.42	\$86.78	\$104.13
64-Gallon	\$34.74	\$69.47	\$104.21	\$138.94	\$173.68	\$208.41
96-Gallon	\$51.93	\$103.86	\$155.79	\$207.72	\$259.65	\$311.58

## CITY OF HAYWARD

### Monthly Commercial Recycle Materials Cart Rates

**Base Rate for 20-Gallon Service = \$10.42**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
20-Gallon	1	\$10.42	\$20.82	\$31.23	\$41.66	\$52.06	\$62.47

**Extra Services:**

Extra pick up same day as scheduled, per 20-gallon equivalent: \$2.73  
 Extra pick up on day other than scheduled, per 20-gallon equivalent: \$10.38

**Base Rate for 32 Gallon Service = \$17.36**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
32-Gallon Per Cart	1	\$17.36	\$34.72	\$52.07	\$69.43	\$86.79	\$104.15

**Extra Services:**

Extra pick up same day as scheduled, per 32-gallon equivalent: \$4.37  
 Extra pick up on day other than scheduled, per 32-gallon equivalent: \$16.60

**Base Rate for 64-Gallon Service = \$34.74**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
64-Gallon Per Cart	1	\$34.74	\$69.45	\$104.19	\$138.92	\$173.65	\$208.38

**Extra Services:**

Extra pick up same day as scheduled, per 64-gallon equivalent: \$8.75  
 Extra pick up on day other than scheduled, per 64-gallon equivalent: \$33.18

### Monthly Commercial Recycling Materials Cart Rates

**Base Rate for 96-Gallon Service = \$51.93**

Cart Size	Number of Carts	Service Frequency					
		1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
96-Gallon Per Cart	1	\$51.93	\$103.86	\$155.79	\$207.73	\$259.65	\$311.58

**Extra Services:**

Extra pick up same day as scheduled, per 96-gallon equivalent: \$13.13  
 Extra pick up on day other than scheduled, per 96-gallon equivalent: \$49.77

### Monthly Commercial Recycling Materials Bin Rates

Bin Size	Service Frequency					
	1 x week	2 x week	3 x week	4 x week	5 x week	6 x week
1 cubic yard	\$91.24	\$178.50	\$247.35	\$316.42	\$385.35	\$454.34
2 cubic yard	\$164.80	\$302.78	\$440.61	\$578.51	\$716.35	\$854.35
3 cubic yard	\$235.06	\$441.96	\$648.74	\$855.66	\$1,062.46	\$1,279.58
4 cubic yard	\$309.25	\$585.00	\$860.83	\$1,136.60	\$1,412.41	\$1,688.15
6 cubic yard	\$452.24	\$865.96	\$1,279.58	\$1,693.24	\$2,106.98	\$2,520.64
7 cubic yard	\$528.34	\$1,011.00	\$1,493.62	\$1,976.25	\$2,458.89	\$2,941.53

Rates are per additional pick up provided on the schedule pick up day:

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$15.91	\$31.87	\$47.79	\$63.70	\$95.56	\$111.47

Rates are per additional pick up provided on other than the scheduled pick up day:

1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$26.79	\$41.72	\$56.46	\$70.97	\$100.64	\$115.31

## CITY OF HAYWARD

### Multi-Family Dwelling Recycling Materials

Monthly MFD Recycling Materials Bin or Cart  
Multi-Family Properties and Mobile Home Parks that have Centralized billing.

Recycling Materials Fee per Dwelling Unit \$9.18

Rates are per additional pick up provided on the schedule pick up day:					
1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$6.36	\$12.75	\$19.12	\$25.48	\$38.22	\$44.59

Rates are per additional pick up provided on other than the scheduled pick up day:					
1 cubic yard	2 cubic yard	3 cubic yard	4 cubic yard	6 cubic yard	7 cubic yard
\$10.71	\$16.69	\$22.58	\$28.39	\$40.26	\$46.12

Steam clean bin:	\$117.98
Graffiti Removal:	\$117.98
Lock for Organic or Recycle Bin:	\$32.44
Key for Organic or Recycle Bin:	\$3.81

### Commercial and Multi-family

#### Multi-family & Commercial Contamination

Carts - Recycling Materials and Organics Materials

Incidents 1 and 2	Warning
Incident 3+	\$25.00

Bins - Recycling Materials and Organics Materials

Incidents 1 and 2	Warning
Incident 3+	\$75.00

#### Commercial Overage

Carts - Recycling Materials and Organics Materials

Incidents 1 and 2	Warning
Incident 3+	\$10.00

Bin - Recycling Materials and Organics Materials

Incidents 1 and 2	Warning
Incident 3 +	\$35.00

#### Multi-family Bin Overage

Bin - Recycling Materials Only (no overage charge for organics)

Incidents 1 and 2	Warning
Incident 3+	\$35.00

**CITY OF HAYWARD**

**Roll-Off**

**Roll-Off Rates (Rates are per-pull)**

Roll-Off Rates for all material commodities

Flasher Charge:	\$39.64
Placement Charge:	\$79.56
Demurrage Rate, per 5-day portion thereof:	\$43.19
Relocation Fee:	\$118.50
Steam Clean Fee:	\$162.63
Graffiti Removal:	\$162.63
Stand-by Rate Per Hour:	\$179.14
Cancellation/Trip Fee (if less than 24 hrs. notice):	\$134.32

**Roll-Off Rates (Rates are per-pull)**

Roll-Off Rates for all material commodities

Box Size (Open Top)	Base Rate (Pick Up and Return for Current Customers)	Base Rate Plus Flasher (for On-Street Delivery)	Base Rate Plus Placement Charge (for New Customers)	Base Rate Plus Flasher Plus Placement Charge
6 cubic yard	\$462.59	\$502.23	\$542.14	\$581.80
14 cubic yard	\$462.59	\$502.23	\$542.14	\$581.80
20 cubic yard	\$656.50	\$696.17	\$736.05	\$775.72
30 cubic yard	\$979.99	\$1,019.68	\$1,059.53	\$1,099.22
40 cubic yard	\$1,303.48	\$1,343.15	\$1,383.04	\$1,422.69
50 cubic yard	\$1,626.94	\$1,666.60	\$1,706.48	\$1,746.14

**Roll-Off Compactor Rates (Rates are per-pull)**

Roll-Off Compactor Rates for all material commodities

Compactor Size	Base Rate (Pick Up and Placement)	Base Rate Plus Placement
15	\$980.37	\$1,059.92
20	\$1,303.99	\$1,383.56
21	\$1,368.74	\$1,448.27
22	\$1,433.48	\$1,513.03
23	\$1,498.15	\$1,577.70
24	\$1,562.88	\$1,642.42
25	\$1,627.58	\$1,707.15
26	\$1,694.72	\$1,774.26
27	\$1,760.33	\$1,839.86
28	\$1,821.77	\$1,901.32
30	\$1,951.22	\$2,030.78
32	\$2,080.64	\$2,160.19
34	\$2,210.08	\$2,289.63
35	\$2,274.83	\$2,354.39
36	\$2,339.53	\$2,419.07
37	\$2,399.04	\$2,478.56
38	\$2,468.96	\$2,548.52
40	\$2,598.42	\$2,677.97

**EXHIBIT G  
FEDERAL, STATE, AND LOCAL DISPOSAL FEES  
AS OF MARCH 1, 2023**

<b>Davis St Transfer Station</b>	<b>Non-GW</b>	<b>GW</b>
DSTS - City of San Leandro Mitigation (Franchise) Fee	\$1.56	\$1.56
DSTS San Leandro Business Tax (GW excluded)	\$2.01	
DSTS - Alameda Co LEA	\$0.38	\$0.38
	\$3.95	\$1.94
<b>Redwood Landfill</b>		\$2.49
<b>Altamont Landfill</b>	<b>Rate/Ton</b>	
Local Enforcement Agency (ACSWMD) Fee	\$0.38	
CA AB939	\$1.40	
Open Space & Recy.(CUP)	\$2.24	
Measure D Fee	\$8.23	
Business License (County) Fee	\$0.95	
County Planning Fee	\$0.13	
County Planning Transportation Fee	\$0.02	
Household Hazardous Waste Fee	\$2.15	
Alameda Co. Facility Fee	\$4.34	
State Water Board	\$0.05	
	\$19.89	

The above fees are based on September 1, 2022 amounts. If they should change prior to the Rate Period 1 (3/1/23), then the Contractor Rates will be adjusted.

## **EXHIBIT H TIMELINES FOR IMPLEMENTATION OF SPECIFIC SERVICES**

### **Diversion Requirements (Section 4.3)**

Reports Required: Contractor shall calculate and report the Rates, as described in Sections 9.4. (Monthly Reports); Section 9.5 (Quarterly Reports); and Section 9.6 (Annual Reports).

### **Diversion Improvement Plan**

- SB 1383 Compliance – Focus efforts on commercial customer compliance with SB 1383, including compliant Organic Materials service or completed waiver
- Target highest-producing MSW Commercial Customers for extended outreach and technical assistance campaign to divert additional MSW material to recycling and organics
- Target major contamination offender list via the Smart Truck technology – identify and correct the behavior of the top 25 contamination offenders. Refresh the list every month to ensure all new offenders receive outreach and technical assistance
- Further capital investments to the commercial recycling line at Davis Street which may provide additional recovery of accepted recycling material – anticipate projects to begin in 2023 with completing in 2023 or 2024
- Dry waste route monitoring – complete monthly audits to ensure dry waste routes are coded correctly and processed at the highest recovery rate possible – target these dry waste accounts to separate the streams and move the recyclable materials to source separated recycle bins to increase our diversion of this material

Outreach and Diversion Assistance – full-time Recycling Coordinator and part-time Intern/associate:

- Coordinator and intern will provide technical assistance to commercial/MFD property managers/owners consisting of in-person site visits and trainings (Covid-permitting), virtual trainings, phone communication, and/or email communication. Some interactions may be short, such as a five-to-ten-minute phone call, and others can take much longer, such as site assessments and trainings, which may require visiting a property multiple times. Our focus is on having thorough, high-quality interactions. An estimate of customer interactions using the combination of methods would be 25-40 per month.
- Preparing for a commercial/MFD customer site visit involves reviewing the customer account and verifying correct service level information including container sizes and collection frequency, checking for any customer opportunities such as overages, contamination, proper equipment (lids, locks, or casters), condition of equipment, etc. During the site visit, the coordinator asks questions, inspects front and back of the house set-ups, the outside disposal set-up, and takes photographs. They engage with the property manager and staff, and provide technical training, updated signage, and look to assess and solve issues and concerns.

- As mentioned above, some technical assistance interactions such as a short phone call may only take minutes, while other technical assistance with pre-work, driving, training, photographing, and then implementing any follow-up (changing service levels, etc.) can take several hours.
- Part of the coordinator work responsibilities will also be geared towards other activities such as tabling outreach at community events and assisting at compost giveaways.

**Single-Family Residential Services (Sections 5.1, 5.2, 5.3 and Exhibit M, Public Education)**

Public Education/Outreach literature shall be provided to City for review:

1. Brochure describing new and existing program components: Receipt by each household ta least two weeks before the Commencement Date  
A. Draft to City for review by January 30, 2023
2. Provide draft contamination and overage notices for City’s review: January 30, 2023
3. Bill insert in each Quarterly Bill: Allow four days for City’s review
4. Complete training for customer service representatives: February 27, 2023
5. Distribute kitchen pails, on request: On-going

**Multi-Family Recyclable Materials Collection (Section 5.2)**

1. Prepare, print and mail brochure: Twice annually in February and September
2. Subcontractor monitoring of participation and contaminants: On-going

**Multi-Family Organics Collection (Section 5.3 and Exhibit M)**

1. Labels for Pails: Contractor shall design and print a label for City’s review
2. Flyers: Contractor shall design/print a flyer describing how and why to participate in the new service. Such flyers shall be mailed to all property Owners or bill payers two weeks in advance of the Commencement Date.
3. Outreach Schedule: As outlined in Exhibit M, contractor shall provide one full-time and one part-time intern or associate for outreach. Such outreach shall include one phone call or email to schedule an on-site appointment with the property Owner or manager or other designated staff, and, if needed, two more follow-up phone calls or emails to schedule a site visit with the property Owner or manager.

Contractor shall maintain an Excel file or other customer relationship management tool that provides excel based reports or dashboards of all Multi-Family Premises, including but not limited to, the contact name and title (e.g., property manager), dates of calls or site

visits, outcome (such as services added), program implementation dates, and shall provide the most current file to the Contract Administrator with each quarterly report and more frequently if requested.

### **Commercial Recyclable Materials and Organic Materials Collection (Sections 5.2 and 5.3)**

1. Prepare/print bill insert for all monthly bills: On-going
  - A. Inserts must include demurrage fee provisions
2. Develop cart signage: Prior to delivery of new carts
3. Provide draft contamination and overage notices for City's review: January 30, 2023
4. Complete training for customer service representatives regarding services and fee structure: February 6, 2023
5. Outreach Schedule: As outlined in Exhibit M, contractor shall provide one full-time and one part-time intern or associate for outreach. Such outreach shall include one phone call or email to schedule an on-site appointment with the property Owner or manager or other designated staff, and, if needed, two more follow-up phone calls or emails to schedule a site visit with the property Owner or manager.

Contractor shall maintain an Excel file or other customer relationship management tool that provides excel based reports or dashboards of all Commercial Premises, including but not limited to, the contact name and title (e.g., property manager), dates of calls or site visits, outcome (such as services added), program implementation dates, and shall provide the most current file to the Contract Administrator with each quarterly report and more frequently if requested.

### **Multi-Family Dwelling Holiday Tree Collection (Sections 5.7.2, 5.7.4 and Exhibit M)**

1. Contractor shall design, print and mail a 5" x 7" postcard to all Multi-Family Customers with up to twenty-five (25) Dwelling Units advising of the services described in Section 5.7.2.
2. Multi-Family Customers with more than twenty-five (25) Dwelling Units shall receive a 5" x 7" postcard detailing the services described in Section 5.7.4. All such informational materials shall be mailed for receipt by the first Monday in December in order to ensure sufficient time to determine a designated location and retrieval date for each Roll-off.

### **Bulky Item Collection (Section 5.10 and Exhibit M)**

Design/print brochure and mail each February and September to all Occupants of Premises:



- A. Brochures must address how to schedule Collections, acceptable and unacceptable materials, proper preparation and set out procedures, Household Hazardous Waste Disposal alternatives and other program components.

**Audits: Scope and Frequency (Section 6.3.3)**

Contractor shall perform two separate week-long audits of all Dry Waste, one for all front-loader vehicles and the other for all Roll-off loads. Such audits shall be performed each year in March and September.

**Free Self-Haul Disposal Coupons for City Residents (Section 6.5)**

1. Distribute coupons on request from a staffed phone line.

**Contractor's Review of Billings (Section 7.2.6)**

Contractor shall conduct a review of its Billings to Customers within twelve (12) months beginning with the Commencement Date and annually thereafter.

**Annual Giveaway of Finished Organic Compost (Section 7.8)**

1. Coordinate with City to select weekend and site for event
2. Deliver 10,000 bags of compost to event site

**Purchase & Delivery of Additional Public Litter Containers (Section 5.9.2)**

1. Obtain from City the locations of the 267 new litter containers: Upon City Request
2. Add any new locations to the existing route(s): Week before collection service begins

**Performance Bond (Section 12.3)**

Contractor shall file with the City a bond, payable to the City, securing the Contractor's faithful performance of its obligations under this Agreement. Such bond shall be renewed annually so that the performance bond is maintained at all times during the Term. The initial principal sum shall be equal to \$15,000,000 (fifteen million dollars) and adjusted yearly on the anniversary date of this Agreement, i.e., March 1) to reflect 100% of the change in the Consumer Price Index (CPI) for the most recent 12-month period for all urban consumer items in San Francisco, Oakland and San Jose as published by the U.S. Department of Labor, Bureau of Labor Statistics.

**Rate Year Five Adjustment (Exhibit I)**

Documents required:

1. Contractor's electronic copy of its application for the adjustment of Rates to be effective March 1, 2027 due: June 1, 2026

2. Contractor's financial review due: June 1, 2026
3. Contractor's electronic copy of its application for the adjustment of Rates (RRI) to be effective for Rate Periods One through Four and Six through Ten due: At least 60 (sixty) days prior to the commencement of Rate Periods, i.e., by each December 30 of the prior year.

**EXHIBIT I  
RATE ADJUSTMENT PROCESS**

**EXHIBIT I-1  
RATE ADJUSTMENT PROCESS**

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**1. OVERVIEW**

The purpose of Exhibits I-1 and I-2 is to describe and illustrate the Rate adjustment method by which the Contractor and City shall determine the annual adjustment to Rates. Rates for Rate Period 1 are provided in Exhibit F, and Contractor’s proposed costs and operating statistics, (Cost Forms), which served as a basis for Rate Period 1 Rates, are attached to this Exhibit I. Rates for Rate Period 5 shall be determined using a cost-based Rate adjustment methodology pursuant to Exhibit I-2. Rates for each year, beginning with Rate Periods 2 through 10 (other than Rate Period 5) shall be determined through an index-type of adjustment described in Section 5 of this Exhibit I-1.

**2. DEFINITIONS**

In addition to the terms defined in Article 1, the following terms are defined for the purposes of Exhibit I only.

- A. **“Annual City Fees”** means the estimated amount of annual Franchise Fees, Street Sweeping Fees, Street Impact Fees, Measure D Augmentation Fees and any other City Fees due to the City. Franchise Fees, Street Sweeping Fees, and Street Impact Fees shall be effective beginning in Rate Period One.
- B. **“Annual Government Costs”** means the estimated annual Federal, State, and local fees Contractor shall remit for materials handled at the Approved Facilities. Costs approved for Rate Period 1 are listed in Exhibit I. In Rate Period 5, Annual Government Costs shall be determined in accordance with Exhibit I-2. For Rate Periods 2, 3, 4, 6, 7, 8, 9 and 10, such Costs shall be determined in accordance with this Exhibit I-1.
- C. **“Annual Percentage Change”** means the annual percentage change in any of the indices defined herein calculated as described in the following paragraph.

The Annual Percentage Change in an index is calculated as the Average Index Value for the 12-month period ending November 30 of the then-current Rate Period minus the Average Index Value for the 12-month period ending November 30 of the most-recently completed Rate Period and dividing the result by the Average Index Value for the 12-month period ending November 30 of the most-recently completed Rate Period.

For example, the March 1, 2024 Rate adjustment would be based on the following:

[(Average CPI-U for November 1, 2022 through October 31, 2023) minus (Average CPI-U for November 1, 2021 through October 31, 2022)] divided by (Average CPI-U for November 1, 2021 through October 31, 2022)

The calculated Annual Percentage Change shall be carried to three places to the right of the decimal and rounded to the nearest thousandths. For example, the April 2013 CPI-U was 244.675, which is rounded to the nearest thousandths.

- D. **“Approved Facilities”** means each of the following facilities, as defined in Article 1, Definitions: “Approved Construction and Demolition Debris Processing Site”, “Approved Disposal Location”, “Approved Dry Waste Processing Site”, “Approved Organic Materials Processing Site”, “Approved Recyclable Materials Processing Site (Davis Street Transfer Station)”, and “Approved Transfer Station”.
- E. **“Average Index Value”** means the sum of the monthly index values during the 12-month period ending in December divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values divided by 6 (in the case of indices published bimonthly).
- F. **“Commodity Revenue”** means the revenue Contractor receives from the sale of Commercial Single Stream Recyclable Materials.
- G. **“CNG Fuel Pricing Index”** means the per-therm price for Natural Gas Service for Compression on Customer’s Premises, Schedule G-NGV1, compiled and published by the Pacific Gas and Electric Company Analysis and Rate Department and reported monthly in its *“Gas RateFinder”* publication (<http://www.pge.com/tariffs>). For example, the November 2021 CNG Fuel Pricing Index is \$1.78, which reflects the sum of the customer charge, procurement charge, transportation charge, and public purpose program (PPP) charge for natural gas service for compression on customer’s premises as reported by Pacific Gas and Electric Company. If Contractor implements a fleet of electric vehicles, the parties will meet and confer to determine a proper index.
- H. **“CPI-U”** means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco-Oakland-San Jose Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics. The December 2013 CPI-U value was 245.711.
- I. **“Motor Vehicle Maintenance and Repair Index”** means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, not seasonally adjusted U.S. city average, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics. The September 2014 Motor Vehicle Maintenance and Repair Index was 267.256.
- J. **“Projected Rate Revenues”** means annual projected Rate revenue based on Rates and then-current Customer subscription levels for Rate Period 5.
- K. **“Rate Revenue”** means the actual monies received by Contractor from Rates charged to Customers. (This definition is the same as that found in Section 1.83 of the Franchise Agreement.)

- L. **“Total Calculated Contractor Costs”** means the Contractor’s costs of providing all services required by this Agreement including pass-through costs, Annual Government Costs, Annual City Fees, and Profit. The Total Calculated Contractor Costs shall be used to determine the annual Rate Adjustment Factor for Rates in Rate Period 5.
- M. **“Total Projected Contractor Compensation”** means Contractor’s Costs plus profit plus Annual Government Fees plus Annual City Fees minus Commercial Single Stream Commodity Revenues. The Total Projected Contractor Compensation shall be used to calculate the Rate Adjustment Factor for Rate Periods 2 – 10, except 5.

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

**Table 1\***

**Additional Indices Information**

	CPI-U	CNG Fuel Pricing Index	Motor Vehicle Maintenance and Repair
Description	Consumer Price Index - All Urban Consumers	Natural Gas for Compression at Customer’s Premises for Motor Vehicles	Consumer Price Index – All Urban Consumers, Motor Vehicle Maintenance and Repair
Series ID	CUURS49BSA0	G-NGV1	CUUR0000SETD
Adjusted	Not seasonally adjusted	N/A	Not seasonally adjusted
Group	San Francisco-Oakland-San Jose Metropolitan Area	N/A	U.S. city average
Item	All items	N/A	Motor vehicle maintenance and repair
Base Period	1982-84=100	N/A	1982-84=100
Periodicity	Bi-monthly	Monthly	Monthly

\* All indices published by the U.S. Bureau of Labor Statistics with the exception of the CNG Fuel Pricing Index, which is published by Pacific Gas and Electric Company Analysis and Rate Department.

### 3. RATE ADJUSTMENT APPLICATION PROCESS

#### A. Application Date and Content

1. **Application Submittal Date.** Nine months prior to the commencement of Rate Period 5 (i.e., June 1, 2026), Contractor shall submit an electronic copy of its application for the adjustment of Rates to be effective March 1, 2027 (i.e., Rate Period 5).

At least sixty (60) days prior to the commencement of Rate Periods 2 – 10 (coming Rate Period, i.e. by each December 30 of the prior year), excluding Rate Period 5, Contractor shall submit to the Contract Administrator an electronic copy of its application requesting the adjustment of Rates for the subject Rate Period.

At least sixty (60) days prior to the commencement of Rate Period 1 (by December 30, 2022), Contractor shall submit to the Contract Administrator an electronic copy of its application for the adjustment of rates for the subject Rate Period.

2. **Content of Rate Adjustment Application.**

A. **Omitted.**

- B. **Rate Period Five.** The application submitted to support the adjustment process of Rates for Rate Period 5 shall present the Contractor's actual total annual cost of operations, profit, pass-through costs, Annual Government Costs, Annual City Fees, reporting data as stated in Section 9.7.6 of the Agreement, the actual annual costs for Rate Period 3 and forecast of the same cost items for Rate Period 4 in accordance with the procedures described in Exhibit I-2. Contractor shall assemble, provide, and submit such information that is necessary to support the actual costs presented and the calculation of the assumptions made by Contractor with regard to forecasting the total annual costs before profit, profit, pass-through costs, Total Calculated Contractor Cost, and Rate Adjustment Factor for Rate Period 5. Such documentation shall include, but not be limited to: calculations of the Annual Percentage Change in various cost indices, per-Ton rates for Approved Facilities, cost allocations, and a copy of the collective bargaining agreement(s) currently in effect. The actual costs shall be based on the financial review for calendar year 2025, which shall be submitted as described below. In addition, the application shall present the Contractor's calculation of the Rate Adjustment Factor, each Rate for Rate Period 4, and each proposed Rate for Rate Period 5.

With the application for the Rate Period 5 adjustment, Contractor shall deliver to the City Contractor's financial review of its profit and loss statement with regard to this Agreement for calendar year 2025. Financial review shall show Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement. The financial review shall be prepared by an independent CPA in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Contractor agrees that its entire cost to prepare the financial review are Contractor's responsibility and that all of the costs for preparation shall be borne by the Contractor and none subject to payment by the City.

If the City requests additional information beyond that provided by the Contractor in its application, the Contractor shall provide information requested by the City pertaining to Contractor's performance under this Agreement, including, but not limited to, information from Affiliates

requested by the City regarding any transactions between Contractor and any Affiliates pertaining to Contractor's performance under this Agreement.

C. **Rate Periods 2 through 10 (excluding 5).** The applications submitted to support the adjustment of Rates for Rate Periods 2 – 10 (excluding 5) shall present the Total Contractor Projected Revenue based on the following calculations:

1. Annual Percentage Change in the Consumer Price Index cited in Table 1, above;
2. Per-Ton government fees for Approved Facilities;
3. Annual Government Costs;
4. Annual City Fees;
5. Total Projected Contractor Compensation for the current Rate Period ;  
and
6. Rate Adjustment Factor.

The application shall include all supporting documentation, including, but not limited to, documents substantiating each of the Annual Government Costs and eligible Tons.

D. **Annual Rate Schedule.** Upon approval of Contractor's application, Contractor shall provide Contract Administrator with an Excel file listing each Rate by service sector, i.e., Single-family, Multi-Family, Commercial Cart, Commercial Bin, and Roll-offs. During the Term of the Agreement, Contractor shall update the file by indicating each annual Rate adjustment and the new Rate approved by the Contract Administrator. Contractor shall provide the file to Contract Administrator within three work days of City's approval of each such Rate adjustment.

B. **City Review of Application.** The Contractor's application for an adjustment of Rates shall be reviewed by the City. The City shall adjust Rates to reflect the adjustments made in accordance with Exhibits I-1 or I-2. The City shall act in good faith to approve such adjustments to Rates by February 15<sup>th</sup> of each Rate Period. The adjusted Rates shall not take effect until the City has approved such Rates.

C. **Failure to Adjust Rates by March 1.** If the Contractor submits its application for adjustment of Rates on or before the application date identified in Section 3.A.1, and the City does not approve adjusted Rates to be effective on or before March 1 of a Rate Period, the City shall include a surcharge on the Rates that shall be effective for the remainder of the Rate Period to recover Rate Revenues lost by the Contractor, if any. To determine the amount of lost revenues, if any, the City and Contractor shall meet and confer to determine the effect the delay in adopting Rates has on the Contractor's Rate Revenues. Any surcharge shall be determined after City approval of the Rate increase, but before the adjusted Rates become effective. The assessment of the revenue impact shall consider the Contractor's Billing cycle (e.g., impact to Customers billed in advance and to Customers

billed in arrears), the ability of Contractor to delay issuance of bills, the payment cycle of Customers, and other variables.

If the Contractor does not submit the application on or before the application date identified in Section 3.A.1 adjusted Rates may not be approved by March 1. In such case, all Rates shall be adjusted as soon as practical following approval by the City. If the Contractor does not submit the application by the application date, no retroactive adjustment will be made to allow the Contractor to recover Rate Revenues that it would have collected, had the Rate adjustment been implemented in accordance with the prescribed schedule.

**4. OMITTED**

**5. ADJUSTMENT PROCESS FOR RATE PERIOD FIVE**

Rates for Rate Period 5 shall be determined through a detailed review of Contractor's actual costs in accordance with the procedures in Exhibit I-2.

**6. ADJUSTMENT PROCESS FOR RATE PERIODS TWO THROUGH TEN (EXCLUDING 5)**

**A. Step 1, Calculate Projected Rate Revenue.** Projected Rate Revenue for the current Rate Period shall equal the sum of the actual Rate Revenue as listed on the monthly reports submitted to City for the most recently completed nine- (9) month period, (i.e., March through November), divided by nine (9) and multiplied by twelve (12).

**B. Step 2, Calculate Annual Government Costs for Federal, State, and Local Fees.** The Annual Government Costs for the current Rate Period shall be calculated.

**1. Annual Government Costs on Organic Materials Tonnage.** The Annual Government Costs for Organic Materials shall equal the sum of the then-current per Ton Federal, State, and local fees in effect (on the submittal date of the Rate application) for Organic Materials handled at the Approved Transfer Station and Approved Organic Materials Processing Site multiplied by the total Tons of Organic Materials Collected for the most-recently completed 12-month period.

**2. Annual Government Costs on Solid Waste.** The Annual Government Costs for Solid Waste shall be calculated in the same manner as that described above for Organic Materials and shall reflect the then-current per-Ton Federal, State, and local fees for the Approved Transfer Station and Approved Disposal Location and Solid Waste Tonnage Collected for the most-recently completed 12-month period.

**3. Annual Government Costs on Dry Waste.** The Annual Government Costs for Dry Waste shall be handled in the same manner as that described above for Organic Materials and Solid Waste.



4. **Annual Government Costs on C&D.** The Annual Government Costs for C&D shall be handled in the same manner as that described above for Organic Materials and Solid Waste.
  5. **Total Annual Government Costs.** The Total Annual Government Costs for each Rate Period shall equal the sum of the Annual Government Costs calculated pursuant to Sections 6.B.1 through 6.B.4.
  6. **Eligible Tons.** For the purpose of this Section 6.B, eligible Tons shall include only those Tons Collected pursuant to this Agreement and delivered to the Approved Facilities for Transfer, Processing, and/or Disposal and for which one or more specific Federal, State or Local fee is/are charged. When calculating Annual Government Costs for Solid Waste, the calculation shall be based on Solid Waste Collected and delivered to the Approved Transfer Station (and shall not include Residue Tonnage resulting from Processing of Recyclable Materials, Organic Materials, Dry Waste, and C&D).
- C. **Step 3, Calculate Annual City Fees.** Annual City Fees for the current Rate Period shall equal the sum of the total City fees remitted to City as listed on the monthly reports submitted to City for the most recently completed nine- (9) month period, (i.e., March through November) divided by nine (9) and multiplied by twelve (12). Annual City Fees are calculated based on billed revenue and does not include commodity revenue.
  - D. **Step 4, Calculate Net Rate Revenue.** The Net Rate Revenue for the current Rate Period shall equal the Total Projected Rate Revenue minus Annual Government Costs and Annual City Fees, which were calculated pursuant to Sections 6.A, 6.B, and 6.C.
  - E. **Step 5, Annual Percentage Change in CPI-U.** Calculate the Annual Percentage Change in CPI-U, which shall be rounded to the nearest thousandth.
  - F. **Step 6, Minimum and Maximum Rate Adjustment.** If the Annual Percentage Change in CPI-U calculated in Step 5 is less than 1.03, then the CPI Adjustment Factor shall be 1.03. If the Annual Percentage Change in CPI-U calculated in Step 5 is more than 1.06, then the CPI Adjustment Factor shall be 1.06.
  - G. **Step. 7, Calculate Adjusted Net Rate Revenue.** The Adjusted Net Rate Revenue for coming Rate Period shall equal Net Rate Revenue for the current Rate Period multiplied by the CPI Factor calculated in Steps 5 and 6.
  - H. **Step 8: Calculate Subtotal.** The Subtotal shall be equal to the Adjusted Net Rate Revenue for the coming Rate Period plus the Annual Government Costs.
  - I. **Step 9: Calculate Projected Annual City Fees.** The Projected Annual City Fees shall equal the sum of the percentage-based City Fees specified in Article 10 multiplied by the Subtotal (Step 8) divided by one minus the sum of the percentage-based City Fees. For example:

Sum of City Fees = 13.5% Franchise Fee + 1% Street Sweeping Fee + 2.5% Street Impact Fee + 1% Measure D Augmentation Fee = 18%

Annual City Fees = [18% x (Subtotal)] / (1 – 18%)

- J. **Step 10: Calculate Total Projected Rate Revenue for the Coming Rate Period.** The Total Projected Rate Revenue for the Coming Rate Period shall equal the sum of the Subtotal plus the Projected Annual City Fees.
- K. **Step 11: Calculate Rate Adjustment Factor.** The Rate Adjustment Factor shall equal the Total Projected Contractor Compensation for the coming Rate Period divided by the Total Projected Contractor Compensation for the current Rate Period.
- L. **Step 12, Adjustment to Rates.** Each then-current Rate shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Period. The adjustment to each Rate shall be rounded to the nearest cent. For example, when setting Rates for Rate Period 6, each Rate Period 5 Rate shall be multiplied by the Rate Period 6 Rate Adjustment Factor to calculate the Rate Period 6 Rate.
- M. **Example.** To illustrate the Rate adjustment procedure described in this Section 6, the following example is provided demonstrating the method of calculating Rate Period 6 Rates. The actual Rate adjustment process will use different values for the costs and per Ton government fees and thus will result in a different Rate adjustment.

Assumptions (Hypothetical):

Total Projected Rate Revenue for Rate Period 6 = \$37,742,241

Annual Government Costs for Rate Period 6 = \$1,448,638

Annual City Fees for Rate Period 6 = \$6,793,603

Average CPI-U for November 1, 2025 through October 31, 2026 = 256.1

Average CPI-U for November 1, 2026 through October 31, 2027 = 259.9

35-gallon rate for Rate Period 5 = \$30.33

Step 1: Calculate Total Projected Rate Revenue for Rate Period 6. Total Projected Rate Revenue for Rate Period 6 = (sum of the actual Rate Revenue as listed on the monthly reports submitted to City during first nine months of current Rate Period/9) x 12 = \$37,742,241

Step 2: Annual Government Costs =

Type of Materials by Service Sector	Per-Ton Government Fees in effect on the Application Date	Tons Collected in Most-Recently Completed 12 months	Annual Government Costs
Single-Family Residential Organic Materials	\$1.49	13,700	\$20,413
Multi-Family Organic Materials	\$1.49	50	\$74.50

Commercial Organic Materials	\$1.49	380	\$566.20
Commercial Recyclable Materials	\$1.49	8,700	\$12,963
Solid Waste Disposed from Single-Family Residential, Bulky Items, Commercial Cart & Bin, and Roll-off Services	\$22.49	62,900	\$1,414,621
Total	NA	85,730	\$1,448,637.70

Step 3: Calculate Annual City Fees for Rate Period 5 = (total City fees remitted to City during first nine months of current Rate Period/9) x 12 = \$6,793,603

Step 4: Net Rate Revenue = Total Projected Rate Revenue – Annual Government Costs - Annual City Fees = \$37,742,241 – \$1,448,638 – \$6,793,603 = \$29,500,000

Step 5: Annual Percentage Change in CPI-U = 259.9/256.1 = 1.015

Step 6: Minimum CPI Adjustment Factor is 1.03. 1.015 is less than 1.03, so Net Rate Revenue shall be adjusted by 1.03.

Step 7: Adjusted Net Rate Revenue for Coming Rate Period = \$29,500,000 x 1.03 = \$30,385,000

Step 8: Calculate Subtotal: Adjusted Net Rate Revenue for Coming Rate Period + Annual Government Costs = \$30,385,000 + \$1,448,638 = \$31,833,638

Step 9: Calculate Projected Annual City Fees = [18% x (Subtotal)] / (1 – 18%) = (Subtotal x 18%) / (1 – 18%) = (\$31,833,638 x 18%) / (1 – 18%) = \$6,987,872

Step 10: Calculate Total Projected Rate Revenue for Rate Period 6 = Subtotal + Projected Annual City Fees = \$31,833,638 + \$6,987,872 = \$38,821,510

Step 11: Calculate Rate Adjustment Factor = Total Projected Rate Revenue for Rate Period 6 / Total Projected Rate Revenue for Rate Period 5 = \$38,821,510 / \$37,742,241 = 1.029

Step 12: Apply Rate Adjustment Factor to Rates =  
35-gallon rate for Rate Period 5 = \$30.33 x 1.029 = \$31.21

## 7. OTHER

If an index described in Section 2 is discontinued, the successor index with which it is replaced will be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics or Pacific Gas and Electric Company, the index (published by the same agency) which is most comparable shall be used.

**EXHIBIT I-2**  
**RATE PERIOD FIVE COST-BASED RATE PROCESS**

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**1. PURPOSE**

The cost-based Rate adjustment method described in this Exhibit I-2 shall be used to determine Rates for Rate Period 5. The intent of performing the cost-based Rate adjustment is to examine the actual impact of changes in costs, the number of Customers, and the service level of Customers and reflect such impacts in the Rates.

The cost-based Rate adjustment involves review of the Contractor's actual cost of operations and operational statistics (staffing levels, routes, route hours, Customer service level data, etc.) for Rate Period 3 to serve as a basis for forecasting Total Calculated Contractor Costs for Rate Period 5.

**2. DEFINITIONS**

In addition to the terms defined in Article 1 of the Agreement, all defined terms presented in Section 2 of Exhibit I-1 are applicable to this Exhibit I-2.

**3. OVERVIEW OF COST-BASED RATE ADJUSTMENT PROCESS**

The Rate adjustment for Rate Period 5 shall be the minimum necessary to ensure the Contractor receives an after-tax Return on Investment (ROI), or equivalent, of 5.5% except that the Rate adjustment shall not exceed 10%. In addition, the Rate adjustment is subject to the following:

- A. Contractor shall provide the City with a financial review for Rate Period 3. Contractor's costs to prepare the financial review is included in the Rates for the Term, not to exceed 100,000.00. Contractor shall also pay the costs of the City's analysis and determination of Rates under the cost-based Rate adjustment process, not to exceed \$40,000. The City will complete its review of the financial review as part of the Rate Period 5 Rate adjustment process.
- B. If the 5.5% Return on Investment (ROI) requires more than a 10% increase in Rates in Rate Period 5, Contractor may accept the 10% Rate increase and continue to perform services required under the same provisions for the remaining Term (including the index-type Rate Adjustment process to determine Rates for Rate Periods 2 – 10, excluding 5), or Contractor may request a higher Rate increase from the City subject to subsection C below.
- C. If Contractor requests a Rate increase greater than 10% and the City declines to grant or negotiate the increase, Contractor may accept the 10% Rate increase and continue to perform services required under the same provisions for the remaining Term, or issue a written notice to the Contract Administrator of Contractor's decision to terminate the Agreement. If Contractor issues such a notice to the Contract Administrator, the notice shall be provided within 180 days after Rate Period 5 Rates become effective and the termination date shall be thirty-six (36) months after the next anniversary of the Agreement. After notice is provided to the Contract Administrator, the City may, at its sole discretion, terminate the Agreement at any time, but in no case longer than 36 months after

receipt of notice. In addition, City must provide Contract Administrator with a minimum of 90 days' notice to terminate.

- D. If cost-based Rate adjustment process indicates that a Rate increase in excess of 10% is required to yield a 5.5% ROI in Rate Period 5 and Contractor agrees to continue to provide all requisite services at the 10% Rate increase, the City agrees to negotiate in good faith with Contractor to find mutually acceptable solutions to address the revenue shortfall. If such negotiations do not yield an agreement, Contractor may give the City written notice to terminate the Agreement.

The table below presents the key steps involved in a cost-based Rate adjustment process to determine the Total Calculated Contractor Costs and Rates for Rate Period 5. Sections 4 and 8 of this Exhibit describe the calculation process in detail.

Description	Relevant Section in this Exhibit	Adjustment Process
Per-Ton Rates	Sec. 4	Adjust per-Ton rates for Approved Facilities
Total Annual Cost of Operations	Sec. 5.A	Project cost for Rate Period 5 based on actual costs for Rate Period 3
Determine actual costs	Sec. 5.A.1	Determine actual costs for Rate Period 3
Calculate allowable costs	Sec. 5.A.2	Identify non-allowable costs and deduct from actual costs to determine actual allowable costs for Rate Period 3
Determine Total Annual Cost of Operations	Sec. 5.A.3	Adjust allowable costs using cost indices as appropriate to project costs for Rate Period 5
Pass-through costs	Sec. 5.B	<ul style="list-style-type: none"> <li>• For Processing and Disposal costs, adjust Processing and Disposal costs based on actual Tonnage and per-Ton rates for Approved Facility;</li> <li>• For interest and lease costs, use amount agreed-upon in Section 5.B.</li> </ul>
Total Cost before City Fees and before Profit	Sec 5.C	
Profit	Sec. 5.D	Calculate profit.
Total Cost before City Fees	Sec 5.E	Calculate Total Cost before City Fees
Annual City Fees	Sec. 5.F	Calculate City fees
Total Calculated Contractor Cost	Sec. 5.G	Sum Total Cost before City Fees and Annual City Fees

Description	Relevant Section in this Exhibit	Adjustment Process
Projected Rate Revenue at Then-Current Rates	Sec. 6	Calculate projected then-current Rate Revenues using Rate Period 4 Rates and Rate Period 4 Customer subscription levels and historical Rate Revenue information
Return on Investment Evaluation	Sec. 7	Calculate the ROI
Recalculation Process	Sec. 8	If the ROI was not equal to 5.5%, repeat steps in Sec. 5.D through 8 changing the profit factor until a 5.5% ROI is calculated.
Rate Adjustment Factor	Sec. 9	Calculate the Rate Adjustment Factor by dividing the Projected Then-Current Rate Revenues by the Projected Rate Revenues for Rate Period 4.
Rates	Sec. 10	Calculate Rates by multiplying the Rate Adjustment Factor for Rate Period 5 to each Rate for Rate Period 4

#### 4. ADJUSTMENT OF PER-TON APPROVED FACILITY RATES

- A. **Initial Per-Ton Rates.** The base component of the per-Ton rates for the Approved Facilities reflects the Contractor's compensation for the service and the government fee component reflects the per-Ton Annual Government Costs assessed for materials handled at the Approved Facilities. The initial per-Ton rates for Transfer, Processing, and Disposal services at Approved Facilities shall be the rates set forth for Rate Period One and are listed in the document, 'Form 7 - Processing Costs' and Disposal Rates', which is included in this Exhibit. The per-ton government fees in effect on the Commencement Date of the Agreement are also itemized in the same document.
- B. **Adjusted Per-Ton Rates for Rate Period 5.** To determine per-Ton rates for Transfer, Processing, and Disposal services for Rate Period 5, the base component of the initial per-Ton rates listed in Section 4.A above shall be adjusted to reflect the change in CPI-U since the Commencement Date, and the government fees for the Approved Facilities shall be adjusted to reflect the then-current fees (i.e., government fees in effect on the date of the Rate application). The following per-Ton rate adjustment procedure shall be applied to each of the per-Ton rates.
1. **Adjusted Base Component.** The base component of the per-Ton rate, which shall be rounded to the nearest hundredth, shall be adjusted as follows:

Annual CPI adjustment = (Average CPI-U for November 2025 through October 2026) / (Average CPI-U for November 2024 through October 2025)

Adjusted base component = Initial base component x Annual CPI Adjustment x Annual CPI Adjustment x Annual CPI Adjustment

2. **Adjusted Government Fee Component.** The government fee component of the per Ton rate shall equal the sum of the then-current per-Ton fees in effect as of May 1, 2027 for the applicable Approved Facility(ies).
3. **Adjusted Total Rate.** The total per-Ton rate shall be adjusted as follows:

Adjusted Total Rate = Adjusted Base Component + Adjusted Government Fee Component

## 5. TOTAL CALCULATED CONTRACTOR COSTS

The Total Calculated Contractor Costs for Rate Period 5 shall be determined in the manner described in this Section.

### A. Step 1, Total Annual Cost of Operations

1. **Determine Actual Total Annual Cost of Operations for the Rate Period 3.** Contractor's financial review and financial records, if requested by City, shall be reviewed to determine Contractor's Actual Total Annual Cost of Operations for the Rate Period 3 to perform all the services in the manner required by this Agreement for each of the following cost categories:
  - a. Labor-related costs (directly related to Collection routes)
  - b. Vehicle-related costs (directly related to Collection routes) (excluding fuel)
  - c. Fuel costs (directly related to Collection routes)
  - d. Other costs (as defined on Cost Form 5 in the cost form)
  - e. Direct depreciation costs (directly related to Collection routes) (note that actual depreciation costs shall not be determined; direct depreciation costs shall be the amount specified in Section 5.A.3.e below)
  - f. Allocated labor, vehicle, fuel and other cost components of the general and administrative, vehicle maintenance, and Container maintenance costs
  - g. Allocated depreciation and start-up cost components of the general and administrative, vehicle maintenance, and Container maintenance costs (note that actual depreciation and start-up costs shall not be determined; depreciation and start-up costs shall be the amount specified in Section 5.A.3.g below)

Contractor's allocations of actual costs to the City shall be performed pursuant to Section 10. Note that the above calculation does not include Processing, Transfer, and Disposal costs; Annual City fees, or profit, which are addressed in subsequent sections.

2. **Calculate Allowable Total Annual Cost of Operations for Rate Period 3.** Contractor shall calculate Allowable Total Annual Cost of Operations for Rate Period 3 by deducting non-allowable costs from the Actual Total Annual Cost of Operation for the Rate Period 3 (determined in accordance with Section 5.A.1 of this Exhibit). The Allowable Total Annual Cost of Operation shall be reported in the cost categories identified in Section 5.A.1 of this Exhibit.

Non-allowable costs which shall be deducted from actual costs include the following:

- a. Labor and equipment costs for personnel and vehicles that are not specified in Exhibit I, Contractor's Proposal.
- b. Payments to directors and/or owners of Contractor unless paid a compensation for services actually rendered.
- c. Unrelated travel expenses, unless authorized in advance by the City.
- d. Entertainment expenses, unless authorized in advance by the City.
- e. Payments to repair damage to property of third parties or the City for which Contractor is legally liable above and beyond the amount included in cost forms in Exhibit I as adjusted by the multi-year change in average CPI-U determined in Section 4.B.1 of this Exhibit.
- f. Fines or penalties of any nature.
- g. Liquidated Damages assessed under this Agreement.
- h. Federal or State income taxes.
- i. Charitable donations to organizations that do not directly serve the City.
- j. Political donations.
- k. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities in excess of that specified on Form 6 in the cost form.
- l. Depreciation and interest expenses in excess of that specified on Form 6 in the cost form including costs for replacement of vehicles and/or Containers because the useful life of such Containers or vehicles was less than anticipated.
- m. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse Parties, unless Contractor is the prevailing Party in such proceeding.



- n. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.
  - o. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or Customers (such as in a CERCLA lawsuit).
  - p. Payments to Affiliates and Related-Party Entities for products or services, in excess of the cost to the Affiliates and Related-Party Entities for those products or services.
  - q. Goodwill.
  - r. Unreasonable profit sharing distributions or bonuses to employees.
  - s. General and administrative costs greater than the general and administrative costs proposed for Rate Period One (as presented on Form 5 in the cost form) adjusted by the multi-year change in average CPI-U determined in Section 4.B.1 of this Exhibit.
  - t. Vehicle maintenance costs greater than the allocated vehicle maintenance costs proposed for Rate Period One (as presented on Form 5 in the cost form) adjusted by the multi-year change in average CPI-U determined in Section 4.B.1 of this Exhibit.
  - u. Container maintenance costs greater than the allocated Container maintenance costs proposed for Rate Period One (as presented on Form 5 in the cost form) adjusted by the multi-year change in average CPI-U determined in Section 4.B.1 of this Exhibit.
  - v. Bad debt write-offs greater than \$20,000.
3. **Determine Total Annual Cost of Operations for Rate Period 5.** Total Annual Cost of Operations for Rate Period 5 shall be calculated based on Allowable Total Annual Cost of Operations for Calendar Year 2025 determined in accordance with Section 5.A.2 of this Exhibit) in the following manner:
- a. Labor-related costs for Rate Period 5 shall be calculated by (i) multiplying the allowable labor-related costs for Calendar Year 2025 by 1 plus the Annual Percentage Change in the CPI-U, and (ii) multiplying the result of step one by the same percentage change used in step one.

Wage adjustments for certain classifications of recycling workers employed by Contractor and Subcontractor for Calendar Year 2025 and Calendar Year 2026 will also be included. Contractor shall provide a separate accounting of positions by name, the total number of positions, the total dollar amount, and the percent allocated to the City based on the inbound Tonnage at Contractor's and Subcontractor's Processing facilities listed in Article 1.

- b. Vehicle-related costs (excluding fuel costs) for Rate Period 5 shall be calculated by (i) multiplying the allowable vehicle-related costs Calendar Year 2025 by 1 plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and (ii) multiplying the result of step one by the same percentage change used in step one.
- c. Fuel costs for Rate Period 5 shall be calculated by (i) multiplying the allowable fuel costs for Calendar Year 2025 by 1 plus the Annual Percentage Change in the CNG Fuel Price Index, and (ii) multiplying the result of step one by the same percentage change used in step one.
- d. Other costs for Rate Period 5 shall be calculated by (i) multiplying the allowable other costs for Calendar Year 2025 by 1 plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one by 1 plus the Annual Percentage Change in CPI-U.
- e. Direct depreciation expense shall be two million, fifty six thousand two hundred seven (\$2,056,207) dollars for Contractor and nine hundred seventy thousand two hundred sixty seven dollars (\$970,267) for Rate Period 5, which is the amount specified in Exhibit I for vehicles, Containers, and facilities, with the exception that an adjustment shall be made if the Contractor received grant monies to offset the capital costs of compressed natural gas (CNG) Collection vehicles prior to Commencement or in Rate Periods One, Two, Three or Four.
- f. Allocated labor, vehicle, fuel, and other costs components of the general and administrative, vehicle maintenance, and Container maintenance costs for Rate Period Four shall be determined by (i) multiplying the allowable allocated costs for Calendar Year 2025 by 1 plus the Annual Percentage Change in CPI-U, and (ii) multiplying the result of step one by 1 plus the Annual Percentage Change in CPI-U.
- g. Allocated depreciation and start-up cost components of the general and administrative, vehicle maintenance, and Container maintenance costs shall be (\$TBD) for Rate Period 5, which is the amount specified in Exhibit I for vehicles, Containers, and facilities.
- h. Total Annual Cost of Operations for Rate Period 5 shall equal the sum of the costs calculated in Sections 5.A.3.a through 5.A.3.g above.

- B. **Step 2, Pass-Through Costs.** Pass-Through Costs for Rate Period 5 shall be determined using the method described below.
1. **Solid Waste Transfer and Disposal Costs.** Solid Waste Transfer and Disposal Costs for Rate Period 5 shall be calculated by multiplying the adjusted per-Ton Solid Waste Transfer and Disposal rate for the Approved Transfer Station and Approved Disposal Facility (per Section 4.B of this Exhibit) by the total Tons of Solid Waste Collected for the most-recently completed 12-month period. Eligible Tonnage to be included in the cost calculations shall be consistent with the description in Section 6.B. of Exhibit I-1.
  2. **Processing Costs.** The following calculation shall be performed separately for: (1) Organic Materials; and (2) Commercial Single-Stream Recyclable Materials. Processing costs for Rate Period 5 shall be calculated by multiplying the adjusted per-Ton rate for Processing for the Approved Processing Facility, which shall be calculated pursuant to Section 4.B, by the total Tons of material Collected for the most-recently completed 12-month period. Eligible Tonnage to be included in the cost calculations shall be consistent with the description in Section 6.B. of Exhibit I-1. Contractor's Commodity Revenue shall be expressed as a per Ton amount, net of Processing costs.
  3. **Interest Expense.** Interest Expense shall be zero dollars (\$0) in Rate Period 5, and is not annually adjusted. If the Agreement is extended beyond the initial 10 year Term, Interest Expense shall be zero in any subsequent Rate Periods unless Parties mutually agree to a different amount.
  4. **Direct Lease Costs.** Direct Lease Costs shall be zero dollars (\$0.00) in Rate Period Four. If the Agreement is extended beyond the initial 10 year Term, Direct Lease Costs shall be zero dollars (\$0.00) in any subsequent Rate Periods unless Parties mutually agree to a different amount.
  5. **Allocated Lease Costs.** Allocated Lease Costs shall be zero dollars (\$0.00) for Rate Period 5 (including interest costs for Allocated General and Administrative of zero dollars (\$0.00), Allocated Vehicle Maintenance costs of zero dollars (\$0.00), and Allocated Container Maintenance of zero dollars (\$0.00). These costs shall be the same amount in any subsequent Rate Period unless Parties mutually agree to a different amount.
  6. **Total Pass-Through Costs.** Total Pass-Through Costs for Rate Period 5 are the sum of the amounts in Sections 5.B.1 through 5.B.5 above.
- C. **Step 3, Total Cost before City Fees and before Profit.** The Total Cost before City Fees and before Profit shall equal the sum of the Total Annual Cost of Operations and Total Pass-Through Costs.

- D. **Step 4, Profit.** Profit shall be the amount that results in calculation of a 5.5% ROI in the ROI Evaluation under Section 7 below.
- E. **Step 5, Total Cost before City Fees.** The Total Cost before City Fees shall be the sum of the Total Cost before City Fees and before Profit (Section 5.C) and Profit (Section 5.D) for Rate Period Four.
- F. **Step 6, Annual City Fees.** Annual City Fees for Rate Period 5 shall equal the sum of the percentage-based City Fees specified in Article 10 multiplied by the Total Cost before City Fees (Section 5.E) divided by one minus the sum of the percentage-based City Fees. For example:  
  
Sum of City Fees = 13.5% Franchise Fee + 1% Street Sweeping Fee + 2.5% Street Impact Fee + 1% Measure D Augmentation Fee (added in RY 4) = 18%  
  
Annual City Fees = [18% x (Total Cost before City Fees)] / (1 – 18%)
- G. **Step 7, Total Calculated Contractor Costs.** The Total Calculated Contractor Costs for Rate Period 5 shall equal the sum of the Total Cost before City Fees (Section 5.E) and Annual City Fees (Section 5.F).

**6. PROJECTED RATE REVENUE**

- A. **General.** Projected Rate Revenue at then-current Rates shall reflect projected annual Rate Revenues based on Rate Period 4 Rates and then-current Customer subscription level. It shall include Projected Rate Revenues for: (i) Cart service, (ii) Bin service, and (iii) Roll-Off service
- B. **Cart Service Projected Rate Revenues.** Projected Rate Revenues from Cart service Customers shall be calculated by multiplying the number of Cart Customers as of May 1, 2026 in each Rate category by the applicable Rate Period 4 Rate and multiplying that by 12 to calculate an annual Projected Rate Revenue. Projected revenues shall also reflect regularly-provided Collection service and revenues from extra charges for special services.
- C. **Bin Service Projected Rate Revenues.** Projected Rate Revenues from Bin service Customers shall be calculated in the same manner as that described for Cart service Customers in Section 6.B. Bin Rate Revenues shall include revenues from uncompacted and compactor Bins.
- D. **Roll-Off Service Projected Rate Revenues.** Projected Rate Revenues from Roll-Off service Customers shall be equal to the most-recent 12-months (ending May 1, 2026) of Roll-Off Rate Revenues and shall be inclusive of revenues from temporary and permanent Customers and from compactor Roll-Offs.

- E. **Total Projected Rate Revenues.** Total Projected Rate Revenues shall equal the sum of the Projected Rate Revenues for Cart service (Section 6.B), Bin service (Section 6.C), and Roll-Off service (Section 6.D).

**7. RETURN ON INVESTMENT EVALUATION**

The projected ROI shall be calculated equal to Net Income divided by Subtotal Calculated Contractor's Cost minus Commercial Single Stream Commodity Revenues. Tax rate shall be the actual tax rate shown on audited financials for calendar year 2025. For the purposes of this calculation, taxes shall be 40.75% of Profit.

$$\text{Net Income} = \text{Profit} - \text{Taxes} = \text{Profit} - (40.75\% \times \text{Profit}) = 59.25\% \times \text{Profit}$$

$$\text{ROI} = \text{Net Income} / \text{Subtotal Calculated Contractor's Cost minus Commercial Single Stream Commodity Revenues}$$

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

**8. RECALCULATION PROCESS**

If the calculated ROI (per Section 7) is not equal to 5.5%, the profit amount calculated per Section 5.D shall be adjusted (by modifying the profit factor) and recalculating all amounts in Sections 5.D through Section 8. This iterative calculation process shall be performed repeatedly until a 5.5% ROI is calculated.

**9. RATE ADJUSTMENT FACTOR**

The Rate Adjustment Factor shall equal the Total Calculated Contractor Costs for Rate Period Four (Section 5.G) divided by the Projected Rate Revenue (Section 6.E). The Rate Adjustment Factor shall be rounded to the nearest thousandth. If the calculated Rate Adjustment Factor is greater than 1.1, then the provisions of Section 3 of this Exhibit I-2 of the Agreement shall be considered. For example:

$$\text{Rate Adjustment Factor} = \text{Total Calculated Contractor Costs} / \text{Projected Rate Revenue}$$

**10. ADJUSTMENT TO RATES**

Each Rate for Rate Period 4 shall be multiplied by the Rate Adjustment Factor to calculate the Rate for Rate Period 5. The adjustment to each Rate shall be rounded to the nearest cent.

**11. EXAMPLE**

**Rate Period 5 Rate Adjustment Example  
(Hypothetical)**

**ADJUSTMENT OF PER-TON APPROVED FACILITY RATES (Section 4)**

Annual CPI adjustment = (Average CPI-U for November 2025 through October 2026) / (Average CPI-U for November 2024 through October 2025)

Adjusted base component = Initial base component x Annual CPI Adjustment x Annual CPI Adjustment x Annual CPI Adjustment

Assumptions: Hypothetical

Average CPI for Nov 2025 to Oct 2026      265.345  
 Average CPI for Nov 2024 to Oct 2025      257.347  
 Adjustment factor                                  1.031

	Approved Facility	Rate Period 3 Base Component	CPI Adjustment Factor	Rate Period 5 Base Component*	Then-Current Government Fee Component as of [TBD]	Rate Period 5 Adjusted Rate
Solid Waste Transfer and Disposal	Approved Transfer Station/Approved Disposal Location	\$74.98	1.031	\$82.17	\$24.25	\$106.42
Residential Single Stream Recyclables	Approved Recyclable Materials Processing Facility (Tri-CED)	NA	1.031	\$0.00	\$0.00	\$0.00
Residential Organic Materials Transfer and Processing	Approved Transfer Station/Approved Organic Materials Processing Facility	\$76.44	1.031	\$83.77	\$1.82	\$85.59
Commercial Single Stream Recyclables Materials	Approved Recyclable Materials Processing Facility (Davis Street)	\$95.00	1.031	\$97.95	\$0.00	\$0.00
Commercial Mixed Dry Waste Processing	Approved Dry Waste Processing Facility	\$74.98	1.031	\$82.17	\$24.25	\$106.42
Commercial Organics and Wet Waste Processing	Approved Transfer Station/Approved Organic Materials Processing Facility	\$82.89	1.031	\$90.84	\$2.50	\$93.34

\* Rate Period 5 = Rate Period 3 x Annual CPI adjustment x Annual CPI adjustment This table is based on Form 7 – Processing Costs, which is included in this Exhibit I.

**CALCULATION OF TOTAL COST BEFORE CITY FEES AND PROFIT (Sections 5.A to 5.C)**

Index Adjustment Calculations	Change				
CPI-U		1.025			
CPI-U with negotiated wages for recycling workers		1.03			
Motor vehicle maintenance and repair index		1.035			
CNG		1.067			

	Actual RP 2	Adjustmen t Factor	Projected RP 3	Adjustment Factor	Projected RP 4
<b>Annual Cost of Operations</b>					
Labor-Related Costs	\$8,800,000	1.03	\$9,064,000	1.03	\$9,335,920
Vehicle-Related Costs	\$880,000	1.035	\$910,800	1.035	\$942,678
Fuel Costs	\$1,075,000	1.067	\$1,147,025	1.067	\$1,223,876
Other Costs	\$1,130,000	1.025	\$1,158,250	1.025	\$1,187,206
Direct Depreciation	\$250,000	---	\$250,000	---	\$250,000
Total Allocated Costs - Labor, Vehicle, Fuel & Other	\$5,370,000	1.025	\$5,504,250	1.025	\$5,641,856
Total Allocated Costs - Depreciation & Start-Up	\$540,000	---	\$540,000		\$540,000
<b>Total Annual Cost of Operations</b>	\$18,045,000		\$18,574,325		\$19,121,536
<b>Pass-Through Costs</b>	tons	rate			
Solid Waste Transfer and Disposal	60,000	\$104.25	\$6,255,000		\$6,255,000
Processing Costs					
Residential Organic Materials Transfer and Processing	14,200	\$83.38	\$1,183,996		\$1,183,996
Commercial Mixed Dry Waste Processing	13,000	\$104.25	\$1,355,250		\$1,355,250
Commercial Mixed Wet Waste Processing	15,000	\$90.94	\$1,364,100		\$1,364,100
C&D Processing	17,000	\$91.56	\$1,556,520		\$1,556,520
Interest Expense	\$19,686	---	\$19,686		\$19,686
Direct Lease Costs	\$0	---	\$0		\$0
Total Allocated Costs - Lease	\$0	---	\$0		\$0
<b>Total Pass-Through Costs</b>			\$11,734,552		\$11,734,552
<b>Commodity Revenue</b>	tons	rate		tons	
Commercial Single Stream Recyclable Materials	12,000	(\$40.00)	(\$480,000)	14,000	(\$560,000)
<b>Total Commodity Revenue</b>			(\$480,000)		(\$560,000)
<b>Total Costs before City Fees and Profit (less Revenues)</b>			\$30,308,877		\$30,856,088

CALCULATION OF PROFIT, CITY FEES, TOTAL CALCULATED CONTRACTOR'S COST, ROI (Sections 5.D to 8)

Iterative Recalculation Process		ROI = Net Income / Total Calculated Contractor's Cost - Commercial Single Stream Commodity Revenues		
		1st iteration	2nd iteration	3rd iteration
Total Calculated Contractor's Cost				
	Total Costs before City Fees and Profit	\$30,856,088	\$30,856,088	\$30,856,088
	Profit factor	10.00%	11.00%	12.533%
	Profit	\$3,085,609	\$3,394,170	\$3,867,194
	Total before City fees	\$33,941,697	\$34,250,258	\$34,723,282
	City fees*	\$7,450,616	\$7,518,349	\$7,496,896
	Subtotal Calculated Contractor's Cost	\$41,392,313	\$41,768,607	\$42,220,178
	Less Commodity Revenues (RP4)	(\$560,000)	(\$560,000)	(\$560,000)
Total Calculated Contractor's Cost		\$40,832,313	\$41,208,607	\$41,660,178
Projected RP3 Rate Revenue				
	Cart	\$12,000,000	\$12,000,000	\$12,000,000
	Bin	\$15,000,000	\$15,000,000	\$15,000,000
	Roll-off	\$11,000,000	\$11,000,000	\$11,000,000
	Total	\$38,000,000	\$38,000,000	\$38,000,000
Return on Investment Evaluation				
	Profit	\$3,085,609	\$3,394,170	\$3,867,194
	Taxes (40.75% of Profit)	(\$1,257,386)	(\$1,383,124)	(\$1,575,881)
	Net Income	\$1,828,223	\$2,011,046	\$2,291,312
	ROI	4.873%	5.360%	5.500%
	Comments	Not equal to 5.5%	Not equal to 5.5%	Equal to 5.500%
		Repeat using	Repeat using	Use Total
		different profit	different profit	Calculated
		factor	factor	Cost
* City Fees are calculated to be 18% of the Total Calculated Contractor's Cost				

CALCULATION OF RATE ADJUSTMENT FACTOR AND RATES (Sections 9 AND 10)

Determine Rate Adjustment Factor	
Rate Adjustment Factor =	$\frac{\text{Total Calculated Contractor Costs}}{\text{Total Projected Rate Revenue}}$
Total Calculated Contractor's Cost	\$41,660,178
Total Projected Rate Revenue	\$38,000,000
Rate Adjustment Factor	1.096
Calculate RP 4 Rates	
RP 3 Rate	Rate Adj
\$31.63	1.096
	RP 4 Rate
	\$34.67



## 12. COST ALLOCATIONS BY CONTRACTOR

The Parties recognize that Contractor serves other jurisdictions with some of the Collection vehicles and facilities used by Contractor for the City. When determining actual Rate Period 3 costs as required by Section 5, Contractor shall allocate shared costs to the City based on the City's proportional share of the costs using the methodology described herein. When allocating costs, the number of accounts shall reflect the number of Customers as of December 31, 2025. The table below lists the allocation method to be used to allocate each of the cost categories. The allocations shall be performed by line of business, shown on Form 3 in the cost form unless otherwise directed by the City.

### Allocation Method for All Costs

Cost Category	Allocation Method
Labor-Related Costs (for route personnel)	<ul style="list-style-type: none"> <li>If route is 100% dedicated to City, allocate 100% of the labor-related costs to the City</li> <li>If route operates in City and other jurisdictions, allocate costs based on average route hours per week in City as a percent of total weekly route hours; calculate on a route-by-route basis</li> </ul>
Vehicle-Related Costs (for route costs)	Same as above
Fuel Costs (for route costs)	Same as above
Other Costs	Same as above
Direct Depreciation	Fixed amount per Section 5.A.3.e
Total Allocated Costs - Labor, Vehicle, Fuel & Other	
From General and Administrative (Form 5 of the cost form)	Allocate G&A costs based on the % of City accounts as a % of total accounts served by the Contractor's maintenance facility located at 172 98 <sup>th</sup> Avenue, Oakland, or other method agreed-upon by the City subject to the limitation in Section 5.A.2.s
From Vehicle Maintenance (Form 5 of the cost form)	Allocate vehicle maintenance costs in the same manner as that specified above for labor-related costs subject to the limitation specified in Section 5.A.2.t
From Container Maintenance (Form 5 of the cost form)	Allocate Container maintenance costs based on the % of City Bins/Roll-Off Containers as a % of the total Bins/Roll-Off Containers maintained by the Contractor's maintenance facility located at 172 98 <sup>th</sup> Avenue, Oakland, or other method agreed-upon by the City Same as that specified above for labor-related costs subject to the limitation in Section 5.A.2.u
Total Allocated Costs - Depreciation & Start-Up	Fixed amount per Section 5.A.3.g
Disposal Cost	<ul style="list-style-type: none"> <li>If route is 100% dedicated to City, 100% of the Tonnage and related Transfer and Disposal costs allocated to the City</li> <li>If route operates in City and in other jurisdictions, allocate Tonnage and related Transfer and Disposal costs based upon the cubic yards serviced of Solid Waste per week in City as a % of total cubic yards serviced per week on a route-by-route basis</li> </ul>

Processing Costs	Same as above
Interest Expense	Fixed amount per Section 5.B.3
Direct Lease Costs	Fixed amount per Section 5.B.4
Total Allocated Costs - Lease	Fixed amount per Section 5.B.5
Franchise Fee	Cash receipts for City
Other - Benchmark Fees	Actual cost allocated to City
Other	To be determined
Profit before taxes	Calculated
Taxes	Assumed 40.75% Federal and State corporate tax rate

**EXHIBIT J**  
**SCHEDULE OF LIQUIDATED DAMAGES**

Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations regarding the events listed in this Exhibit pursuant to the terms and conditions of this Franchise, the time frame for accomplishing each event and nature of the responsibility associated with the event, unless otherwise stated in this Exhibit.

**1. Commencement Date for All Services**

Consistent with Section 13.5.Liquidated Damages, for each failure to implement each of the services described on the Commencement Date: \$1,000 per day. Some examples of those services include Solid Waste Collection and Disposal, Single Stream Recyclable Materials Collection and Processing, Organic Materials Collection and Processing, Bulky Items Collection, and use of Alternative Fuel Vehicles.

**2. Compliance with Section 4.3, Diversion Requirements**

**A.** For each Rate Period that Contractor fails to comply with the provisions of Section 4.3: \$100,000 annually.

Contractor agrees that it will fully cooperate with the City to conduct an audit of Contractor's Tonnage records for calendar year [TBD] as part of the Rate Period 5 adjustment described in Exhibit I-2. The purpose of the audit is to evaluate Contractor's compliance with Section 4.3. Such audit may be conducted by a third-party selected by City. City anticipates that such an audit and the City's review of the findings may require up to 90 days. Upon receipt of the audit, City will complete its review and may assess Liquidated Damages. City shall assume the costs associated with a third-party audit, however, such costs shall be reimbursed by Contractor if the audit finds that Contractor misrepresented Diversion data.

City may schedule a second audit during Rate Periods 6 - 10 to monitor Contractor's compliance with the Diversion Rates. Such audit may be conducted if, for example, the number of Multi-Family and Commercial Customers subscribing to the Diversion services offered or Customers' service levels appear to be inconsistent with Tonnage records.

**B.** Within 90 Days of the City's determination that Contractor has failed to comply with Section 4.3, Contractor agrees that it will work cooperatively with City to determine additional Diversion programs necessary to achieve compliance with the Diversion Requirements listed in Section 4.3. During this 90-Day period, Contractor will not be assessed additional Liquidated Damages.

Contractor will be assessed Liquidated Damages of \$80,000 for each month Contractor fails to fully implement the City-approved Diversion programs after the 90-Day period.

**3. Commercial and Roll-off Loads Sorted for Diversion**

- A. For each failure to deliver Commercial Dry Waste load(s) for Processing at the Approved Dry Waste Processing Site and Processed for Diversion to comply with Section 4.3: \$200.00
- B. Subject to the provisions of Section 6.3.1, for each failure to deliver Roll-off load(s) of Construction and Demolition Debris and all Roll-off loads of Dry Waste and Recyclable Materials to the Approved Dry Waste Processing Site and Processed for Diversion to comply with Section 4.3: \$200.00
- C. For each failure to deliver Roll-off loads of Organic Materials as designated per Section 5.6.1 for delivery to the Approved Transfer Station for Transfer to the Approved Organic Materials Processing Facility unless determined to be unacceptable for Composting by the Approved Transfer Station personnel: \$200.00

**4. Collection Reliability**

- A. For each failure to commence service to a new Customer account within six (6) Business Days pursuant to Section 8.3.2, which exceeds twenty-five (25) such failures annually: \$200.00
- B. For each failure to collect either Solid Waste, Recyclable Materials, Organic Materials or C&D which has each been properly set out for Collection, from an established Customer account on the scheduled Collection day and not Collected by the end of the following Business Day, which exceeds fifty (50) such failures each annually: \$200.00
- C. For each failure to collect either Solid Waste, Recyclable Materials, Organic Materials or C&D which has each been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$200.00.

**5. Collection Quality**

- A. For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Carts upright with lids secured which exceeds fifty (50) such occurrences annually: \$200.00
- B. For each proven occurrence of obvious uncustomary discourteous behavior to a Customer: \$200.00
- C. For each failure to clean up Solid Waste, Recyclable Materials or Organic Materials spilled from Customers' Containers which exceeds fifty (50) such occurrences each annually: \$200.00
- D. For each occurrence of collecting Solid Waste, Recyclable Materials or Organic Materials during unauthorized hours which exceeds one (1) such occurrences each annually: \$500.00
- E. For each failure to empty Public Litter Receptacles on a designated schedule unless authorized by the City which exceeds one (1) such occurrences annually: \$500.00
- F. For each instance of drops of vehicle oil on any street which has been reported by a Customer and confirmed by City staff, pursuant to Section 8.3.7: \$200.00 per incident

**6. Customer Responsiveness**

- A. For each failure to initially respond to a Customer complaint by the end of the following Business Day which exceeds fifty (50) such occurrences annually: \$200.00
- B. For each failure of driver/driver's helper to be in uniform: \$ 50.00
- C. For each failure to have a Customer service representative respond to a phone call within three (3) minutes when the number of phone calls not answered within three (3) minutes exceeds ten percent (10%) of the monthly total: \$200.00

**7. Reporting**

- A. Failure to provide accurate reports required under the Franchise. A report shall be considered late until such time as a complete and accurate report is received by the City. For each calendar day a report is late: \$300.00
- B. For submittal of substantially inaccurate data: \$600.00

**8. Vehicle Noise Levels**

For each failure to operate vehicles pursuant to Section 8.3.7 that exceeds ten (10) route days in a 12-month period: \$200 per route day.

**9. Use of Alternative Fuel Vehicles**

- A. For each day Contractor uses standard diesel-powered Collection vehicles in the City that exceeds a total of 20 route days in a 12-month period: \$200 per route day. Notwithstanding the foregoing, liquidated damages shall not apply in the event the Alternative Fuel Vehicles are not in service due to unavailability of parts or manufacturer defects beyond Contractor's reasonable control.
- B. For each day Contractor uses its Liquid Natural Gas or Compressed Natural Gas powered Collection vehicles in any other jurisdiction that exceeds five (5) consecutive Business Days: \$200 per route day.

**10. Transition to Next Contractor at End of Agreement**

For failure to provide the documentation required in Section 4.8, Transition to Next Contractor at End of Agreement: \$50,000.

In placing Designee's initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions of the time that the Agreement was made.

Contractor

City

Initial Here: 

Initial Here: 

Kelly McAdoe  
City Manager

Initial Here: 

Michael Lawson  
City Attorney

Initial Here: 

Miriam Lens  
City Clerk

## **EXHIBIT K BULKY ITEMS COLLECTION SPECIFICATIONS**

### **1. Customer Service**

- a. Contractor's Customer Service Representatives (CSR's) shall review the following when scheduling a Bulky Items Collection appointment for a Customer:
  - i. What types of items will be set out and documented in a call log.
  - ii. The list of acceptable and unacceptable items.
  - iii. Proper preparation of acceptable items and placement in compliance with City right-of-way access laws so that items are placed up on the curb, not in the street.
  - iv. The per-cubic-yard Rate charged for quantities in excess of acceptable amounts, regardless of who placed the items next to the setout.
  - v. Confirm and record Customer's telephone number in case follow up or notification is necessary.
  - vi. If a Customer lives in a Dwelling Unit that is not eligible, offer a per-cubic-yard Rate for service.
- b. Contractor shall send no later than the next Business Day after the appointment is scheduled for an Appointment Confirmation Notice to the residence for which the Collection has been scheduled. Two to four-unit residences may have a different mailing address than either the billing address or the Contractor's service address on record. The Confirmation Notice shall include the words "Retain This Notice," and shall summarize the program brochure.

### **2. Record of Setouts Exceeding Established Quantities**

- a. Contractor may bill the tenant or the property Owner for all Bulky Items removed in excess of acceptable amounts. Such bill shall list as a discreet line item "Bulky Items Overage" or similar language, and include the date that the service was provided. Also required is a digital photograph of the setout clearly showing the address. A letter with photo shall be promptly forwarded to the Customer. The letter shall include as a citation the following.
  - i. Number of total yards set out.
  - ii. Number of overage yards.
  - iii. Number of units attributed to the setout. 4) Date of actual Collection of setout.
- b. If set-out amount exceeds the limit or includes unacceptable items, CONTRACTOR will not leave a tag. CONTRACTOR will call or email the customer.

### **3. Public Education and Community Outreach**

- a. Program notification literature shall be developed and mailed pre-sorted first class directly to eligible Customers using billing address (property Owner/manager) and service address (resident/tenant), including each unit of 2-4 unit residences. The literature shall:
  - i. be developed by Contractor in conjunction with the City;
  - ii. describe the program and how to participate; and
  - iii. be mailed twice annually, in March and September.
- b. Non-Collection Notices are an integral part of the Public Education and Community Outreach component of this program. Contractor will call or email Customers in the event items are not collected due to improper set out.
- c. All program literature shall be provided in English with phone numbers for Spanish, Chinese, and Vietnamese language translation services.

#### **4. Notification to the City and to Customer for Non-Collection**

- a. Contractor shall have an internal system to confirm whether every scheduled setout was actually Collected on its scheduled Collection day. In the event of a missed or incomplete pick up Contractor shall:
  - i. Notify the Contract Administrator via e-mail no later than 8:00 AM on the following day advising the address and the reason for non-Collection.
  - ii. Notify the Customer via telephone no later than 9:00 AM on the day following the scheduled appointment and confirm that the entire setout will be removed on that day.
- b. Acceptable reasons for non-Collection may include, for example, unacceptable items, safety concerns, road closures. Acceptable safety concerns may include instances where at least three vehicles parked next to each other on the same side of the street completely obstruct access to the Bulky Items requiring removal. In each instance, Contractor shall:
  - i. Notify Contract Administrator by 8:00 AM the following day with the address and the approximate quantity requiring removal.
  - ii. Notify the Customer via telephone no later than 9:00 AM on the day following the scheduled appointment and confirm that the entire setout will be removed as soon as the reasons for non-Collection have been resolved. Contractor shall make three (3) attempts within the following three (3) days in order to remove the setout.

- c. Contractor shall also notify Contract Administrator with its observations of illegal dumping on streets and public property within one Business Day. Such notification may be via e-mail or phone.
- d. Contractor shall send Contract Administrator a list of each week's scheduled Bulky Items Collection appointments for Multi-Family Premises no later than 12:00pm on the Friday prior to the Collection week.



**EXHIBIT L**  
**SCHEDULE OF CITY PROPERTIES**  
**TO BE SERVICED BY CONTRACTOR**

Contractor shall serve the following City of Hayward properties and any new locations, new facilities, or changes in locations.

<b>Hayward Executive Airport</b> 20301 Skywest Dr., 94541 (510) 293-8678	<b>Fire Station # 8</b> 25862 Five Canyons Parkway, CV 94552 (510) 293-8618
<b>Animal Services</b> 16 Barnes Ct., 94544 (510) 293-7200	<b>Fire Station #9</b> 24912 Second St., 94542 (510) 293-8619
<b>City Hall</b> 777 B Street, 94541 (510)583-4000	<b>Fire - Training Center</b> 1401 W. Winton Ave., 94545 (510) 293-8660
<b>City Yard</b> 3455 Enterprise Ave, 94545 (510)881-7999	
<b>Equipment Management</b> 24505 Soto Rd., 94544 (510) 881-7913	<b>Landscape Division</b> 16 Barnes Ct., 94544 (510) 583-8906
<b>Facilities Division</b> 16 Barnes Ct., 94541 (510) 583-8900	<b>Library (Main)</b> 888 C Street 94541 (510) 293-8685
<b>Fire Station # 1</b> 22700 Main Street, 94541 (510) 293-8611	<b>Library - Weekes Branch</b> 27300 Patrick Ave., 94544 (510) 782-2155
<b>Fire Station # 2</b> 360 West Harder Rd., 94544 (510) 293-8612	<b>Police Department</b> 300 West Winton Ave., 94544 (510) 293-7091 (Admin.)
<b>Fire Station # 3</b> 31982 Medinah St., 94544 (510) 293-8613	<b>Police Station</b> 22701 Main Street, 94541 (510) 581-0223
<b>Fire Station # 4</b> 27836 Loyola Ave., 94545 (510) 293-8614	<b>Streets Division</b> 24505 Soto Rd., 94544 (510) 881-7745
<b>Fire Station # 5</b> 28595 Hayward Blvd., 94542 (510) 293-8615	<b>Utilities/Water Pollution Source Control</b> 24499 Soto Rd., 94544 (510) 881-7902/7900

<b>Fire Station # 6</b> 1401 West Winton Ave., 94545 (510) 293-8616	<b>Water Distribution</b> 24505 Soto Rd., 94544 (510) 881-7933
<b>Fire Station # 7</b> 28270 Huntwood Ave., 94544 (510) 293-8617	<b>Water Pollution Control Facility</b> 3700 Enterprise Ave., 94545 (510) 293-5395
Firehouse Clinic 28300 Huntwood Ave , Hayward, CA	<b>West Harder Road at W.</b> Jackson Street, 94544 APN: 454000506905
Old City Hall 22737 Main Street Hayward, CA 94541	Hazel Community Garden 22196-22198 Main Street Hayward, CA 94541

## Public Litter Containers to be Serviced by Contractor

CAN NUMBER	LOCATION
<b>A Street</b>	
1	Peralta Street - N/E corner
2	Montgomery Street - N/E corner
5	Mission Boulevard - S/E corner - in front of Zorns
6	998 A Street - N/W corner of Main Street
7	Mission Boulevard - N/W corner - in front of 76 gas station
8	1010 A Street - N/E corner of Main Street
9	1015 A Street - in front of Goodyear
10	Main Street - S/W corner - in front of Sapporo
11	1063 A Street
12	Parking Lot #5
14	1086 A Street - in front of Eden Liquors
15	Foothill Boulevard - S/E corner
16	Foothill Boulevard - N/E corner
17	Parking Lot #6 - between Foothill Boulevard & Second Street
18	1201 A Street - S/E corner of Second Street
19	1197 A Street - S/W corner of Second Street
20	1172 A Street - N/W corner of Second Street
21	255 A Street - S/W corner of Filbert Street
<b>A Street (West)</b>	

34	S/E Corner of West A Street at Victory Drive
<b>Amador Street</b>	
24	Elmhurst Street
0240 (new location)	24405 Amador Street
<b>Atherton Street</b>	
26	C Street - N/E corner
27	22701 Atherton Street - S/W corner of C Street
<b>Atherton Street</b>	
29	22870 Atherton Street - N/E corner of Willis Avenue
30	Willis Avenue - S/E corner
31	Dead end - east side
<b>B Street</b>	
Solar Trash Receptacle#1	Near Mission Blvd - adjacent to bench facing Newman Park
Solar Trash Receptacle#2	Near Foothill Blvd - in front of Copy Pacific
Solar Trash Receptacle#3	Watkins Street - N/E corner
25	Montgomery Street - S/W corner

<b>CAN NUMBER</b>	<b>LOCATION</b>
32	Montgomery Street - entrance to BART station
33	Montgomery Street - N/E corner
35	Back of City Hall - N/E corner
36	Back of City Hall - S/W corner
39	Watkins Street - inside parking lot - B Street side
46	Mission Boulevard - N/E corner
55	Parking Lot #2 - inside
56	Parking Lot #2 - inside
No Number (used to be 69)	Parking Lot #2 - entrance
70	Parking Lot #2 - behind Bank of the West
60	1090 B Street - N/W corner of Foothill Boulevard - side of Copy Print
61	Foothill Boulevard - S/W corner
62	Foothill Boulevard - S/W corner
63	Foothill Boulevard - S/W corner
	Between Foothill Boulevard & Second Street - in front of Telephone Co.
64	
65	Neuman Park

66	Neuman Park
67	354 B Street - N/E corner of Filbert Street
68	Filbert Street - south side
71	Parking Lot #2 - inside
72	Parking Lot #2 - inside
No #	1019 B St.
<b>B Street</b>	
74	Arlette Avenue - south side - in front of L&M Liquor
75	1925 B Street - in front of Tacos El Grullense
76	Pearl Avenue - north side - near bus stop
77	2059 B Street - in front of Quart House Liquor
242	1681 B Street
No #	1681 B Street - SW Corner of B and 7th St in front of Liquor Store
<b>Barnes Court</b>	
231	16 barnes Court - Animal Control - sidewalk
237	16 Barnes Court - Animal Control - doorway
<b>C Street</b>	
13	Watkins Street - east side
22	822 C Street - N/E corner - in front of Post Office
23	Watkins Street - S/E parking lot
28	1129 C Street - bus stop
79	Watkins Street - S/W corner
80	Mission Boulevard - S/W corner - near bus stop
81	944 C Street - in front of La Imperial Restaurant
82	Main Street - S/E corner - side of Historical Society
83	Main Street - N/W corner
84	Main Street - N/E corner
85	1065 C Street - S/W corner of Foothill Boulevard
87	Foothill Boulevard - N/E corner

<b>CAN NUMBER</b>	<b>LOCATION</b>
90	Myrtle Street - Burbank Elementary School
<b>Calaroga Avenue</b>	
91	Between Catalpa Way and Panama Street - in front of English Language Center
<b>Campus Drive</b>	
59	Hayward Boulevard - N/E corner - near bus stop

<b>Campus View Way</b>	
No number	New Dobbel
<b>Carlos Bee Boulevard</b>	
100	Hayward Boulevard
<b>Century Theaters</b>	1069 B Street, Between B St and C St
No #	In the alley behind the theater
No #	Near the parking garage elevators
<b>City Center Drive</b>	
37	Backside - bus stop
92	Foothill Boulevard - DeAnza Park
<b>D Street</b>	
3	Atherton Street - N/W corner
47	Lot between Foothill Blvd & Mission Blvd - south side
95	Grand Street - S/E corner
96	Atherton Street - S/E corner
86	2nd Street - across from All Saints Church
204	2nd Street - south side - near bus stop
No # (used to be 213)	5th Street - south side - near bus stop
238	5th Street - N/E corner - near bus stop
239	Valley Street - N/E corner - near bus stop
<b>Depot Road</b>	
93	Hesperian Boulevard - in park by gazebo
94	Adrian Avenue
<b>E Street</b>	
101	1015 E Street - Bret Harte School - between school and sun gallery
<b>Eden Landing Road</b>	
102	Production Avenue - east side
103	Production Avenue - west side
<b>Farmhill Dr</b>	
126	At Hayward Blvd - South side
127	At Hayward Blvd - north side

<b>CAN NUMBER</b>	<b>LOCATION</b>
<b>First Street</b>	
104	Between C Street and D Street - west side - near Portuguese Park
<b>Fletcher</b>	
235	At Bus Stop
<b>Foothill Boulevard</b>	
107	22370 Foothill Boulevard - in front of Home Savings
108	22310 Foothill Boulevard - Mervyns - in front of lawn area
109	City Center Drive - S/W corner - Mervyns
110	22398 Foothill Boulevard - N/E corner of Russell Way
111	22240 Foothill Boulevard - S/E corner of Russell Way
112	22443 Foothill Boulevard - in front of Cobblers
114	22501 Foothill Boulevard - S/W corner of A Street
115	Between A Street and B Street - west side - Daily Review
116	22540 Foothill Boulevard - between A Street and B Street - east side
117	B Street - N/E corner - in front of Joe Corsi
118	Grove Way - N/W corner, in front of Walgreens
120	22656 Foothill Boulevard - in front of Tile Co.
240	Between B Street and C Street - Cinema Place parking structure entrance
<b>Gading Street</b>	
213	In front of Glassbrook School's field
<b>Grand Street</b>	
125	24070 Grand Street - N/E corner of Winton Avenue
No number	Grand Street - between C & D Streets, Eastside
No number	Grand Street - between B & C Streets, Eastside
No number	Grand Street - Southwest corner of C Street
No number	22773 Grand Street
<b>Harder Road</b>	
123	Dollar Street - south side - in front of K-mart driveway entrance
124	Whitman Street - near corner of school yard
<b>Hesperian Boulevard</b>	
43	27400 Hesperian Boulevard - N/E corner of Bolero Avenue
44	West Street - S/W corner

45	West Street - N/E corner - near bus stop
48	A Street - S/W corner
50	23958 Hesperian Boulevard - Walgreens
91	25010 Hesperian Blvd - S/E Corner
128	Tahoe Avenue
129	Catalpa Way
130	24700 Hesperian Boulevard - S/E corner of Tennyson Road - in front of Kaiser
131	Depot Park
132	Cathy Way - N/E corner - near bus stop

CAN NUMBER	LOCATION
137	On Hesperian Blvd @ bus stop near Middle Lane
<b>Investment Boulevard</b>	
133	Eden Landing Road
<b>Jackson Street</b>	
134	Meek Avenue
135	Sutro Street - inside park
215	151 West Jackson Street - N/E corner Amador Street - near bus stop
<b>Main Street</b>	
121	22572 Main Street - N/W corner of B Street
136	Simon Street - empty lot
<b>Main Street</b>	
138	22575 Main Street - N/W corner of B Street
139	22636 Main Street - S/E corner of B Street
122	22626 Main Street - S/E corner of B Street
113	NE Corner of Main and C intersection adjacent to ac transit stop (located March 2013)
140	Between B Street and C Street - side of Centennial Bank
No # (used to be #141)	22637 Main Street - between B Street and C Street
144	22777 Main Street - west side - in front of Bay Cities Credit Union
<b>Manon Avenue</b>	
145	27958 Manon Avenue - N/E corner of Tennyson Road
<b>Mission Boulevard</b>	
No Number	Parking Lot #1 - N/E corner of Mission Boulevard
00	Mission Blvd near Pinedale Ct @ bus stop in front of M&T Photo Center (added 10/17)

40	D Street - N/E corner - Guiliani Plaza - tot lot
41	D Street - N/E corner - Guiliani Plaza - tot lot
No # (used to be #42)	D Street - N/E corner - Guiliani Plaza - tot lot
119	Corrine Street - S/E corner
142	Parking Lot #10
146	A Street - N/E corner - in front of Brake Shop
147	A Street - N/E corner - near the bus stop
148	A Street - N/W corner - in front of Zorns
149	22810 Mission Boulevard - N/E corner of D Street
150	Fairway Street - S/E corner
151	Berry Avenue - S/W corner
152	Fletcher Lane - N/W corner
153	D Street - N/W corner - Library
154	B Street - S/E corner
155	22698 Mission Boulevard - N/E corner of C Street
156	C Street - S/E corner
<b>Mission Boulevard</b>	

<b>CAN NUMBER</b>	<b>LOCATION</b>
78	Lot east side between Jackson Avenue and D Street
157	C Street - N/W corner
158	D Street - N/E corner - Library
159	Main Library - D Street - side entrance under patio
160	Main Library - Mission Boulevard
161	Main Library - Mission Boulevard
162	Main Library - C Street - main entrance
163	Main Library - C Street
164	Main Library - D Street
165	22809 Mission Boulevard - N/W corner of D Street
166	23951 Mission Boulevard - near bus stop in front of computer store
167	Orchard Avenue - S/W corner - near bus stop
168	Orchard Avenue - S/W corner - near bus stop
169	Blanche Street - south side - end of trail
170	26359 Mission Boulevard - in front of Bras Monuments - near bus stop
171	Sorenson Road - east side - near bust stop in front of sound wall
172	Blanche Street - S/E corner
173	Fairway Street - N/E corner - near bus stop
Used to be #174	Blanche Street - N/E corner - in front of entrance sign/fountain
175	Corrine Street - N/E corner
214	B Street - parking lot - Mission Boulevard side



216	Highland Boulevard - N/E corner - near bus stop
224	Between Jackson Street and Fletcher Lane - east side
241	Between B Street and C Street - Parking Lot 7
<b>Orchard Avenue</b>	
177	O'Neil Avenue - near bus stop
<b>Panama Street</b>	
180	Hesperian Boulevard - High School
181	Hesperian Boulevard - Fire Station
<b>Patrick Avenue</b>	
183	27287 Patrick Avenue - N/W corner of Roosevelt Avenue - near bus stop
<b>Ruus Road</b>	
49	28200 Ruus Road - N/E corner of Panjon Street - Matt Jimenez Center
<b>Santa Clara Avenue</b>	
182	Jackson Street - N/W corner - in front of 7/11
<b>Schafer Road</b>	
178	890 Schafer Road - middle of street
184	Gading Road - side of Glassbrook School - near bus stop
<b>Second Street</b>	
38	West of Walpert Street - near bus stop
187	1200 Second Street - east side - in front of Bank of America

<b>CAN NUMBER</b>	<b>LOCATION</b>
188	Between Russell Way and A Street - west side - in front of Wells Fargo
189	B Street - S/W corner - church parking lot
No # (used to be 190)	22622 Second Street - east side
191	East of Walpert Street - near bus stop
192	E Street - S/W corner
41 (used to be #186)	D Street - near bus stop - NE corner
39	D Street. NW corner.
<b>Sleepy Hollow Avenue</b>	
193	Tennyson Road - Kaiser emergency parking lot

<b>Sorenson Road</b>	
194	Luvana Drive - near BART overpass stairs
<b>Soto Road</b>	
195	Lund Avenue - N/W corner
42	Near Langley way - near bus stop (under redwood trees)
141	In front of Fairview School entrance - near bus stop sign
<b>Tennyson Road</b>	
73	Dickens Avenue - S/E corner - near bus stop
88	Tampa Avenue - S/E corner - closer to Biscayne Avenue
89	Between Huntwood Avenue and Lustig Court - south side - near bus stop
97	Pompano Avenue - S/E corner - in front of Auto Parts
98	Calaroga Avenue - S/E corner - gas station
99	Pompano Avenue - N/W corner - near bus stop
105	Bruno Street - N/E corner
106	723 Tennyson Road - north corner of Vasona Court
143	583 Tennyson Road - north side - between Andrea Street and Baldwin Street
176	Baldwin Street - N/E corner - near bus stop
185	Beatron Way - S/W corner
197	Hesperian Boulevard - in front of Kaiser parking garage - near bus stop
198	Calaroga Avenue - N/E corner - near bus stop
199	1027 Tennyson Road - in front of Glad Tiding Church
200	1075 Tennyson Road - in front of Jack in the Box
201	Between Huntwood Avenue and Manon Avenue - north side - near bus stop
202	680 Tennyson Road - south side - in front of Eden Youth Center
203	458 Tennyson Road - south side - near bus stop
205	390 Tennyson Road - south side - In front of Taco Bell
206	Leidig Court and Huntwood Avenue - north side
207	Between Leidig Court and Whitman Street - on the school yard side
208	Whitman Street - N/W corner - near school yard
209	Between Whitman Street and O'Harron Drive - north side
210	Dixon Street - S/W corner - near traffic light
219	Tyrrell Avenue - N/E corner
232	345 Tennyson Road - north side - in front of 7-11
233	451 Tennyson Road - N/W corner of Manon Avenue
No number	Huntwood Avenue - N/E corner
No number	Huntwood Avenue - S/W corner
No number	S/E corner at Sleepy Hollow Ave, next to Sound Wall and across street from Lord Tennyson Apartments

No number	S/E corner at Sleepy Hollow Ave, next to Sound Wall and across street from Lord Tennyson Apartments
No number	Hesperian Boulevard - N/E Corner at bus stop in front of Mc Donald's
<b>Third Street</b>	
211	22766 Third Street - N/E corner of D Street
<b>Tyrrell Avenue</b>	
26	27000 Tyrrell Avenue - Tyrrell School to the left of the semi circle driveway
69 (used to be #51)	27211 Tyrrell Avenue - Shepherd St
53	Shepherd School
54	Tyrrell School - in front of parking lot
<b>Watkins Street</b>	
174	D Street - S/W Corner
217	Between B Street and C Street - east side - in front of Post Office
218	Between B Street and C Street - west side
No number	Between B Street and C Street - east side - in front of parking lot stairwell
220	C Street - S/E corner
221	Between C Street and D Street - east side
<b>Watkins Street</b>	
222	D Street - N/E corner
223	D Street - N/W corner
225	Between Jackson Street and Fletcher Lane - east side
<b>Whitman Street</b>	
212	Fruitwood - N/W corner
226	Near Fruitwood - BART street overpass stairs
227	Next to Tennyson School and soundwall - west side
228	Berry Avenue - N/W corner
229	East side - past Berry Avenue
<b>Willis Avenue</b>	
234	Watkins Street - N/W corner
<b>Winton Avenue</b>	
230	Soto Road - in front of gas station
236	Soto Road - near school

**EXHIBIT M**  
**Public Education and Community Outreach Program**

**PUBLIC EDUCATION PLAN COMPONENTS**

The Contractor's publicity and education efforts shall encourage the maximum level of Customer participation in waste reduction, Recycling and Composting. The Public Education Plan Components are required of the Contractor and shall, at a minimum, focus on both Transition Related Activities and On-Going Program Maintenance Activities.

The tasks listed below shall be regarded as minimum publicity and education plan components to be provided by the Contractor.

During the Term of this Agreement, Contractor shall provide staff to coordinate all aspects of public outreach to ensure that all Residential and Commercial Customers are well informed regarding the programs and services provided under this Agreement. The major responsibilities of this individual are described in the next section. Contractor shall provide one full-time staff person and one part-time intern or associate, both dedicated to this Hayward agreement.

**PUBLIC EDUCATION BUDGET**

Public education materials described in this Exhibit will be paid for utilizing the public education budget (7.1.7) unless otherwise noted.

**GENERAL**

1. Contractor's public outreach functions shall include: (1) Managing all technical assistance to effectively facilitate all Customers' participation in the services offered under this Agreement, including coordination with staff employed by Contractor and any consultants; (2) Conducting on-going monitoring of Customers' participation to determine the level of compliance with local and state regulations; (3) Being available by telephone and email during regular business hours to respond to requests from Customers or Contract Administrator; and (4) Being available to provide presentations to Customers Monday through Friday and occasional Saturdays for the services described herein, particularly the services described in Section 5, on request from the Contract Administrator or a Customer.
2. Contractor's public education communications shall include: (1) Proposing changes to the outreach literature to clarify the services available; (2) Ensuring timely mailing of all outreach materials as described in this Exhibit; (5) Being available by telephone and email during regular business hours to respond to requests from Contract Administrator; and
3. Informational materials which concisely explain the programs and services shall be printed and distributed by the Contractor. Examples of required information shall include: acceptable Single-Stream Recyclables and Organic Materials, proper

preparation, set-out procedures, Collection schedule, Rate structure and other relevant information as determined by the Contractor and the City. The literature shall be printed in sufficient number to be distributed to all affected Residential and Commercial Customers, and used for public relations activities.

4. All publicity and education activities are to be thoroughly coordinated with the City through the Contract Administrator in all phases, including design, implementation and distribution. Contract Administrator shall be allowed ten (10) days to review and revise all documents prior to Contractor printing the document for dissemination.
5. As directed by Contract Administrator, materials for general distribution shall contain translations in Spanish. As directed by Contract Administrator, brochures and flyers shall also include short announcements in Chinese, Tagalog and Vietnamese indicating that additional information in each of those languages is available on the Contractor's website.
6. The Contractor prepare notices to be placed on setouts or sent electronically that do not conform to correct preparation procedures.
7. Contractor shall maintain a website, pursuant to Section 7.1.3.

## **ON-GOING ACTIVITIES**

Each year of the Agreement, Contractor shall provide public information/education activities to aide in the smooth transition and implementation of the new services, as well as the on-going services.

In addition, Contractor shall complete the following tasks for the services listed:

### Residential Services (Single-Family Customers and Multi-Family Customers)

#### Communications:

1. Brochure Describing New & Existing Program Components: Print a brochure for receipt by each single-family household. The brochure will detail the new and existing program components, including two (2) Bulky Item appointments available each calendar year, acceptable Recyclable Materials, acceptable Organic Materials, Sideyard Service alternatives, and Cart sizes available. As directed by Contract Administrator, brochures will be developed using graphics and may include brief text in English and Spanish. Annually as directed by Contract Administrator, Contractor shall prepare, print and mail such brochures.
2. Bulky Item Appointments: Include bulky in the twice a year services overview mailer that describes the two (2) annual appointments available to remove Bulky Items. Mail a confirmation postcard to remind Customers of the scheduled appointment date. At a minimum, the brochures shall address how to schedule Collections, acceptable and unacceptable materials, proper preparation and set out procedures, Household Hazardous Waste Disposal alternatives and any other program components. Brochures shall be mailed

to all Occupants of Premises in February and September (or as directed by Contract Administrator).

3. Holiday Tree Collection: Design, print and mail a December newsletter mailer that includes describing the annual holiday tree Collection service. All such informational materials shall be mailed by the first Monday in December in order to ensure sufficient time to determine a designated location and retrieval date for each Roll-off. Mailer format may be updated as directed by Contract Administrator.
4. Bill Insert: As directed by Contract Administrator, prepare quarterly bill inserts. The services described will include, but are not limited to, the Recyclable and Organic Materials Collection services, the procedures to schedule Bulky Items appointments, procedures to obtain Sideyard service or a low-income discount, the Household Hazardous Waste Program, the Holiday schedule, the procedures to obtain free self-haul disposal coupons, the annual event to distribute finished Compost and any other topics requested by Contract Administrator. The bill insert shall be inserted in each quarterly bill. Contractor shall provide 250 copies of each brochure for City's use.

#### Operations

1. Kitchen Pails: Contractor shall purchase a sufficient quantity of 1.58-gallon (or similar size) green, food scrap pails for Contractor to deliver to Customers on request. (Kitchen Pails paid for by Contractor, not from the public education budget.)
2. Labels Applied to Carts: Contractor shall purchase a sufficient quantity of labels that Contractor staff shall apply to carts with missing labels. (Labels paid for by Contractor, not from the public education budget.)

#### Recyclable Materials Collection for Multi-Family Dwelling Services

One brochure for all residents, both single-family and multi-family.

Develop MFD Property Manager tool kit; MFD Property Manager information may be included in quarterly bill inserts.

Prepare and mail service overviews and recycling education to all multi-family property tenants and single family residents in April and December.

Brochures shall also be provided on request or as needed, based on participation levels or extent of contamination. As directed by Contract Administrator, the brochure shall be prepared in English and Spanish.

#### Commercial Services for Single Stream Recyclable Materials Collection and Organic Materials Collection

1. Brochure/Bill Insert: Print a brochure as an insert in all bills for Commercial and Roll-off Customers that describes the services provided, including Collection procedures, schedules, services provided by the Alameda County Hazardous Waste Program and other provisions.

Contractor shall provide copies of the brochure annually in quantities as directed by the Contract Administrator.

2. Labels for Carts and Bins: Prior to delivery of any Cart or Bin, affix a decal that describes the acceptable and unacceptable materials. Such labels shall be reviewed and approved by Contract Administrator. (Printing the labels paid for by Contractor, not from the public education budget).
3. Outreach Schedule: Contractor shall schedule and conduct waste assessments to describe these services and the Mandatory Recycling Ordinance; to offer labels for indoor containers and posters for reference, and to arrange to deliver Carts or Bins for Customers' use. Such outreach shall include one phone call to schedule an on-site appointment with the property Owner or manager or other designated staff, and two more follow-up phone calls to offer a site visit with the property Owner or manager. Contractor shall maintain an Excel file of all Commercial Premises, including but not limited to, the contact name and title (e.g., property manager), dates of calls or site visits, responses from property Owners and managers, program implementation dates, and shall provide the most current file to the Contract Administrator with each quarterly report and more frequently if requested. Contractor shall continue to complete the same outreach measures described immediately above to each property owner or manager who does not subscribe to the requisite services. Contractor shall provide a record of the required outreach to the contract administrator with each quarterly report.

#### Multi-Family Organics Collection

1. Kitchen Pail: Contractor will purchase a sufficient quantity of 1.58-gallon (or similar size) green, food scrap pails to be delivered by Contractor on request from Multi-Family Property Owners or Managers. (Kitchen pails paid for by Contractor, not from the public education budget).
2. Label for Pail: Contractor will design and print a label describing how to participate in the program, and be responsible for facilitating placement of the labels on the food scrap pails prior to distribution. (Labels paid for by Contractor, not from the public education budget.)
3. Flyer, postcard or brochure: Contractor will create and include instructions/service information with kitchen pails that are delivered to Multi-Family Premises.
4. Outreach Schedule: Contractor shall schedule and facilitate meetings to describe this service and its importance; to offer kitchen pails on request from property owner or manager and at Contractor's local office, and to provide sufficient support to property managers, owners and tenants in order to ensure all Customers have been provided with the appropriate materials to properly participate in the services and are aware of the provisions of the Organics Reduction Recycling Ordinance.

Such outreach shall include one phone call to schedule an onsite appointment with the property Owner or manager or other designated staff, and two more follow-up phone calls to

schedule a site visit with the property Owner or manager. Contractor shall maintain an Excel file of all Multi-Family Premises, including but not limited to, the contact name and title (e.g., property manager), dates of calls or site visits, responses from property Owners and managers, program implementation dates, and reductions in service levels for Solid Waste Collection, and shall provide a record of the required outreach to the Contract Administrator with each monthly report for the first six months following the Effective Date.

Contractor shall continue to complete the same outreach measures described immediately above to each property Owner or manager who does not subscribe to the requisite service. Contractor shall provide a record of the required outreach to the Contract Administrator with each quarterly report.

5. Labels for Carts and Bins: Prior to delivery of any Cart or Bin, affix a decal that describes the acceptable and unacceptable materials. Such labels shall be reviewed and approved by Contract Administrator. (Labels to be paid for by Contractor, not the public education budget).
6. Holiday Tree Collection: Contractor agrees to design, print and mail a December newsletter mailer to all Multi-Family Customers with up to twenty-five (25) Dwelling Units advising of the services described in Section 5.7.2. Multi-Family Customers with more than twenty-five (25) Dwelling Units shall also receive a December newsletter mailer detailing the services described in Section 5.7.4. All such informational materials shall be mailed for receipt by the first Monday in December in order to ensure sufficient time to determine a designated location and retrieval date for each Roll-off.

#### General Provisions

1. A member of Contractor's staff who is trained to provide technical assistance to Customers is required and shall be available by telephone during regular business hours. On request from the Contract Administrator or a Customer, technical assistance staff may also be required to provide presentations to Customers on Saturdays for the services described herein, particularly the services described in Section 5.

#### **ON-GOING PROGRAM MAINTENANCE ACTIVITIES**

Contractor shall, at its expense and for no additional compensation:

1. Mail or email the appropriate program brochure and other City-selected materials each time a Customer signs up for new service.
2. Provide Carts (35-, 64- or 96-gallon) and/or Roll-offs (ranging from 14 cubic-yards to 30 cubic-yards) for Solid Waste, Recyclable Materials and Organic Materials for each of the following annual events: Annual Open House at the Hayward Executive Airport (or similar event); Cinco de Mayo Festival at City Hall Plaza (or similar event); Asian American Heritage Festival (or similar event); Juneteenth Celebration at City Hall Plaza (or similar event); Blues Festival (or similar event); Mariachi Festival (or similar event); Up to Four (4) Downtown Street Parties between June-September (or similar events); Zucchini Festival (or similar event);



Volunteer Clean-Up Event at Weekes Park (or similar event); City-Wide File Clean Up Day (or similar event); Up to three (3) compost giveaway events (or similar events); Up to four (4) neighborhood-scale bulky pickup events; and up to three (3) additional events identified by the City.

**EXHIBIT N**  
**ACWMA Policy for Commercial Recycling Program Minimum**  
**Requirements**

**Attachment B**



At the November 8, 2012 meeting the Alameda County Source Reduction and Recycling Board adopted the following:

**Recommendation**

Staff recommends that the Recycling Board adopt the following definition and process for assessing the existence of an “adequate commercial recycling program” for the purpose of determining municipal eligibility to receive per capita Recycling Fund monies, effective July 1, 2013 forward, and that the Recycling Board review the criteria in two years, in November 2014.

Moved: Nate Ivy  
Second: Rebecca Kaplan  
Ayes: Ivy, Kaplan, Mahon, Natarajan, O'Donnell, Reid, Turner, Wile, Wozniak  
Nays: None  
Absent: Krueger  
Recused: Jewell

Attachment A: Definition and Process for Evaluation  
Attachment B: Commercial Recycling Programs Summary Table

**Attachment B-1**  
**Definition of "Adequate Commercial Recycling"**

A proposed updated definition of an adequate member agency commercial recycling program for the purpose of receiving Measure D money is stated below. It involves satisfying ONE (or more) of three criteria with respect to commercial recyclables and ONE (or more) of three 'parallel' criteria with respect to commercial organics. "Commercial recyclables" are defined as, at minimum, old corrugated cardboard (OCC), office paper, mixed paper, glass and metal food and beverage containers, and #1 and #2 plastic bottles; and "commercial organics" are defined as, at minimum, plant debris, food scraps, and compostable paper.

The three criteria applicable to commercial recyclables are listed below. An adequate commercial recycling program under the County Charter will satisfy ONE (or more) of these criteria on and after July 1, 2013 unless the Recycling Board adopts an alternative definition after that date.

1. The member agency participates in the ACWMA mandatory recycling ordinance, Phase 1. The Recycling Board has previously formally stated that participation in the ordinance is not necessary, but is more than adequate.

OR

2. The member agency ensures that at least one hour per year of technical assistance work time is actually provided to businesses to encourage and assist commercial accounts to recycle more. The minimum amount of time can be provided by member agency staff, franchised hauler staff, consultants to the member agency or franchised haulers, or any combination of these. The minimum time commitment will be proportional to the number of commercial accounts in the member agency. For example, one hour per account per year means a minimum work effort of 22 hours per year in Piedmont; a minimum work effort of 848 hours per year in Pleasanton, and so forth (see Attachment B for a current tally of the number of commercial accounts in each member agency).

In addition, a member agency would need to either make source separated recycling services available at open market rates or adopt a rate schedule under which the prices per volume and frequency of source separated services are no higher than that for refuse/garbage service of the same volume and frequency. This second part of criteria 2 is necessary because technical assistance and outreach cannot increase recycling participation if the service is not available at a competitive price.

OR

3. The member agency achieves a 50% participation rate in its commercial recycling program. Participation for recycling shall be calculated as a percentage of total commercial accounts. Participation through centralized processing will count so long as the centralized processing facility meets the less than 10% covered materials residual quality standard defined in the mandatory recycling ordinance.

The three criteria applicable to commercial organics are listed below. An adequate commercial recycling program under the County Charter will satisfy ONE (or more) of these criteria on and after July 1, 2014 unless the Recycling Board adopts an alternative definition after that date.

1. The member agency participates in the ACWMA mandatory recycling ordinance, Phase 2 (or a variation on Phase 2 approved administratively as provided for in the ordinance). The

Recycling Board has previously formally stated that participation in the ordinance is not necessary, but is more than adequate.

OR

2. The member agency ensures that at least 3 hours per year of technical assistance work time is actually provided to organics generating businesses to encourage and assist commercial organics accounts to recycle more. The minimum amount of time can be provided by member agency staff, franchised hauler staff, consultants to the member agency or franchised haulers, or any combination of these. The minimum time commitment will be proportional to the number of commercial accounts in the member agency. For example, 3 hours per account means a minimum work effort of 48 hours per year in Piedmont; a minimum work effort of 1143 hours per year in Pleasanton, and so forth (see Attachment B for a current estimate of the number of commercial organics accounts in each member agency).

In addition, a member agency would need to either make source separated commercial organics services available at open market rates or adopt a rate schedule under which the prices per volume and frequency of source separated services are no higher than that for refuse/garbage service of the same volume and frequency. This second part of criteria 2 is necessary because technical assistance and outreach cannot increase recycling participation if the service is not available at a competitive price.

OR

3. The member agency achieves a 50% participation rate in its commercial organics program. Participation for commercial organics shall be calculated as a percentage of organics generating businesses based on SIC and/or NAICS codes. Participation through centralized processing will count so long as the centralized processing facility meets the less than 10% covered materials residual quality standard defined in the mandatory recycling ordinance.

#### **Process for Determining Whether the Criteria Have Been Satisfied**

If adopted, the commercial recycling criteria would apply on July 1, 2013 and the commercial organics criteria would apply on July 1, 2014. Each member agency receiving Measure D disbursements currently provides an annual report to the Recycling Board approximately each October which describes Measure D funds received and spent in the previous fiscal year. These annual reports can document compliance with minimal effort starting with the October 2013 report. The annual report shall document compliance with the criteria as of July 1st of that year. However, if the technical assistance criteria is used to comply, the member agency shall document the budget or contractual commitment to provide the required number of hours for the current (at the time of the report) fiscal year, and affirm that the minimum number of hours were provided in the prior fiscal year when applicable. Documentation of technical assistance hours provided shall be available upon request (e.g., during the five year financial and compliance audit required in the County Charter).

If Recycling Board staff believes a member agency is not in compliance, it will notify the member agency and refer the situation to the Recycling Board for a decision. If the Recycling Board decides the member agency has not complied with the minimum standard, it may withhold future Measure D payments.

**Attachment B**



At the November 8, 2012 meeting the Alameda County Source Reduction and Recycling Board adopted the following:

**Recommendation**

Staff recommends that the Recycling Board adopt the following definition and process for assessing the existence of an “adequate commercial recycling program” for the purpose of determining municipal eligibility to receive per capita Recycling Fund monies, effective July 1, 2013 forward, and that the Recycling Board review the criteria in two years, in November 2014.

Moved: Nate Ivy  
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OR

2. The member agency ensures that at least one hour per year of technical assistance work time is actually provided to businesses to encourage and assist commercial accounts to recycle more. The minimum amount of time can be provided by member agency staff, franchised hauler staff, consultants to the member agency or franchised haulers, or any combination of these. The minimum time commitment will be proportional to the number of commercial accounts in the member agency. For example, one hour per account per year means a minimum work effort of 22 hours per year in Piedmont; a minimum work effort of 848 hours per year in Pleasanton, and so forth (see Attachment B for a current tally of the number of commercial accounts in each member agency).

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OR

3. The member agency achieves a 50% participation rate in its commercial recycling program. Participation for recycling shall be calculated as a percentage of total commercial accounts. Participation through centralized processing will count so long as the centralized processing facility meets the less than 10% covered materials residual quality standard defined in the mandatory recycling ordinance.

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If Recycling Board staff believes a member agency is not in compliance, it will notify the member agency and refer the situation to the Recycling Board for a decision. If the Recycling Board decides the member agency has not complied with the minimum standard, it may withhold future Measure D payments.



## **EXHIBIT O COLLECTION ROUTES**

The following pages are Contractor's garbage route maps.

The following codes are used to identify each route:

M = Monday

T = Tuesday

W = Wednesday

H = Thursday

F = Friday

Note: A map is not included for the properties located on Palomares Road that are within the City of Hayward.

[ROUTE MAPS TO BE PROVIDED AT A LATER DATE]

## **EXHIBIT P CART SPECIFICATIONS**

### **A. CART DESIGN REQUIREMENTS**

#### **1. General**

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

#### **2. Cart Handles**

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

#### **3. Cart Lid**

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

#### **4. Cart Colors**

The Solid Waste, Recyclable Materials, and Organic Materials Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Solid Waste Carts shall be gray body/gray lid. Recyclable Materials Carts shall be blue body/blue lid. Organic Materials Carts shall be green body/green lid. Contractor may propose other colors for Carts, which are subject to approval by the City. For all colors including those prescribed in this paragraph, the Contractor shall obtain written approval from the City for the Cart color before Contractor's purchase of the Carts.

#### **5. Identification Markings**

All markings on the Containers shall be approved by the City in advance of ordering Carts.

## B. CART PERFORMANCE REQUIREMENTS

### 1. General

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

### 2. Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-68</b>	<b>130</b>
<b>30-35</b>	<b>70</b>
<b>20</b>	<b>40</b>

### 3. Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

### 4. Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

### 5. Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to twenty-five (25) miles per hour for any new carts as applied from any direction.

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

## **6. Lid Performance**

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

## **7. Reparability**

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.